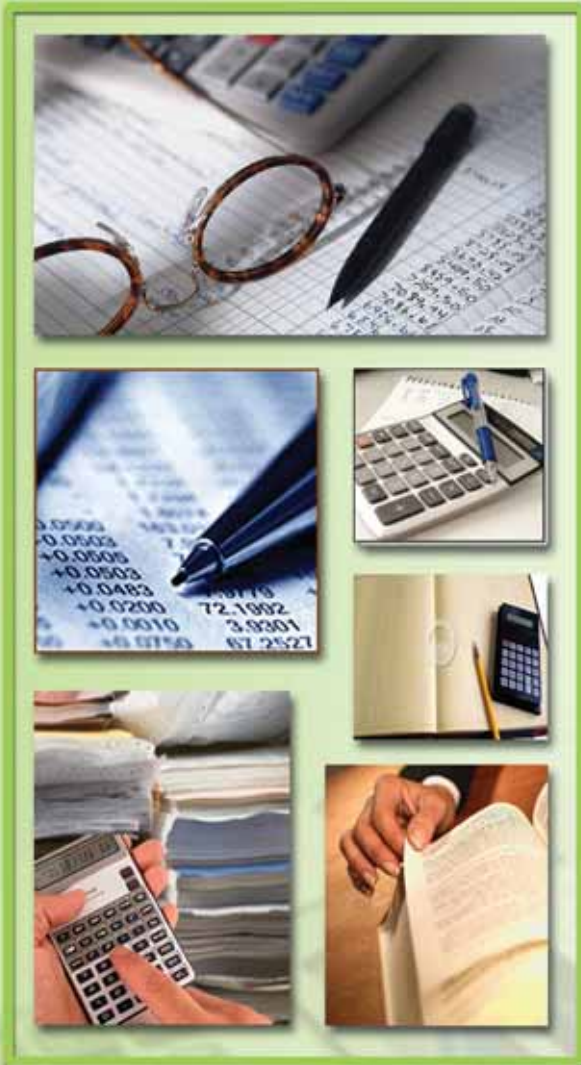


INTERface

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A Buzzer or A LIGHT ?

The way you let your light shine is by just being yourself around people. You can really touch peoples' lives in the real sense through the way you live your life.

You can sow seeds just by showing people that you are real. Some people call it friendship: being a genuine friend, genuinely caring for people, just letting your light shine.

*Jesus also said, "**you are a city set on a hill**". A city set on a hill cannot be hidden. Nobody lights a lamp and puts it under a basket. You and I are to live a life that brightly shines and dispels darkness.*

I read a story some time back about a person who had his doorbell hooked up to a big buzzer in the back room. The buzzer was really loud. He wanted to change it and put a bulb there instead that would illuminate when somebody pushed the doorbell. So it would not make a noise but would glow.

The problem was the light would barely illuminate. He could not figure out what was wrong, so he called an electrician friend. His friend looked at it and told him, "Oh, you don't understand. It takes more power to shine than it does to make noise."

That is very true. Jesus said, "Let your light shine." It is reflected in your attitude, your work ethic, and your countenance.



INTERface

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Promoting & Deepening Accountability of Governance for Substantive Democracy

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This is a brief note to explore the contours of accountability as a concept and tool for effective and democratic governance. The attempt is to highlight and flag some of the key issues.

1. The Mirage of Substantive Democracy

In the 20th century Democracy as a value and as a system of governance seemed most appropriate from the perspective of furthering and guaranteeing universal freedom, equality, equity and social justice. There was huge amount of enthusiasm and optimism regarding the transformative potential of democracy. However, by the end of the 20th century several limitations and distortions of the basic values of democracy and democratic systems were more than apparent.

On the one hand, we saw the emergence of President Bush's notion of 'democracy', which primarily means protection and expansion of American corporate interests through war, invasions and occupations of the

Southern countries in a completely uni-polar world. On the other hand, the neo-liberal discourse with its enormous influence on governments across the globe is pushing for a techno-managerial notion of democracy, where the emphasis is on accountable and transparent governance and not on rights and empowerment of the poor and marginalized. In this notion of democracy, the value and politics of democracy and people is missing. The focus remains on creating governance structures which could promote, protect and provide conducive and stable environment for the growth of global capital and market.

On a less skeptical note, the experiments with democracy in many of the post-colonial countries have had paradoxical results. On the one hand, it is a significant

achievement that in deeply hierarchical, patriarchal and ethnically (including caste and religion) divided countries; democracy has created the political space for establishing the norms of universal human rights. In countries like India, where democracy has matured to certain extent, this has resulted in an institutional form of democracy, which witnesses regular elections and regular change of regimes, separation of powers, independent judiciary and guarantee of some citizenship rights and entitlements for at-least part of population.

The level of democratization of the society, polity and governance is uneven in regions like South Asia and depends on varying factors. However, it is clear that none of these countries have been able to achieve substantive democracy where the entire set of human rights-civil, political, economic, social and cultural -are ensured and guaranteed to all citizens irrespective of their class, gender, caste, ethnicity or creed. Often the State, in spite of its stated objectives of social justice, plays a partisan role and ensures the cornering of resources and power for the elite interests in an already scarce economy leading to alienation of basic rights of the poor and marginalized groups.

In this context, several thinkers and activists believe that the distortions in the idea and values of democracy are inherent in the representative form and systems of democracy.

To achieve substantive democracy, it would be important to make a transition from representative form of democracy to a participatory form of democracy. Substantive democracy can be ensured only through sustained participation and engagement of the common people, particularly the marginalized, in the power matrix of the society, polity and economy.

2. Contours of Participatory and Substantive Democracy

It would be worthwhile to present the basic principles of participatory democracy leading to substantive democracy. It is important to underscore that the basic principles being suggested here are in the form of basic values, which would have to be translated into systems of governance and polity for operationalizing the notion(s) of participatory and substantive democracy. Second, the basic tenants being suggested here are not exhaustive and would have to be further refined and fleshed out.

Access - In representative democracy, the gulf between the marginalized groups and institutions and systems of governance has only increased. It would be essential to ensure access of the marginalized to all institutions of governance, decision making sites, resources, etc.

Participation - Designing systems and evolving a culture of participation, which goes beyond voting and ensures the participation of poor and ordinary

citizens in processes of decision making (at all levels), resource use (resources of all kinds including financial and natural) and setting the political and developmental agenda.

Transparency - The system has to have inbuilt mechanisms for openness of processes and information. This openness and access to information should be ensured for all. Importantly, there should be no realm of governance (or kind of information), which would be outside the purview of this fundamental idea.

Responsiveness - Mere participation and transparency would not lead to substantive democracy. The polity and governance systems would have to respond to the needs, aspirations and demands of the people. Responsiveness to the peoples' need has to be enshrined as a basic tenant of democratic governance.

Decentralization - Centralized systems by definition ensure exclusion, particularly of the margins. Therefore, from the lens of the marginalized and giving substantive meaning to democracy, the idea of decentralized systems and processes has to be kept as a central value. Decentralization is more commonly used word but 'Non-centralized' would be a more appropriate phrase as it does not begin with the premise and principle of centralization.

Accountability - All the principles mentioned above would remain notional if the system of governance and the

polity would not become accountable to the people and to the fundamental political and value framework as enshrined in the constitution or other forms of universal consensus like the Universal Declaration of Human Rights (UDHR). This accountability cannot be through voting and change of regime once in five years. It has to be to regular, ongoing, sustained accountability to the people. Needless to say that, these are basic ideas and would need to be fleshed out for a more comprehensive understanding and dialogue; but these could provide a good starting point for a discussion. It would be important to note that the distortions of representative democracy and the blocks to these principles emanate from a complex interplay of societal, political and economic structures like patriarchy, caste, etc, which ensure discrimination and exclusion of the marginalized. Therefore, when we talk of access, participation, transparency, decentralization, responsiveness and accountability then the centrality of the marginalized groups in this discourse is unquestionable.

3. Governance Accountability

It would be prudent to add here that accountability, as already stated above, is a value and does not have the limited meaning of access and openness of information, decisions, processes and power; instead it would mean a process of empowering common people to use this 'accountability' to change their life. Operationally it would mean simplification of information and procedures to an extent that it enables

people to make governance accountable and responsive. A proactive reaching out to people would be an integral part of any discourse of accountability of governance.

Second, accountability is a value and a means to an end. It is important to not get caught in several attempts of accountable governance, where accountability becomes the end in itself. Taking on from the previous point, accountability is the first step in building participatory and substantive democracy but would become limiting as an objective in itself. We need to be cautious of systems of governance, which are accountable but do not provide the space to change local and grassroots conditions. This also leads us to the next point.

Third, the entire discourse of accountable governance has to be informed and driven by a set of fundamental values, which are rooted in social justice and universal human rights. It would be extremely limiting to not have the human rights value framework at the centre of this discourse as it might give rise to 'accountable' systems, which remain completely hierarchical and patriarchal. An 'accountable' system providing enough data and information regarding the status of women but not taking adequate steps to counter the discrimination against women would be futile. Accountability should be viewed as a tool for realization of the democratic impulses and aspirations of the society and the polity. Nevertheless, it should be clear that

mere accountability of governance cannot counter the social, economic and political structures of exclusion and discrimination.

Fourth, building on the previous point, it is important to underscore that governance is a political process and not a techno-managerial concept focusing on efficient resource use as propagated by the neo-liberals. Therefore, it would be important to shift the current debates focusing on techniques, procedures and systems for accountable-governance to a new realm of politics and culture of accountability. However, the discussions on techniques and procedures are important to ensure that the politics of accountability is made tangible.

Fifth, governance is a notion not restricted only to governments. All the principles discussed earlier including accountability have to be central to all forms of governance ranging from the State to the large private corporations to civil society groups. This becomes particularly important in the neo-liberal era where the State is being forced to abdicate many of its responsibilities and move out of several critical sectors. In this context, the large corporations, multilateral and international institutions should adhere to the concept of transparent and accountable-governance. The notion of accountability of governance is not restricted to political governance; it has to be the primary feature of economic and social governance as well.

Finally, traditionally in democracy,

media has played an important role in ensuring transparency and accountability of governance. It continues to play that role and would continue to do so. However, given the changing character of media, which is moving towards corporatization, civil society needs to proactively play this role. Media, which is often restricted by the elite interest, has limitations in raising the critical questions of politics of transparency and accountability from the perspective of marginalized groups and citizens. Peoples' movements, social action groups and mass organizations would have to take the lead in deepening and promoting accountable-governance.

4. Tools for Ensuring Accountable Governance

At the onset of this section it is important to state that tools discussed here cannot be used independent of mobilizing and organizing the people. The people would have to take the lead for building and shaping up a movement for accountable-governance. However, some of the tools discussed here could provide the strategies for building the movement.

Right to Information - Given the imperial character of the post colonial States, information is hidden and not shared with the common people. This is often done by the States, which are supposed to be representing the people. Unfortunately, this lack of transparency has been used by the State to serve elite interests. Struggles like the Right to Information campaign and MKSS in India

have been able to establish the right to information as a fundamental right of all citizens.

Budget Analysis - Budgets are the documents where the real policy intent of the State can be identified. Often there is a huge gulf between the political rhetoric of governance and the actual budgets presented by the governments. Several civil society groups have used the tool of budget analysis from the perspective of poor and ordinary citizens to make transparent the real policy intents of the government.

Social Audits - Different forms of social audits (people directly auditing the performance of the government) of the government programs, schemes and plans have been used to demand accountability for the chasm between stated policies and laws on the one hand, and actual implementation and governmental (in)action on the other. Jun Sunwais is one popular form of social audits.

Report Card Methodology - Constant and systematic feedback from the citizens about the quality and institutions of governance is also used to deepen transparency of governance. This is done by providing report cards to the government and its institutions about their performance and the level of satisfaction of the citizens. PAC from Bangalore has done pioneering work on this methodology.

E-Governance - E-governance is also an important tool for making governance

accountable. The basic principle of e-governance is to use modern technology, particularly the internet to ensure easy, free and complete access to critical information in the public domain. Technology can help in cutting the red tape, which often by design is to create obstacles in transparency and accountability of governance. However, it is important to underline that given the low levels of access of common people to technological tools, e-governance has limitations in a country like India.

Decentralization - Decentralization of governance systems is also being used

as a tool for ensuring accountability of governance. Creation and empowerment of local bodies has provided the space for greater accountability. In India, according to law, many key decisions regarding local governance need to be taken in the village general assemblies (Gram Sabha). This ensures a high a level of participation, transparency and accountability of governance.

All these tools have been extensively used in different contexts and have their strengths and limitations. Often a combination of these tools is required for deepening and promoting accountable-governance.

“This article has been reprinted from the ‘Civil Society Voices’; September - December 2007 issue”

Satyam Fallout & Implications on Governance

Sanjay Patra, *Executive Director,*
FMSF

1. Satyam Nemesis

If Management is about running organizations, Governance is to ensure that it is run responsibly". In the recent times the nation of India and the World has been shocked about with the "Satyam" issue. The corporate world which always felt good about the corporate governance practices has been jolted out of its dreams. Mr. Madhav Mehra, President of UK based World Council for Corporate Governance said, *"Satyam fraud can be the greatest threat to India's Corporate reputation unless handled proficiently. We must recognize that it is a systemic failure and not an individual. Mr. Raju is certainly not a chartered accountant and was incapable of hiding Rs. 7000 crore from the company's balance sheets for 10 years on his own or dupe such an eminently qualified board to believe that their profit margin was just 3% compared to 20% for its competitors."* What makes the matter even more serious is the fact that satyam was the winner of "Golden Peacock Global Award for Excellence in Corporate Governance" for the year 2008.

Clearly the biggest sufferer in this case are the employees, shareholders and the investors. It is not a very positive thing obviously, but it throws a very basic question on corporate governance. People are raising the question whether the companies should have the chairperson and CEO rolled into one position?

Of course it is not an isolated incident in the corporate history. In the past we had Enron, Worldcom, Arthur Andersen to name a few. The misplaced faith in self regulation has come out in open. In pursuit of profits and private gains they have compromised on good governance practices leading to such a crisis. The Satyam debacle is a severe indictment of the systems and regulatory practices and more critically the role of the auditors.

2. Evolution of corporate Governance

When we look at the evolution of corporate governance, the first attempt was made by Adrian Cadbury Committee which came up with the report on corporate governance in 1992. In its

report while outlining the code of “Best Practices”, it made an observation which is very important. It recognized the fact that of the code of “Best Practices” had been in existence in the past, some of the failures and fraud could have been minimized. However, it recognized that no system of control can fully eliminate the risk of fraud without throttling the companies to an extent that they lose their competitive edge.

Few of the key recommendations made on the governance in the above mentioned report are as under:

- There has to be a combination of executive and non – executive members in the overall governance of the company.
- Non – executive directors have two particular contributions to make to the governance process in view of their independence from executive responsibility. The first is in reviewing of the performance of the board and the executive. The second is in taking the lead where potential conflicts of interest arise.
- The committee recommended that the caliber of the non – executive members of the board should be very high so that excellent standard of corporate governance can be maintained.
- Non – executive directors should bring an independent judgment on issues of strategy, performance, resources, key appointment and standards of conduct.
- There should be a clear board composition with sub committees where the non – executive members should be the members of such committees.
- The majority of the members on the board should be non – executive members/independent directors.
- The selection of non – executive members/directors should be based on impartiality and should be done through a formal selection process. They should have specified terms.
- Given the varying backgrounds, qualification and experience of directors, it is highly desirable that they all should undertake some form of internal and external training. This should be followed by a clear induction process.
- The board should have various sub committee such as audit, remuneration and nomination committee.

- One of the members should be in-charge of finance functions given the importance of finance.
- The boards should have a formal schedule of matters specifically requiring their collective decision to ensure that the direction and the control of the company remains firmly in their hands and as a safeguard against misjudgments and possible illegal practices.

3. Processes within India

Within India the Confederation of Indian Industry (CII) came up with a desirable Corporate Governance code in April 1998. It recommended 17 good practices companies can have. Many of them were already covered by the Adrian Cadbury Committee. Again this code spoke about the importance of non-executive/independent directors, setting up of various committees and the information that must be reported and placed before the board.

The other initiatives worth mentioning are by Securities & Exchange Board of India (SEBI) in Corporate Governance, Narayanmurthy Committee Report and Shri Kumar Manglam Birla Committee report. They flagged off similar good practices to be followed by various companies.

4. Sarbanes Oxley Act, 2002

After the supposedly Enron and

Worldcom collapse, the Government of USA brought in a public law called Sarbanes Oxley Act in 2002. It brought in “**public company accounting oversight board**” to oversee the audit of public companies in order to protect the interest of investors and general public. It also talked about protecting the independence of the auditors where the auditor is prohibited from providing other allied accounting services to the client if they are the auditors. Another important point that was brought in was the rotation of the audit partner every 5 years. This was quite significant; however, it stopped short of recommendation of rotation of audit firms. It also brought in the issue of auditor reporting to the audit committees of the companies. Another very important issue it flagged off was the conflict of interest at various levels.

5. Learning on Governance in Voluntary Organizations from the above experiences

We as a part of the civil society organizations can be relieved that the Satyam like situation has not happened in the non-profit sector. At the same time, there are lessons which can be derived from what the corporate sector is going through in Governance.

One of the basic principles that we have to keep in mind is that excessive controls throttles the organization and does not allow the space to operate freely. On the other hand lack of controls exposes organizations to very high risks of frauds and failures. Therefore what is

needed is a balanced control with clarity of processes.

The Satyam issue has brought to the forefront the important role of the independent members/ board of directors. This raises the issue of the process to get independent members. Every organization should have a clear methodology on how the independent board members are selected and what kind of training / orientation is provided to make them effective in their role. The desirable Corporate Governance Code issued by CII in its recommendation no. 3 says that no single person should hold directorship in more than 10 companies. However in the non-profit sector, there is no such limitation on the number of boards and committees that single individual can be member of.

It is also important to determine at the organizational level the issues that would require the decision of the board. These issues should be brought into the board meeting for deliberations and decisions. Some of them are:

- Assets
- Investment of fund
- Laying down policy like Human Resources, Finance, Administration etc.
- Oversee the Audit processes
- Approval of expenditure authority levels

➤ Risk Management Policy

The finance function in any organization is a very core function. Therefore the financial control and oversight is a major role in organizational governance. The board should identify and nominate a treasurer who is competent to understand and govern the financial management of the organization.

The structure of board must be well defined. There need to be various sub committees/ working committees where the board members must be involved in control or oversight of the organization. For example, there can be Audit Committee, HR Committee, Program Committee, Finance Committee etc.

The audit is a very important function in governance control. The independence of auditor needs to be ensured and protected. The observation of the auditor must be discussed and debated in the Audit Committee and necessary corrective actions must be taken in time. In the non – profit organizations a major challenge faced is the different type of services provided by the auditor. The non audit services or advices need to be handled with care. Availing of non-audit services from the auditors should be avoided as much as possible. Rotation of auditors after a period of 5 years is again a very healthy process. However, it also depends on the situation in that area and whether alternatives are available.

An important role of the governing board is to guard against Conflict of Interest. Every Board needs to formulate a Conflict on Interest Policy and ensure that it is implemented in letter and spirit.

6. Conclusion

The Satyam issue has opened a debate on Good Governance. As part of the Voluntary Sector, even though we are not directly affected by it we should take it as a opportunity to debate and deliberate on Good Governance

practices within the NGO Sector. It is said that preventive action is less painful than curative act. The key issues that need to be kept in mind in Governance of Voluntary Organisations are independence of the governance process including controls, protection from conflict of interest, Independence of auditors and enhanced financial disclosures. It is probably the right time to demonstrate good practices in governance in NGO sector so that the corporate sector can take lessons out of it.

Financial Management - Practical issues and Challenges for a Voluntary Organization

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Chartered Accountant

1

. Introduction :

The primary objective of financial management process in an organization is to optimize financial and economic benefits out of scarce financial resources. The financial resources for a voluntary organization mainly comprises of grants/ donations from donors – local or international. This calls for effective utilization of the same for the planned and approved purposes. Thus an organization is greatly accountable to its stakeholders when it comes to financial aspects. Hence effective financial management is a key component in the chain of accountability of a voluntary organization.

Financial management comprises of multiple processes, including financial accounting, assets accounting, financial reporting, internal controls, internal audit, statutory (external) audit providing a report and opinion on the reported

financial status and performance. Each of these processes, including financial management itself, should incorporate sub processes and techniques, including management, forecasting, strategic planning, planning and budgeting, procurement, disbursements, control, and communications.

However, in the present context, an organization is faced with multi-dimensional challenges in coping up with the requirements of effective financial management.

The objective of this article is to enhance the ability of an organization to provide accurate, complete and timely financial information to comply with the requirements and regulations of its donor, government and regulatory agencies, their grant reporting requirements, as well as adhere to generally accepted accounting principles. Accurate and timely financial

information also assists in decision-making and enhances our ability to attract funds from our grantors.

To begin with, we reflect on the systems requirements and to prepare appropriate financial systems and processes.

2. Internal Control Systems :

The objective of an effective control system is to contribute towards:

- Improving Responsibility and Accountability
- Minimizing lapses and fraud
- Timely completion of Work
- Adhering to budgets
- Maintenance of Accounts
- Documentation

With the above objective, some of the specific areas to be taken into consideration are given below:

2.1. The major challenge is to set up an appropriate internal control system and procedures relating to financial transactions. Only with proper internal control system and procedure, the management can expect to provide timely and correct financial statements to the Governing Body and the Government authorities. Therefore, it is useful to examine the practical issues that need the attention of the management of NGOs.

2.2. While there are a number of procedures that are required to set up an appropriate internal control system, some of the important basic issues are highlighted for discussion.

3. Cash & Bank :

The second major area is the management of Cash and Bank transactions, where there are ample opportunities for gaps to occur if proper systems are not in place. Some of the essential control points that need to be put in place are provided herewith:

3.1. There should be a periodical independent verification of cash by a person, preferably, not connected with the Accounts department. There should be a proper record evidencing the name of the person verifying it, the date and the denomination particulars.

3.2. The Entity should obtain pre-printed "Account payee" cheques from the bank for issuing cheques to outside parties and a separate uncrossed cheque book to be used for making self-drawals for meeting office expenses.

3.3. A proper written procedure should be established for making "On-line payments" of Government dues, where applicable.

3.4. In case of payments by draft, it is advisable to attach a photocopy of the draft purchased and issued in favor of payee with the payment voucher.

3.5. It is advisable that all payments to parties are sent only by registered post or courier. The parties should not be encouraged to take delivery of the cheques from the office.

3.6. In no circumstances, there should be a single signatory for issue of cheques.

3.7. All the payments made through cheques / drafts should be routed through party accounts and not directly debited to expenditure account.

3.8. It is important to make payments bill-wise (to suppliers or for services) rather than to make on-account payments.

4. Accounting Procedures:

The next major area is the Accounting procedures which is the basis for recording of transactions and books of accounts. This also forms the basis for generation of appropriate reports. Some of the key areas to be taken in to consideration are given below:

4.1. All the expenditure vouchers, without exception, should be signed by a designated authority in addition to the Accountant.

4.2. It is suggested that a printed format of requisition be used for giving advances by way of Imprest to employees towards travel, purchases etc.

4.3. If an NGO seeks to recover overheads from the project grants, they should ensure that in no case the overall recoveries from different projects exceed the actual expenditure incurred by the entity. In other words, recovery of own administrative expenditure should not result in gain exceeding the total expenditure.

4.4. Where the projects involve services rendered by the community

free of cost and which are sought to be treated as part of the project expenditure, then care has to be taken for maintaining proper records from inception. This record cannot be generated at a later stage based on estimates and conjectures.

4.5. Where Entities use Tally Package for their accounting, it should be made clear that all the rectification vouchers should be entered as and when made and not carried out as on a back date by deleting the original entries and substituting the corrected ones.

5. Insurance of Assets :

Internal control system for usage and management of asset is a very crucial area in an organization.

5.1. In the first place, safeguard of assets against any calamity is foremost. Hence a policy relating to insurance assets should be considered and a written procedure approved by the Governing Body needs to be in place. The procedure should clearly state about assets that are not considered for insurance with reasons and also risks not covered with proper reasons.

6. Periodical Reporting :

As stated above, reporting is a crucial link in the chain of accountability. While there are statutory requirements that call for annual preparation of financial statements, as part of good system, periodical generation of reports is very important for effective monitoring and appropriate decision making.

The Finance Officer / Accountant should prepare an "Accounting Status Report" (ASR) at monthly intervals, preferably before the end of the succeeding month and submit the same to the Chief Executive. The ASR would broadly give information relating to –

- (a) Status of bank reconciliation
- (b) Status of statutory payments
- (c) Status of advances outstanding for a period exceeding three months
- (d) Status relating to bills / liabilities payable outstanding for over three months
- (e) Status of Donor Grants
- (f) Status of Investments
- (g) Status of Legal Compliance
- (h) Project Variance Report

7. Investments :

An organization needs to take utmost care while making an investment, especially if it is out of restricted funds /donor grants. After ensuring that the funds available for investment are not required immediately for programme or specified purposes investment decision is to be made. The following needs to be taken into consideration while making an investment decision:

7.1. The Governing Body should lay down a clear policy relating to investment of its surplus funds. The basic responsibility of an NGO is to ensure safety of the 'Principal' amounts received by them rather than focusing on increasing the returns by way of interest or otherwise from investment of such funds. It is essential to take note

of the fact that surplus funds invested in mutual funds would be susceptible to market conditions and therefore carry a higher level of risk.

7.2. Investments, should as far as possible be identified to the source i.e. whether it is out of own surplus or out of Specific Purpose Funds. In the latter case, it will be clear that they can only be temporary and for short-term duration.

7.3. Such investment needs to be made in only those schemes as laid down in Section 11(5) of the Income Tax Act, 1961. Investment in any other scheme other than those specified in Section 11(5) will be a legal violation and jeopardize the organization's credibility.

7.4. An investment register should be maintained, showing :

- a) The nature and description of the investments.
- b) In the case of investments in companies, the name of company.
- c) Certificate numbers.
- d) Distinctive numbers.
- e) Cost, amount paid-up and face value.
- f) Due dates for receipt of interest.
- g) Date on which dividends are ordinarily received.
- h) Maturity dates.
- i) All the investments kept by an authorized official with adequate security measures.

- j) All investments should be periodically verified physically with the Register.
- k) Periodic review of all investment income, to ensure timely receipt.

8. Foreign Contribution Funds (FC Funds):

8.1. There has to be a clear understanding that in no case foreign contribution funds are used for non-FC purpose, even in anticipation of the receipt of non-FC funds.

8.2. As far as practicable, funds received for a specific purpose should not be utilized for other projects or programmes in anticipation of receipt of monies.

9. Fixed Assets :

Purchase of fixed assets and capital expenditures should be made only after the approval of the board and should be as per the approved budget.

9.1. Purchase of assets should be made after inviting at least 3 tenders / quotations and purchase order should be placed with the most suitable vendor after due internal analysis.

9.2. It is very important for all NGOs to maintain a fixed asset register, showing full particulars including quantitative details and location of the assets. The register should indicate the date of purchase, the name of the supplier, bill number, date and amount etc.

9.3. The title deeds of immovable properties should be kept in safe custody, preferably in an iron safe within the office or in a bank locker.

9.4. Donations in kind - Proper receipts should be given to the donors. It should be possible to obtain from the donor, the correct value of the donated item and they should be accounted for in the books of accounts by crediting to Capital Fund.

9.5. There should be a system of physical verification of the fixed assets once during the year (not necessarily as on the balance sheet date) and this fact of verification should be placed before the Governing Body for their information and recording in the Minutes.

9.6. Any sale of fixed assets should be made with the prior approval of the Governing Body, who would lay down the basis for determining the sale price. There should be a transparent procedure to effect the sale.

9.7. Depreciation should be provided on fixed assets; but this cannot be treated as a source of fund. This is because, assets are acquired either out of own funds or specific grants. Even where the capital expenditure is incurred out of own funds, an equal amount should be charged to the income and expenditure account and transferred to the Capital fund. In this way, the cumulative surplus as on the balance sheet date, would be reflected by way of advances / bank balances / investments.

9.8. Finally, access to the assets should be clearly stated for its usage by the organisation's staff. This primarily applies to usage of vehicle, office equipments such as the photocopier etc. Usage such assets should be limited and has to be only with the approval of the authorized staff.

10. Minutes Book of Governing Body Meetings :

Minutes are the formal record of the proceedings of the meeting. It is important to record the summary of the proceedings of the meeting in a written form. A Minutes Book can be of loose sheets chronologically bound together or a bound register. The pages of the Minutes should be consecutively numbered.

The Minutes should generally include the following: (only illustrative and not exhaustive)

10.1. Authority for opening and closing of bank accounts and also authority to the signatories for operation of the accounts.

10.2. Purchase / sale of fixed assets

10.3. Taking note of the periodical reporting of the Accounting Status Reports.

10.4. Insurance of assets, cash etc.

10.5. Investment policy and procedures thereof, including specifying the limits under different categories

10.6. Approving the employee compensation including the Chief Executive.

10.7. Prior approval for travels outside India and the methods for reimbursing the expenditure thereon; post approval of the trips undertaken specifying the name, the place and the expenditure incurred.

10.8. Taking note of the filing of TDS return, income tax return, service tax return (where applicable) PF return etc. and also to take note of the status of the assessments.

11. Conclusion

The nature and extent of Internal Control can be developed on the size and activities of the organization which may vary from one organization to another. It is, therefore, very difficult to recommend any universal system for all organizations, therefore it is important to understand the features and mechanism of Internal Control. All organizations should develop their own systems of Internal Control depending on their needs and resources. The areas discussed in this article are some of the essentials that a Finance Personnel of an NGO has to take into consideration while managing the financial aspects of an organization.

Charities in the Dock

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Organisational Development Consultant

“Two things strike the student of Indian income-tax law with trepidation and amazement – the precipitate and chronic tinkering with the law by bureaucrats who are the unacknowledged legislators of India, and the anaesthetized patience of the Indian public. Truly, we Indians are a “low arousal” people. We endure injustice and unfairness with feudalistic servility and fatalistic resignation. The poor of India endure inhuman conditions which would lead to a bloody revolution in any other country. The rich endure foolish laws and unending amendments which benefit none except the legal and accountancy professions, and instinctively prefer to circumvent the law than to fight for its repeal.”

- Mr. Palkhivala

Though most of us have forgotten Mr. Palkhivala, his views on the Income Tax act and the way in which bureaucrats tinker with the law and test the patience of people still holds good. The amendment made in the sections applicable to charities is an outstanding example which will benefit none except the legal and accountancy professions and it is unfortunate that charitable organizations instinctively prefer to circumvent the law than to fight for its repeal.

The charitable organizations have been representing that they have been left out in the reform process and no sustained benefit has been extended to

them especially under the Income – Tax Act. The laws relating to charities are allowed to continue with cumbersome procedures and complications and in fact certain concessions given have been modified which has put the sector into a disadvantageous position. The Government normally takes cognizance of the court verdicts and often makes amendments to substantiate its stand and putting the charities in the dock.

The government has taken decision to amend section 2 (15) on the basis of one of such court verdicts, which has put many charitable organizations into a disadvantageous position. Section 2 (15) was amended vide finance Act, 2008, by

the provision which states that, the ***“advancement of any other object of general public utility shall not be charitable purpose if it involves carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration; irrespective of the nature of use or application or retention of the income from such activity”***. The amendment is based on many old cases and also the following recent cases:

The judgment of the Gujarat High Court in the case of CIT vs. Gujarat Maritime Board (2007) 289 ITR 139 is one such case. The Supreme Court has referred that the present case in their view was squarely covered by the judgment of the Court in the case of CIT vs. Andhra Pradesh State Road Transport corporation (1986) 159 ITR 1, where it was held that though it earned income in the process, having no profit motive, it is not liable to Income Tax. Applying the rationale of the said judgment, they have indicated the income earned by the Board is deployed for the Development of Minor ports in India and are entitled to be registered as Charitable Trust under section 12A of the Income Tax Act.

In the light of the above judgments, Sec.2(15) has been crucial in a way that “the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business or any

activity of any service in relation to any trade, commerce or business for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity or the retention of such income by the concerned entity”

The amendment is certainly a bolt from the blue for genuine charitable institutions, who really work in villages and would like to earn income on self-sustaining basis and with self-respect. Take the case of a charitable institution working for the physically challenged persons in a rural area and also involving itself in manufacture of greeting cards in a small way for part financing of its activities and to help maintain the home for the physically challenged persons. Another example would be to take the case of an organization distributing agricultural inputs to rural farmers and in turn collecting a very nominal fee for the same so that additional farmers can be benefited. Thus, in the light of the present amendment, even a capacity building programme conducted for rural women where registration fee is collected will be construed as business activity.

There is a very thin line between the charitable act and the service act and this will certainly cause problems in accounting and would affect the programmes. It is true that influential people and organizations should not misuse this tax shelter and evade taxes, thereby depriving the Government of its dues. At the same time, genuine organizations should not be denied this

benefit too. Though Government may be collecting some nominal revenue after the amendment, the blow that it has given to the fourth limb categories of organizations will have more impact.

The World Bank has undertaken a study on the various incentives given in different countries and has come out with two important tests, which should be taken into consideration for exempting lawful, economic, business or commercial activities world wide. The first being, the test of “**principal purposes**”, which essentially looks at whether the principal activities and the expenditure of the organization are for non-commercial purposes. They may be permitted provided;

- (i) No profit or earnings are distributed to founders, members and so on and;
- (ii) The NGO is organized and operates principally for the purpose of conducting appropriate (not for profit) activities.

The second test is the test for “**Destination of Incomes**”. Here, if the surplus earned from the activity of trade/business is committed for and actually utilized for the activities of the organization, then the organization should be entitled to the advantages of tax exemption.

The amended section is not in line with the world wide opinion.

The much awaited circular from the

Central Board of Direct Taxes (CBDT) was issued on 19th December 2008 after more than 6 months and has not provided any guidelines to protect genuine organizations. This was based on the assurance given by the Finance Minister during the budget debate that CBDT will be following the usual practice and issue explanatory circular containing guidelines for determining whether any entity is carrying on any activity in the nature of trade, commerce, or business or any activity rendering any service in relation to any trade, commerce or business. Having gone through the circular, one feels that it has gone beyond its power.

The first paragraph in the Circular justifies the amendments and confirms about number of entities engaged in commercial activities and were also demanding exemption on the ground that such activities fall under the fourth limb of the charitable purpose definition.

The second paragraph only confirms, that the amendment is not applicable to first three limbs of the definition which are;

- i) Relief of poor
- ii) Education
- iii) Medical Relief.

The organization which falls under the above three categories is eligible for exemption even if it is incidentally carrying on commercial activities. The “Relief of the poor” under the Income Tax Act encompasses a wide range of

objects for the welfare of the economically and socially disadvantaged. It will, therefore, include within its ambit, purpose such as relief to destitute, orphans, or the handicapped, disadvantaged women or children, small and marginal farmers, or senior citizens in need of aid. Though, the present Circular broadly indicates the purpose, yet many associations involved in similar activities have to substantiate their claims in the Income Tax Office (ITO). The notification also confirms that associations involved in education and Medical Relief would also be eligible for exemption as charitable institutions even if they, incidentally carry on commercial activities.

The fourth limb of the definition of charitable purpose contained in the section 2 (15) which is about the advancement of any other object of the general public utility is dealt in paragraph 3. Now it has been doubly made sure that any activity if carried on with a commercial intention will not be eligible for exemption under section 10 (23 C) of the Act.

The industry probably has utilized its strength by getting exemption for their association involving mutuality and they would continue to enjoy their exemption so long as they prove that their activities are restricted to contribution from and participation of only their members. Their dealing with any non - members of their trade, or business activities will alone be governed by the amended provisions of section 2 (15).

The paragraph 3.2 rings the warning for many entities involved in charitable purpose with the object of the advancement of any other object of general public utility engaged in trade, commerce or business. The Circular confirms that the object of the 'general public utility' will only be a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any such service in relation to trade, commerce, or business. Though it is an uncharitable comment on many charitable organizations which are in the classification of the fourth limb, who have taken the route of trade, commerce, or business for providing employment opportunity for rural women or others and any method of sustainability for their charitable activities, yet there are public and private sector undertakings and some of the governmental organizations which are wearing the mask as per the Circular.

The Circular also indicates that each case would therefore, be decided on its own facts and no generalization is possible. Those who can read between the lines can interpret in their own way. The general message and support for the genuine organization is "Assesseees, who claim that their object is "charitable purposes" within the meaning of section 2 (15) would be well analyzed to ensure any activity which is in the nature of trade, commerce or business or rendering of any service to relation to the any trade or commerce or business.

The CBDT has gone beyond its limits in issuing the circular, and has not

“

Whether the purpose is charitable will depend on the totality of the facts of the case.

”

interpreted the intention of the legislatures the Finance Minister had indicated: *“I once again assure the house that genuine charitable organizations will not be any way be affected”*. The CBDT will follow the usual practices, issue explanatory circular containing guidelines for determining whether the entity is carrying on any activity in the nature of trade, commerce, or business or any activity or rendering any service in relation to any trade, commerce, or business. “Whether the purpose is charitable will depend on the totality of the facts of the case”. The intention of the legislation should be to protect the interest of genuine organizations that are in the fourth limb. Even if the same surplus gets generated from their functioning, their charitable nature should be protected. But the CBDT instead of protecting such organization from the clutches of departmental officials, as per the instruction of the legislature, has issued a circular casting an aspersion that the object of general public utility will be only a mask or device to hide the true purpose which is trade, commerce, or business. The Circular, against the observation in K.P Varghese’s case stated that “the task of

interpretation of a statutory enactment is not a mechanical task, but is an attempt to discover the intention of the legislature”. There is a case where the legislatures have indicated that the circular will protect genuine organizations; however, instead of protecting them, aspersions have been cast on them. The genuine Charitable organizations deserve encouragement from the Government and they are thought of mostly at the times of Natural Disasters like Tsunami and earthquakes and forgotten during other times like the Budget presentations. This is a provision that affects the Charitable Institutions in a big way. It is unfortunate that there is no strong network or lobby among the charitable organizations to argue this issue and there is no assurance that genuine organizations will not be affected.

The “National Policy on Voluntary Sector” indicates as follows, “The government will also simplify and streamline the system of granting Income Tax exemption status to charitable projects under Income Tax Act”.

However, in practice, instead of simplifying the act, the Government has complicated and introduced harsh amendments. The government blows hot and cold simultaneously at one end in announcing the National Policy committing themselves to provide Income Tax incentives and, at the same time withdrawing the concessions enjoyed by the charities. The affected genuine organizations will have to endure injustice and be in the dock!!

Bangladesh Through the Lens of a First Time Visitor

R. Bhakther Solomon,
Chief Executive Officer, Development Promotion Group

The description of a first time visitor's account of Bangladesh truly captures the multiple diversity of the country as well as provides a sneak peek into the development dilemmas. We would encourage our readers to send us any such visit accounts or stories that would be interesting for all our readers.

I had the privilege of visiting the People's Republic of Bangladesh. It is bordered by India on all sides except for a small region, sharing the border with Burma to the Far East and Bay of Bengal to the South. The Zia international airport, contrary to the general expectation to a new comer, gives a beautiful panoramic view and also quick immigration and baggage clearance. Things look fantastic ! One gets the impression of one landing in a blessed land. Alas, once outside the airport, on the roads, one is confronted with different dimensions of the reality in the country. Things are different!

Bangladesh is a young nation having completed just 35 years. The borders of present day Bangladesh were established with the partition of Bengal and India in 1947, when the region become the eastern wing of Pakistan. However, the political and linguistic discrimination as well as the economic neglect led to popular agitations against

West Pakistan which led to war for independence in 1971. Bangladesh came into being with a population ranging from 142 – 159 million. According to a recent World Bank note, the country has made significant progress in human development in the areas of literacy, gender parity in schooling and reduction in population growth. The majority of the Bangladeshis work in agriculture. Bangladesh has moderate tax rates. The highest income tax rate is 25 percent, and the highest corporate tax rate is 30 percent. Other taxes include a value-added tax (VAT), property tax and a tax on interest. In the most recent years, overall tax revenue as a percentage of GDP was 8.7 per cent. Figures do not reveal much.

This paper is presented with the concern regarding the country's economic profile which is not good. The people / Government must do something to live upto the expectation of it being a fast developing - nation. The author wishes that everyone who reads this paper

develops a critical mindset not only of this paper but also the country's reality and work towards bettering the reality of the nation.

Despite the continuous domestic and international efforts to improve its economy, Bangladesh remains a developing nation, if not a poor nation. According to the World Bank, the most significant obstacles of growth are poor governance and weak public institutions. In recent years, the country has seen an increase in foreign direct investment but the investments are yet to trigger the growth process. There are large number of NGOs both national and international. Of late their presence / active services are being cited as the reasons for the country's recent development and growth. The presence of Micro Finance Institutions (MFIs) also of late are being cited as one of the reasons for the country's growth.

Bangladesh has been ranked 149th among 179 countries in freedom of trade in the "Index of Economic Freedom" report released by The Heritage Foundation, a Washington-based think-tank and The Wall Street Journal in the recent past. The "Index of Economic Freedom" is produced annually by The Heritage Foundation and The Wall Street Journal, appraises economic freedom based on 10 categories, namely trade freedom, labour freedom, fiscal freedom, business freedom, government size, investment freedom, property rights, financial freedom, freedom from corruption and monetary freedom. Countries whose scores fall

between 80 and 100 per cent in the index are said to have free economies while mostly free economies are those scoring between 70 and 79.9, moderately free (between 60 and 69.9) and mostly non-free (between 50 and 59.9). Countries which score from 49.9 and below are rated as economically repressed.

Bangladesh offers ample tourist attractions. It has good mangroves and natural ponds with clean water. Much of the country has been relatively untouched by modern technology and development. Many tourists find new flora and fauna and the colourful tribal life so enchanting. Bangladesh has the longest natural beach in the world. Sundarbans Reserve Forest site is one of the World Heritage sites and the most important mangrove forests in the world. It silently safeguards against the fury of flood / cyclones and provides timber, honey, medicine and nurtures a variety of fish and provides a lovely green canopy housing birds. Active environmentalists and nature lovers would love to be here ! This is a good eco-tourism sight for world travelers !

In spite of being a country proclaimed to profess Muslim religion, it seems to be a free country. 85% of the population is Muslim, but it is a land of religious freedom, harmony and tolerance. The constitution establishes Islam as the state religion but provides the right to practice the religion of one's choice. In fact I visited one village (Nagori – 35 kms. from Dhaka) alongwith a group of neighbouring country's personnel. We

are told that in the village, both Muslims and Christians live together peacefully, more or less in equal number. The villagers built a big church, replacing their old church on an estimated cost of Tk. 20 million! In India now building churches seems to be an impossible one, even where Christians are the majority. Countries that profess religious tolerance must take a leaf out from this country's religious harmony.

The people are well behaved – both men and women move freely on the roads without fear. There is no restricted dress code. Most women wear traditional dress and the younger ones – churidhar. Most men wears casuals. Ordinary folk wear lungis. Irrespective of the educated and uneducated, the cycle rickshaw wallahs cater to all. The rich drive costly vehicles with scant respect to traffic rules. The roads are chaotic. All people seem to be in hurry – may be the author's visit was on the eve of Ramzan festival. One could see policemen with sticks in their hands, but fails to bring about strict discipline among the road users! There are good upcoming big housing and office multistory complexes along with poor colonies. The parliament building is majestic and looks like five-star hotel buildings. So also many mosques.

Handful of shopping malls exist. The shopping malls are full of people, some do window shopping while most others are serious in getting something. It is a good sight to see rich people buying large quantities of dress materials (lungis and cheap variety sarees) and

carrying in their own hands for distribution to the poor before the festival ! Most of the shops display a “fixed rate” board but still the shrewd shoppers can have his / her way of getting things on 5 – 35% cheaper by bargaining. The cloth shops are full of saris of the latest type with stone / pearls / embroidery work. However, things seem to be more costly than in India !

Not many seem to be addicted to cell phones, unlike in India where many seem to become technology savvy and start displaying their cell phones in public. No wonder, even territories find a means in these aids. Not many computer and internet cafes and STD/ISTD telephone booths on the roads as we see in many other south Asian countries. If these things are considered as necessary communication items in a modernized world, to some extent, they are not in adequate numbers. Probably, this is also one of the indicators which reflect the poor development or the backwardness of the country. The food habits of the people seem to be similar to the neighbouring countries.

In spite of the impressive growth performance of the country during the last two decades, especially during the last one decade, the majority people remains are poor. I am shocked to see the plight of the poor. It is not relative poverty but absolute poverty that manifests here. The current per capita income is Tk.38056 (545 US\$).

I know that there are poor in Bangladesh as any other Asian countries, but I never

expected families sleeping on the pavements in large numbers in Dhaka city. Mothers sleeping on the pavements with their infants on their arms / chest, a mind boggling sight ! There are few people from all age groups beg on the traffic signals. Even as early as 5 O' clock in the morning, one could see beggars in the traffic signals. Who is to be blamed? One could also see ultra rich persons / families driving important cars. There are vast number of middle class families. But what strikes one is the spread of poverty which prevails! Is the successive failures of the various Governments which assume office since 1971, or the poverty reduction strategy plan of successive governments and civil society organizations responsible for the mass failure to deliver the desired results ? It looks like that !

The reality not only shows the failures of the Government especially the poverty reduction strategy adopted by the Government, but also the failures of I/NGOs and the Micro Finance Institution (MFIs). Probably the successive Government must have failed to even plan / implement poverty reduction measures through a credible process of public and political consultations.

For the past one or two decades, there emerged a large number of NGOs and MFIs. The latter have been instrumental in introducing micro finance to the poor on the basis of group lending methodology. This methodology, now replicated in many other countries,

consists of requiring those borrowers to form groups and that, within each group, borrowers themselves be responsible for a loan. Bangladesh is known globally for pioneering micro-credit activities. In fact, many countries adopted the idea from Bangladesh in their poverty alleviation efforts. Such is the goodness of Bangladesh MFI's wellness one hears in the outside world. Is these MFIs functioning to pull the families up the small success in poverty reduction the country achieved solely because of MFIs and NGOs ? one wonders.

Presently, there exists more than 600 licensed MFIs. 4000 are waiting to get approval. As per the new law, no MFI is allowed to function without any license from the regulatory body. Any MFI having outstanding loans of at least Tk. 40 lakh and 1000 borrowers is entitled to get license. It is learnt that there are a couple of very good MFIs in Bangladesh and each one claims to have more than a million borrowers / savers as their clients. If what they claim is true and also if at least 600 MFIs are active, they all together must be catering to the financial needs of at least currently more than 200 million poor. If so, during the last one decade, MFI themselves alone would have at least uplifted 15-25% of the poor above the poverty line. In that case, within the next one decade, poverty would be wiped out of Bangladesh! But there is no such sign. Probably, many poor are clients of many MFIs and borrow from one MFI repay another. Let me state that had NGOs and MFIs be successful as they claim, the country should be free from hunger

within the next two decade if not before 2015!

One leading MFI founder member, when questioned in an open forum, admitted that “poor who would have take loan 8 times from the MFI must have nearly doubled the income by now”. But he was not prepared to state that by nearly doubling the income where the families had moved up in the scale from below the poverty line or above poverty line or are still in the subsistence level! During the last one decade, the combined price rise in essential commodities has gone up by more than 50%. Naturally, there cannot be much change in the economic profile!

It would have taken 5 to 8 years for someone to take 8 times loans from different institutions. In spite of 5-8 years of loans from different NGOs/ MFIs, the Government poverty alleviation programme and also the presence of large number of I/NGOs and their direct programme, the plight of majority poor in Bangladesh is very pathetic. It reflects badly the NGOs and their work. Hailing from India and having a good knowledge of the Development sector, I do admit that this kind of dichotomy exists in few pockets in India too! But that is restricted to few areas, if not to a very few communities only. There are few pockets in Orissa / Bihar where despite the large presence of I/NGOs and Government poverty elimination

programme, still many struggle to eek out a living. Over the past two decades, there has been lot of poverty reduction and reform process to help the poor, but these must have brought very little importance on the lives of the poor. So lapses in few pockets is an universal phenomenon. This is an exception, definitely but not the rule.

The current data from the World Bank and other Institutions if believed to be authentic states that 49% of the families are poor in Bangladesh - the highest number in the Asian region. Recently, in a workshop organized (Aug. '08) by the Chronic Poverty Research Centre (CPRC), Data Analysis and Technical Assistance Ltd. (DATA) and the International Food Policy Research Institute (IFPRI), a paper was presented. Drawing on information collected from 1,800 households across rural Bangladesh, the study found that while close to half the households surveyed moved out of poverty, around one-fifth remained chronically poor and a small percentage fell into poverty. These households were found to be extremely vulnerable to unexpected shocks, such as illness, dowry and wedding expenses and floods. The study found that those households that have lower education levels, own less land, hold fewer non-land assets and livestock and have many young children and elderly members thus facing the most difficult challenge in escaping poverty.

Since YOU Asked....

SECTION 35AC

You Asked:

Whether for registration under Section 35AC an organization must have completed 3 years?

We Replied:

While applying to **National Committee for Promotion of Social and Economic Welfare** for registration u/s 35AC, the organization has to furnish the Balance Sheet and the Profit & Loss Account for latest year and two preceding years. Also, the organization has to furnish details of their activities for the preceding three years.

However as per the guidelines issued in this regard, according to Proviso to Rule 11L (3) of Income Tax Rules, if the organization is in existence for less than

three years it may furnish information for the period of its existence.

To sum up, an organization which is in existence for less than 3 years can also apply for registration under section 35AC by furnishing Balance Sheet and Profit & Loss Accounts for the period of its existence and it is not mandatory that organization must complete 3 years before applying for registration.

However, normally an organization of national importance and more than 3 years old apply for registration under section 35AC. It may also be noted that 35AC is generally given for specific projects and in certain circumstances keeping in view the importance of the project, the time limit may be waived off.

TRANSFER OF SHARES TO FOREIGN BODY

You Asked:

Can shares of a Company incorporated under Section 25 of the Companies Act, 1956 be transferred to a Foreign Body Cooperate or a Foreign NGO?

We Replied:

The answer to the query depends on the percentage of share holding that is transferred to the Foreign Body. However, we would like to emphasize on the following aspects:

- 1) FCRA does not allow foreigners on the Board of Indian Companies therefore the status of a Company as the one registered under Section 25 may be impaired if the transfer of shares result in inclusion of a foreigner in the Board.
- 2) Secondly, if more than fifty percent shares of an Indian Company are held by a Foreign Company, then it becomes the Subsidiary of that Foreign Company and gets covered under

the definition of “Foreign Source”, as defined in FCRA Act, 1976.

- 3) The applicability of FEMA also needs to be seen which will be on a case to case basis. For instance, foreign investment in any form is **prohibited** in a company whether incorporated or not (such as Trusts), which is engaged or proposes to engage in the following activities:

- (i) Business of chit fund, or
- (ii) Nidhi Company, or
- (iii) Agricultural or plantation activities, or
- (iv) Real estate business, or construction of farm houses
- (v) Trading in Transferable Development Rights (TDRs).

IMPACT OF AMENDMENT IN SECTION 2(15) BY FINANCE ACT, 2008

You Asked:

What are the consequences of Amendment in Section 2(15)?

We Replied:

1. As per Section 2(15) of Income Tax Act, 1961, Charitable purpose includes
 - Relief to poor
 - Education
 - Medical relief
 - Advancement of any other object of Public Utility.

Prior to Finance Act, 2008, any income from business or commercial activity by an NGO which was incidental to the main objectives of the NGO was not taxable as per Section 11(4A).

The Amendment brought by Finance Act, 2008 has hit the fourth category of NGOs involved in “Advancement of any other object of Public Utility”. It seems that the income from the business or commercial activities of the NGOs covered under this category is no more tax-free and it will now be subject to tax.

This means that the NGO’s engaged in Relief to Poor, Education, and Medical Relief will continue to get the Tax exemption on income from their commercial and business activities.

2. The Finance Act, 2008 is applicable from the first day of the **Assessment Year i.e., 01st April, 2009**. This means that from 1st April, 2008, income from Business or Commercial Activities generated by NGOs involved in “Advancement of any other object of Public Utility” will be taxable.
3. The probable activities of NGOs likely to get affected by the Amendment are:
 - Rent from Property
 - Income from Conference Halls
 - Income from one time activities like Charity Shows
 - Professional Services related with expertise and incidental to charitable work.

For further details, please visit
<http://fmsfindia.org/fmsf/pdf/st-norms6.pdf>

You Asked:

Are educational institutions availing 80G exemptions under Sec 10(23)(c)(iiiad) with annual revenue of less than Rs.1 crore permitted to invest their surplus funds in deposits of private companies? Should they conform to the provisions of Section 11(5) for investment of their funds?

We Replied:

The provisions of Section 11 and section 10(23C)

are mutually independent, however, as per the third proviso to section 10(23C) the surplus funds of organizations covered under clauses (iv), (v), (vi) or (via) of Section 10(23C) are required to be invested in modes specified in Section 11(5). Since the third proviso does not cover educational institutions claiming exemption under clause (iiiad), there is no apparent restriction on the investments by such institutions.

Fourth Confluence of the Forum for Ethics, Accountability and Transparency (FEAT)

The fourth Confluence of Forum for Ethics, Accountability and Transparency (FEAT) was organized by FMSF in Chandigarh on 06th & 07th of March, 2009 in Hotel Shivalikview. The theme of the forum was “Accounting and Audit of NPOs: Ethical Practices”





A. Background and Objectives of FEAT

The FEAT confluence is an initiative of FMSF to bring together the Auditors from India, Nepal and Bangladesh who are providing professional services to the Development Sector -NGOs, NPOs or NGDOs.

The confluence is aimed to discuss and understand the challenges in the sector vis-à-vis the role of an auditor. It was also aimed to build a consensus and common understanding amongst the participating auditors on the key issues related to the sector. It also aimed to facilitate the participants to discuss the challenges faced by them during the performance of their duties as an auditor.

B. Overview of the Fourth Confluence

1. Participation

The confluence was attended by 51 participants from all over the country with representatives from Nepal as well. Amongst the participants were auditors of EED partner organizations and Chartered Accountants providing services to the Development Sector. Special invitation was sent to Mr. Eribert Padilla of Philippines to discuss the evolution of Accounting Standards of NGOs in Philippines with the group.

From FMSF Mr. Sanjay Patra, Ms.S.P.Selvi, Ms.Anuradha Singh and Ms.Swati Kundra attended the confluence. Ms.Anne Bohrer of EED and FMSF evaluator Mr.John Mwangi also attended the confluence.

2. Welcome & Keynote Address

Mr.Sanjay Patra, Executive Director of FMSF and Ms. Anne Bohrer, Finance Monitoring officer of Asia-Pacific Desk of EED gave a welcome note. The Keynote Address was delivered by Dr. Avinash Chander, Technical Director of the Institute of Chartered Accountants of India

3. Discussion Points

The two days of confluence was divided into four Technical Sessions. The points of discussion of the technical sessions were:

➤ Challenges and Good Practices in Accounting of NPOs

The first Technical Session on Challenges and Good Practices in Accounting of NPOs was taken by Ms.Rozmin Ajani and Mr. Suresh Kejriwal. The session was chaired by Mr.Sandip Bhandare. The speakers discussed the existing Accounting Practices in NPOs and the factors that contribute to challenges in standardization of Accounting Policies. They also discussed on how a sound Accounting Framework can be designed.

A task group of 7 persons was formed at the end of the session to work upon the self imposed ethics.

➤ ***Legal Challenges in NPO Sector***

The second Technical Session on Legal Challenges was taken by Mr.Hafez Dalal and Mr.Manoj Fogla. The session was chaired by Mr.Sudhir Verma. In this session the amendments brought in by the Finance Act, 2008 in the definition of “Charitable Purpose” as defined under Section 2(15) and its implications on the Development Sector, was discussed in length. Apart from this, certain Governance Issues were also highlighted by the Speakers.

➤ ***Social Accountability Standards of NPOs***

The third Technical Session on Social Accountability Standards was taken by Mr. Manoj Fogla and Mr.Amitabh Behar. The session was chaired by Ms.Anne Bohrer. The speakers discussed on the issues of Transparency, Accountability and prevailing ethical/unethical practices in the sector. The speakers emphasized on the need of Social Accounting and Social Audit to bring in the element of Accountability in the NPOs.

➤ ***Audit of NPOs***

The fourth Technical Session on Audit of NPOs was taken by Mr.Rethinam and Mr.Sudhir Verma. The session was chaired by Mr.Samir Manocha. In this session the speakers discussed the difference in role of Auditors as a Consultant and as an External Evaluator. The speakers also discussed the need for independence of Auditors while discharging the audit function.

Apart from the Technical Sessions, there was a special session by Mr.Eribert Padilla on “The evolution of Accounting Standards of NGOs in Philippines”. At the end of confluence there was an open house discussion on the Ethical Practices.

Evolution of Accounting Standards of NGOs in Philippines :

Apart from the Technical Sessions, there was a special session on Day 1 by Mr.Eribert Padilla on the evolution of Accounting Standards of NGOs in Philippines. Eribert took the participants through the different eras of NGO Evolution in Philippines.

Open House Discussion

An open house discussion on the Ethical Practices took place in the end. The session was facilitated by Mr.Sanjay Patra, Ms.Anne Bohrer, Mr.Suresh Kejriwal and Mr. Manoj Fogla. The session was chaired by Mr.Amitabh Behar. Mr. Amrish discussed the most prevalent unethical practices in the sector. He also discussed the self imposed ethics identified by the task group which was formed after the first Technical Session. The other participants also exchanged their views and it was a unanimous thought that the auditors need to go beyond their technical role to curb such unethical practices.

4. Way Forward

Mr. Pradeep Esteves and Mr.Sanjay Patra discussed on how the forum should be taken forward to ensure greater participation and strengthening it further. The need for more frequent interactions and formation of Regional Forums was felt.

With the above discussions, the Confluence concluded.

Second National Convention of “NGO Accountants Network” - NAN.

Another Step towards Promoting Accountability.

FMSF has been working to promote accountability in Social Development Sector since last one and a half decade. Initiation of “NGOs Accountants Network (NAN)” in January 2005, was one of the initiatives to build financial management capacities of the grass-root level NGO



Accountants. In this context Accountants from various NGOs were invited to attend the II National Convention held in New Delhi on 16 – 17 of February 2009. There were about 80 participants representing 52 development organizations from all parts of the country.

Understanding the crucial and significant role of accountants in ensuring good financial accountability and governance, the forum aims to enhance their capacities on prevailing issues. The Second National NAN Convention was organized with this objective of encompassing the most important and predominant issues focused on Governance, Legal Aspects, Accounting and Reporting.



The Convention began with a Welcome Address by Ms. S. P. Selvi and Mr. Sanjay Patra, Executive Director of FMSF gave a brief introduction to the Convention.

The two days Convention included four Technical Sessions. The first Technical Session on “Accountability: Concept & Challenges” was facilitated by Mr. Sanjay Patra. He focused on the relevance of accountability and magnitudes of challenges today. He also focused on building capacities of Accountants, as Accountability means Accountant with Ability. The Second Technical Session on “Financial Governance” was facilitated by Mr. Manoj Fogla, a qualified experienced Chartered Accountant and a renowned author of various publications brought out by FMSF. He discussed about the various dimensions, role and peculiarity of Management and Governance issues of an NGO linking and highlighting the relevance of financial management principles stated in Kautilya’s “Arthashastra”.

The Third Technical Session on “Financial Management Practical Issues & Challenges” was divided into four sub-sessions “Accrual Basis of Accounting”, “Accounting Aspects (Notional Expenses)”, “Fund Based Accounting” and “Preparation & Presentation of Financial Reports”. These sessions were facilitated by Mr. Sanjay Patra, Mr. V. Rethenam, also a qualified CA & a practicing auditor and Mr. Manoj Fogla. In the session on “Accounting Aspects (Notional Expenses)”, Mr. V. Rethenam discussed the various accounting aspects from the internal control system point of view emphasizing the importance of setting up of appropriate control systems in financial management practices.

In the third sub-session, Mr. Manoj Fogla discussed various functional aspects of the funds and its appropriate allocations focusing on Fund Based Accounting. In the fourth sub-session Mr. Sanjay Patra informed was about the appropriateness and the need to establish linkage between financial and progress reporting.

In the Fourth Technical Session on “Legal Framework: Income Tax (with focus on Sec.2(15) amendment) and FCRA (Provisions the new bills, 2006), Mr. K. N. Gupta, an experienced Chartered Accountant, having in-depth knowledge of the developmental sector, provided a comprehensive overview of the Finance Act, 2008 which redefines “Charitable Purpose” u/s 2(15) and FCRA provisions of the new bill. He also discussed its implications and impacts on Voluntary Sector.

Each of the above Four Technical Sessions had open discussions wherein the participants were invited to share their queries and suggestions on future activities of NAN forum were also made. The participants appreciated the convention and its relevance; they also recommended starting regional chapters for the network.

The Convention concluded with the closing remarks by Mr. Sanjay Patra who intimated the participants that the recommendations provided will be followed up and future course of action will be worked out accordingly.

The Award that Created Ripples...

The CSO Partners' outstanding annual report award is an endeavor in creating benchmarks in the realm of NGO reporting and is the first and only annual report awards in the voluntary sector. It is an effort to build a movement for transparency to bring in accountability. The award was instituted by the **CSO partners** jointly with the **Financial Management Service Foundation, Murray Culshaw Consulting, & the Credibility Alliance**. Not-for-profit organizations across India were invited to participate in the process. The reports received were categorized into



three different categories, '**Small**' (*Organizations with an annual income of less than Rs.50 lakhs*) '**Medium**' (*Organizations with an annual income range of between Rs.50 Lakh to Rs. 5 Crore*) & '**Large**' (*Organizations with an annual income of more than Rs. 5 Crore*).

The annual reports were judged by an independent panel of evaluators who analyzed and scrutinized the reports thoroughly. The annual reports and audited financial statements of the organization were evaluated on three main aspects of 'financial reporting', 'transparency' 'reader friendliness & effective communication'. The short listed annual reports were then presented to a Panel of Jury who then judged the reports and selected the winners.



The entire process culminated in an “award ceremony” that was organized on the 27th of March, 2009 at the India Habitat Centre in New Delhi where all the participants were invited and winners were felicitated. Shree Wajahat Habibullah, Chief Information Commissioner, Government of India & the chief guest of the evening graced the occasion with his presence.

The overall response for the awards was extremely encouraging. The large number of reports received for the awards is ***a recognition of the effort by the organizers to create a platform to identify & showcase the good practices existing in the voluntary sector.***



***And the Winners of the
CSOP Outstanding Annual Reports Awards are..***

Category I - Small Organizations

Winner:

'Borderless World Foundation' Pune

Runners Up:

Dream a Dream', Bangalore &
Gramin Evam Nagar Vikas Parishad, Patna

Category II - Medium Organizations

Winner:

The Akanksha Foundation', Mumbai

Runners Up

'Udayan Care', New Delhi &
'Shree Navchetan Andhjan Mandal', Bhuj

Category III - Large Organizations

Winner:

Seva Mandir', Udaipur

Runners Up

Swami Vivekananda Youth Movement' Mysore,
'Dalit Foundation', New Delhi &
'Foundation for Ecological Security', Gujarat.

Training on Social Audit

In pursuance of enhancing accountability of NGOs to its various stakeholders, FMSF had brought out a Handbook on Social Audit in March, 2007. This handbook speaks of tools and practices to realize the concept of Social Audit in the context of enhancing accountability towards the various stakeholders of an organization, especially the Community.



In the process of taking forward the above tools, practices and steps articulated in the Handbook within its partner network, FMSF encouraged organizing of trainings on Social Audit by the partner organizations. In response, Orissa Development Action Forum (ODAF), network organization based in Orissa, had organized a Workshop on Social Audit on 4th & 5th November, 2008 at Dhenkanal. From FMSF, Ms. S.P. Selvi facilitated the same.

The workshop was attended by about 30 members of the network. The two day workshop process included an overview of the concept of Accountability in the context of Voluntary



Sector and the linkage between Social Audit and Social Accountability of an organization. Following this, a brief input session on Social Book-keeping and Accounting was provided as this is very crucial in the process of implementing the Social Audit concept.

The three phases of Social Audit – Preliminary, Consultative and Consolidating Phases – were explained with a Case Study Group Exercise. The Case Study Exercise on preparation of Social Accounts invoked good group discussions and cross sharing of thoughts and queries. Inputs on preparation of Social Performance Report were also provided. Video documentation of the Public Audit Process of other organizations such as Mazdoor Kisan Shakti Sangathan (MKSS) was shown to the participants. The most participatory aspect of the entire workshop was the Role Play by the participants who were divided into the Community and the NGO wherein the participants came up with the discussions relating to a Social Audit process bringing in various aspects from varying perspectives.

The workshop concluded with the encouraging feed-back from the participants about initiating Social Book-keeping at their end which is a crucial element in the process of implementing Social Audit.

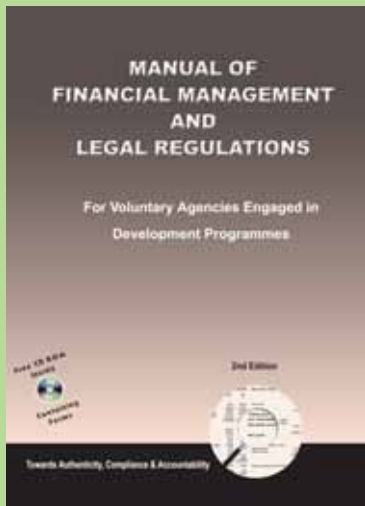
ICAI Award for Excellence in Financial Reporting

With a view to promote better standards in the presentation of information in the financial reports, the Institute of Chartered Accountants of India has been holding an annual competition for the **ICAI Awards for Excellence in Financial Reporting**. The awards are given for the various categories, **Manufacturing and Trading enterprises, Banking and Financial Institutions, Service, Insurance, Information Technology, Communication and Entertainment enterprises, Infrastructure & Construction Sectors and Others** (Section 25 companies, Educational Institutions, NGOs, Charitable hospitals and other organizations).

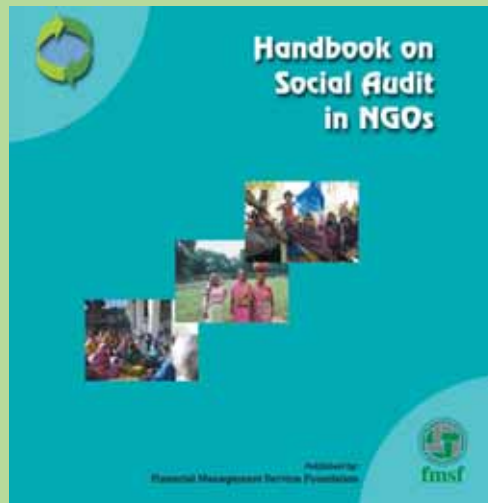
FMSF received the award for the most “commendable entry” for the Financial Year 2007-2008 in the category of Not-for-profit Organizations.



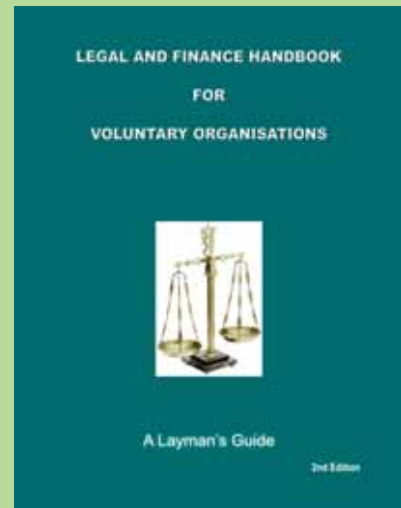
Publications of FMSSF



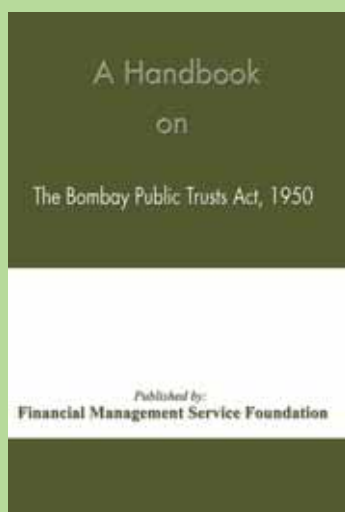
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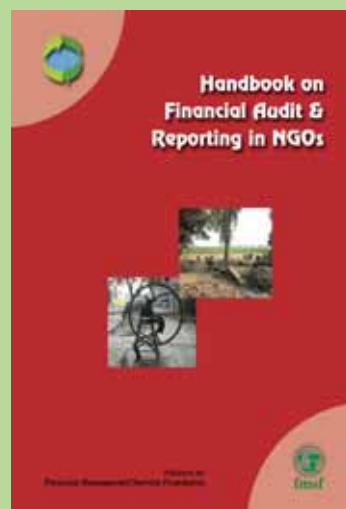
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Contribution Price: Rs. 500/-



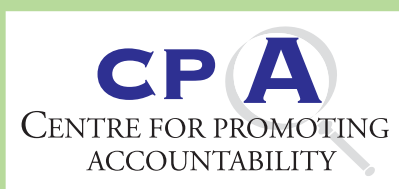
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Contribution Price: Rs. 200/-



Contribution Price: Rs. 250/-



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