# INTER*face*

*towards promoting accountability*

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Between Us ....

# ORIGINAL THINKING

*In our journey in life, we come across many people who influence our thinking processes. However, copying or imitating them becomes a major hindrance to our growth process. It is important to learn key principles from people around us but we must use them in our own context. The following story underlines this issue.*

*A young student was going to the market to buy vegetables for the monastery where he was studying. On the way he met a student from another monastery."Where are you going?" asked the first student. "Wherever my legs take me," replied the other. The first student pondered over the answer as he was sure it had some deep significance. When he returned to the monastery, he reported the conversation to his teacher, who said: "You should have asked him what he would do if he had no legs." The next day the student was thrilled to see the same boy coming towards him. "Where are you going?" he asked and without waiting for a reply continued, "Wherever your legs take you, I suppose. Well, let me ask you..."*

*"You're mistaken," interrupted the other boy. "Today I'm going wherever the wind blows."*

*This answer so confused the first boy that he could not think of anything to say.*

*When he reported the matter to his teacher, the old man said: "You should have asked him what he would do if there were no wind." Some days later the student saw the boy in the market again and rushed to confront him, confident that this time he would have the last word. "Where are you going?" he asked. "Wherever your legs take you or wherever the wind blows? Well, let me ask you . . . . "*

*"No, no," interrupted the boy. "Today I'm going to buy vegetables."*

# Accrual Basis of Accounting

- S.P. Selvi, FMSF

***Accounting is very crucial link in the chain of Accountability for both profit-oriented organisations and non-profit organisations. Accounting is also the basis of preparing reports, especially the financial reports. This article aims to look into one of the methods of accounting, i.e., Accrual Basis of Accounting and its applicability for Voluntary Organisations.***

Accounting is essential to record any financial transaction which helps in ascertaining the financial status of an organisation on a particular date. Proper analysis of the financial status and information enables the management of the organisation to take appropriate decisions at appropriate time.

Accounting, as defined by the American Institute of Public Certified Public Accountants (AICPA) Committee, is the *"art of recording, classifying and summarising in a significant manner and in terms of money, transactions and events which are, in part at least, of a financial character and interpreting the results thereof."*

Most of the organisations follow double-entry system of accounting. This system is the core of accounting. All transactions are recorded as having dual aspect i.e., each debit will have a corresponding credit.

## 1. Accounting Concepts

To maintain the books of accounts, it is useful to understand the prevailing accounting concepts, principles and concepts. Some of the basic concepts are:

1.1. Entity Concept: As per this concept, the entity is treated as an artificial person separate from the persons who operate it.

1.2. Historical Cost Concept: As per this concept, all transactions are recorded at the cost price. This means that any fluctuation in the market value (increase or decrease) is generally not accounted for.

1.3. Going Concern Concept: This concept assumes that the organisation has a continuous (perpetual) existence. As per this, transactions are recorded on long-term basis, whereby the benefit for the money spent now is likely to accrue in future, is taken into consideration.

1.4. Money Measurement Concept: This concept states that only those transactions which can be measured financially, i.e., in terms of money are recorded in the books of accounts.

1.5. Accrual Concept: This concept is discussed in detail in the following paragraph.

1.6. Realisation Concept: This concept states that income is not recorded in the books of account till it is realised in Cash.

1.7. Dual Aspect: This has been already referred to above. As per this concept, every transaction has dual aspect i.e., every debit has a corresponding credit.

## 2. Methods of Accounting

There are basically two methods of accounting:

- Cash Basis of Accounting; and the other,
- Accrual Basis of Accounting ( also called Mercantile Basis of Accounting)

2.1. Cash Basis of Accounting: In Cash basis of Accounting, all transactions whether of capital or revenue nature are recorded as and when it is effected irrespective of the period to which they relate.

***In Accrual Basis of Accounting, the period to which a transaction relates is the basis***

Similarly, in the case of expenditures it will be accounted as Outstanding Expenses during the particular period, even if the payment is not made.

For example, an organisation pays the salary for the month of March, 2007 on 5th April, 2007. This payment is accounted in the month of April, 2007 although it relates to the month of March, 2007. Similarly, any receipt or income is accounted for at the time of actual receipt of funds. This method of accounting is referred to as Cash Basis of Accounting. It can be noted that the emphasis under this system of accounting is on cash receipts and cash payments, hence called Cash Basis of Accounting.

2.2. Accrual Basis of Accounting: In Accrual basis of Accounting, the period to which a transaction relates is the basis. Only those revenues / incomes and expenses of a particular period are taken into account. In the case of revenues, it is immaterial whether it is actually received in cash, but will be accounted for during the particular period as "Accrued Income (but not received)."

Since accrual of revenue (and not only the actual receipts) and accrual of expenditure (and not only the actual payments) is the basis of accounting, it is called as Accrual Accounting.

## 3. Illustration:

Let us look at the implication of these methods of accounting in the books of an organisation through an illustration.

"Development for All (DFA)" had received a grant of Rs. 1,00,000 from its funding partner. Out of this, it had purchased a Xerox Machine costing Rs. 80,000. An amount of Rs. 60,000 was paid to the supplier and an amount of Rs. 20,000 was agreed to be paid at a later date.

DFA had also paid an amount of Rs. 20,000 for travel expenses against which the actual expenses were Rs. 15,000 only, thus paying an amount of Rs.5,000 as advance.

3.1. Entries to be passed under Cash Basis of Accounting

| Date | Particulars | Ledger Folio No. | Debit Amount | Credit Amount |
|---|---|---|---|---|
| | Xerox Machine Account Dr.<br>To Cash Account Cr.<br>(Being the Xerox Machine of Rs. 80,000 purchased. Out of which Rs.60,000 is paid and Rs.20,000 is outstanding | | Rs.60,000.00 | Rs. 60,000.00 |
| | Travel Expenses Account Dr.<br>To Cash Account Cr.<br>(Being Rs. 20,000 paid for travelling which includes Rs. 5,000 paid in advance.) | | Rs.20,000.00 | Rs. 20,000.00 |

3.2. Trial Balance as per Cash Basis of Accounting

| Particulars | Debit | Credit |
|---|---|---|
| Cash Account | 20,000.00 | |
| Xerox Machine Account | 60,000.00 | |
| Travel Account | 20,000.00 | |
| Grant Account | | 1,00,000.00 |
| Total | 1,00,000.00 | 1,00,000.00 |

3.3. Entries to be passed under Accrual Basis of Accounting

| Date | Particulars Folio | Ledger Amount No. | Debit Amount | Credit |
|---|---|---|---|---|
| | Xerox Machine Account Dr.<br>To Cash Account Cr.<br>To Outstanding Expenses A/c Cr.<br>(Being the Xerox Machine of Rs. 80,000 purchased. Out of which Rs.60,000 is paid and Rs.20,000 is outstanding | | Rs.80,000.00 | <br>Rs. 60,000.00<br>Rs. 20,000.00 |
| | Travel Expenses Account Dr.<br>Prepaid Expense Account Dr<br>To Cash Account Cr.<br>(Being Rs. 20,000 paid for travelling which includes Rs. 5,000 paid in advance.) | | Rs.15,000.00<br>Rs.5,000.00 | <br><br>Rs. 20,000.00 |

3.4. Trial Balance as per Accrual Basis of Accounting

| Particulars | Debit | Credit |
|---|---|---|
| Cash Account | 20,000.00 | |
| Xerox Machine A/c | 80,000.00 | |
| Outstanding Expenses Account | | 20,000.00 |
| Travel Account | 15,000.00 | |
| Prepaid Expense A/c | 5,000.00 | |
| Grant Account | | 1,00,000.00 |
| Total | 1,20,000.00 | 1,20,000.00 |

When we look at these two Trial Balances, we find that under Accrual Basis of Accounting, there are two additional accounts, which are Outstanding Expenses Account and Prepaid Expenses Account which only reflects the amount paid in advance and also the amount to be paid.

***Accrual Basis of Accounting is widely acknowledged as the more scientific method of accounting, as it reflects the true financial status of an organisation on a particular date informing not only the actual revenue or income and expenditure but also those expenses that are outstanding or paid in advance***

Accrual Basis of Accounting is widely acknowledged as the more scientific method of accounting, as it reflects the true financial status of an organisation on a particular date informing not only the actual revenue or income and expenditure but also those expenses that are outstanding or paid in advance.

However, Cash Basis of Accounting is preferred and followed by Voluntary Organisations as it is found to be easy and simple to follow. Another aspect, is that most of the Voluntary Organisations believe that Accrual Basis of Accounting is best suited to profit oriented organisations. However, some of them follow the Accrual Method in Income Generating Projects.

Also most of the funding agencies require a statement of the funds received and its utilisation for the purpose for which the funds were remitted thereby approving Cash Basis of Accounting.

Under the prevailing laws in India, Accrual Basis of Accounting is not mandatory for Voluntary Organisations. However, it is useful to look at the requirements under various Indian laws.

## 4. Requirements under various laws:

4.1. Sec. 145 of the Income Tax Act, 1961: Sec. 145 of the Income Tax Act, 1961 states that an organisation can follow either Cash Basis of Accounting or Accrual Basis of Accounting but it has to be consistent, which means that, following Cash Basis of Accounting in one year and following Accrual Basis of Accounting in the next year should not be there. This section emphasises only on consistency in the method of accounting followed by an organisation, whether it is Cash Basis or Accrual Basis of Accounting.

However, it is important that an organisation has a policy about its accounting method as this is the key Accounting Policy. Once the policy is made, it needs to be also disclosed in the Notes to Accounts of its annual financial statements.

4.2. Foreign Contribution (Regulation) Act, 1976: The Foreign Contribution (Regulation) Act, 1976 requires Receipts and Payments Account of Foreign Funds received during the year along with Balance Sheet for Foreign Contribution to be filed along with the Form FC-3. As Receipts and Payments Account is a summary of the Cash Book, it implies Cash Basis of Accounting. Thereby, it can be inferred that FCRA does not refer to Accrual Basis of Accounting.

The other Acts, such as The Societies Registration Act, 1860, Indian Trusts Act, The Bombay Public Trust Act, 1950 do not emphasise on the method of accounting. The primary requirement being annual filing of audited statement of account with respective authorities.

4.3. Sec. 25 of the Indian Companies Act, 1956: However, an organisation registered under Sec. 25 of the Indian Companies Act, 1956, is bound by the provisions of this Act [Sec.209(3)(b)] which requires maintenance of accounts on accrual basis of accounting and according to the Double Entry System of Accounting.

5. Institute of Chartered Accountants of India (ICAI), the apex body for framing the accounting policies, had come up with a Technical Guide in the year 2003. The primary objective of this guide is to suggest a standardised framework for the preparation and presentation of Financial Statements for Non-Profit Organisation. (NPOs).

The Accounting Standards formulated by ICAI do not apply to NPO, if no part of the activity of such entity is commercial, industrial or business in nature. However, these Accounting Standards will be applicable in case any part of the activity of the organisation is commercial or business in nature.

However, the above Technical Guide recommends Accrual Basis of Accounting to NPOs which poses certain practical implications. For example, accrual of project grants / donations is debatable due to its uncertainty. Also from donors' point of view, accrual basis of accounting may not be acceptable owing to probable misuse at times. For example, an organisation may show utilisation of expenses on the basis of outstanding expenses (which are yet to be paid) and the funds may be in the possession of the organisation on the date of certification of the report.

Keeping the aforesaid aspects in consideration, there is a great need for developing specific guidelines and standards for NPOs by ICAI.

# DESIGNING GOVERNANCE PROCESSES

- ***Sanjay Patra,*** F.C.A. &
***Madhuchhanda Mishra***

In the public sector, good governance is based on a system of checks and balances between the different branches of the government (i.e. the legislative, the Judiciary and the Executive). In case of Not-for- Profit Organizations (NPOs), it works in very much the similar way. An organization exercises good governance when it has an internal system of checks and balances that ensures the public interest is served and it is in this context that 'Boards' play a very critical role since it is the principal governing body in an NPO. Boards reflect the collective efforts of accomplished individuals who advance the institution's mission and long-term welfare.

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The designing of the governance process involves four key elements namely;

1. Designing board structure and processes
2. Directing strategic plans and priorities
3. Delegating management authority & responsibility to the Chief Executive Officer (CEO) /Leadership Team
4. Determining Strategic Results & Exercising Board Accountability

## 1. DESIGNING BOARD STRUCTURE AND PROCESSES:

Boards tend to work effectively when they are structured. There should be a process for orientation and sensitization of the trustees regarding their responsibilities. A clear distinction between strategic matters and operational matters should be made. Areas like the vision, mission of the organization, core values, strategic direction, major policy decisions are some of the strategic matters that should be dealt primarily by the Board. Hiring, termination and supervision of staff, work allocation, managing and evaluating the overall program are few of the operational matters that should be taken care of by the CEO/Leadership team. A position paper on this issue (commonly known as Management Manual) should be drafted which should be revisited annually

1.1. Bylaws/Trust deed/Articles of Association: These are key documents in designing the governance process itself. They are the set of rules under which the organization will operate. They typically include such items as (a) number of members, term length, nomination process, committees, and meetings; (b) fiscal year/ accounting cycles, committees, and officers' responsibilities; (c) methodologies, tools, and strategies, monitoring and evaluation etc.; and (d) how to amend the bylaws/trust deed/ Articles of Association themselves. It should be noted that bye-laws can also be called the NGO's "constitution", "article of association" "statues" or 'Trust Deed' depending on the nature of the organization and the law of a particular country.

1.2. Election of Office Bearers: There should be a clearly defined policy for recruitment, election/ selection of trustees or board members. The induction of new members should be through an open process providing the option of electing / selecting from a pool of people having substantial work experience and expertise from the voluntary sector.

1.3. Various committees: Committees are a useful structure for working efficiently. Dividing the board into working committees is a common mechanism for:

- Organizing the board's work to accomplish the NGO's mission.
- Preparing board members for making informed decisions.
- Using board members' skills and expertise
- Providing opportunities to become involved and serve the organization.

Generally, board members are part of such committees along with other senior staff of the team. Each committee needs clear instructions about what it is to accomplish. Ideally, it should take the form of a written mandate, which includes meeting and membership guidelines and reporting timeframes. Some of the commonly formed committees are: Executive Committee, Finance Committee, Purchase Committee etc.

1.4. Board Meetings: The members of the Board should meet at regular intervals to discuss the policy issues and take strategic decisions with regard to the organization's work. The board members need to be informed of the dates of the meetings well in advance so that they can prepare themselves well.

1.4.1. Agenda & Preparatory notes: Along with the notice of a meeting; it is desirable to enclose the list of items to be discussed or the Agenda. It is very important that the agenda for the meeting is sent in advance (preferably) as it helps the members to prepare themselves for the meeting. It should be accompanied by preparatory notes in order to give the board members a brief background of the issues on the agenda of the meeting.

1.4.2. Quorum: Quorum refers to the minimum number of members that must be present to make the proceedings of a meeting valid. If the quorum is not available in a meeting, then the meeting should be adjourned. For general meeting, the quorum should be at least one third of the total members. For Board members, the quorum should be at least 50% of the total members.

1.4.3. Minutes: All the important decisions taken during the meeting, suggestions made and feed back given by the board members should be well documented. The minutes can act as a reference point for further action as well as the next Board meeting.

1.5. General Body Meeting: The NGOs registered under the Societies Registration Act or under the Companies Act or any other law which requires formation of both the general body and the board should ensure that there is a transparent and appropriate policy regarding General Body Meetings. The membership should be open to all sections of stakeholders. The general body should be always larger than the board. The meeting of the general members should be at least once in a

***Conflict of interest is a situation in which outside interests affect or are perceived to affect the ability of an individual to make fair and impartial decision on behalf of the NGO.***

year to discuss and approve important matters like the approval of audited accounts, review of activities during the year, election of the board members, appointment of auditors etc.

1.6. Conflict of Interest: Conflict of interest is a situation in which outside interests affect or are perceived to affect the ability of an individual to make fair and impartial decision on behalf of the NGO. Conflict of Interest can exist when

- opportunities for direct material gain are involved;
- when close associates or family members stand to benefit
- personal interests or loyalties conflict and compete with those of the NGO

A conflict of interest policy helps in resolving such situations. It helps in dealing impartially with situations in which an individual's multiple interests compete or collide. There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with. A policy on conflict of interest has three essential elements:

1.6.1. Full Disclosure: Board members and staff members in decision-making roles should make known their connections with groups doing business with the organization. This information should be provided annually.

1.6.2. Board Member Abstention from Discussion and Voting: Board members who have an actual or potential conflict of interest should not participate in discussions or vote on matters affecting transactions between the organization and the other group.

1.6.3. Staff Member Abstention from Decision-Making: Staff members who have an actual or potential conflict should not be substantively involved in decision-making affecting such transactions.

1.7. Governance Manual: Governance manual can serve as a guide for the board's operations. Governance manual refers to a set of well written basic documents, which give instructions in matter such as selection of members, meeting schedules etc. All rules of operation for the board should be collected together in the manual. The governance manual should include guidelines on the following areas like:

- Roles & responsibilities of the board members
- Guiding principles
- Conducting elections for the board
- Board member orientation
- Formation of committees
- Conflict of Interest Policy
- Meeting Procedures
- Policy on staff recruitment

## 2. DIRECT STRATEGIES, PLANS AND PRIORITIES:

Planning is a mission directed activity that enhances accountability. Planning is a process of setting goals and articulating a strategy to achieve them through the acquisition and disposition of resources. The role of the board is to oversee and monitor the planning process rather than engaging in the fine details of planning directly. The board should bring in the larger perspective to the planning and ensure that the plan is actually put into effect, adjusted or redirected, when required.

***It is the duty of the board to uphold the organization's mission, and to articulate a clear vision for its future and the values that will guide decisions and behavior***

It is the duty of the board to uphold the organization's mission, and to articulate a clear vision for its future and the values that will guide decisions and behavior. The board should integrally involve in setting strategic direction through strategic planning, organizational alignment and implementation.

A strategic plan does not guarantee attainment of goals. But, at the very least, it helps in setting goals and provides a clear, well-lighted path to reach them. A strategic plan, with attainable goals, should be developed and approved by the board, with staff input and support. At the same time, the board should receive regular progress reports from the chief executive officer regarding the implementation of the plan.

Board members should be involved in articulating a shared vision for the future of the organization and evaluating strategic choices in this light. They should draw on their individual resources to support progress in achieving the vision.

The strategic planning exercise should involve:

- Assessing external and internal environments
- Clarifying mission and values
- Identifying critical issues
- Determining goals and objectives
- Formulating strategies
- Implementing them
- And finally monitoring their effective implementation

Simply, put, Strategic planning determines where an organization is going and how it is going to get there.

### 3. DELEGATING MANAGEMENT AUTHORITY & RESPONSIBILITY TO THE CHIEF EXECUTIVE OFFICER (CEO):

One of the thumb rules of a well managed organization is to make a clear distinction between governance and management. The underlying assumption is that this distinction induces the required checks and balances that ensure the organization is well run. One way to maintain the distinction between governance and management is to ensure that the same people do not perform both jobs. It is in this context that the role of the CEO/leadership team becomes very crucial.

3.1. Delegation of Authority: The board delegates authority to the CEO/ leadership team for the overall management of the organization. The board hires the organization's CEO, makes assignments to him, and monitors his or her performance. The CEO is a key decision making authority and is answerable to the Board.

3.2. Evaluation & appraisal of CEO: It is appropriate for the board to do a formal performance appraisal of the CEO at regular intervals. The appraisal should be based on predetermined criteria such as written job description and stated annual goals. Such processes will help the CEO understand the board's expectations. The CEO's performance should be measured in relation to his or her job description, and the evaluation may cover the following activity areas:

- staff relations;
- administration;
- planning;
- leadership;

- fiscal management;
- external public relations;
- effectiveness in working with the board to fulfill the annual plan;
- and effectiveness in helping the board achieve its own accountability and level of responsibility

3.3. Mechanism for CEO's Accountability: The Board should also ensure that a mechanism for CEO's accountability is in place. The CEO owes the board accurate, thorough and timely information about the organization, its environment and its activities. The CEO should also provide quarterly/ six monthly reports to the Board regarding his/her work and involvement in the work of the organization. Further, processes like evaluation and appraisal of the CEO can also act as mechanisms for ensuring his/her accountability to the board.

## 4. DETERMINING STRATEGIC RESULTS & EXERCISING BOARD ACCOUNTABILITY

For an NGO, being accountable means demonstrating regularly that it uses its resources wisely and doesn't take advantage of its special privileges to pursue activities contrary to its not-for-profit status. By virtue of its registration under various laws, the board is held responsible for the organization. The board as a whole, and its individual members, are answerable for all that the organization does, and how it does it. The board therefore is the locus of accountability.

An explicit governance structure is the first step towards establishing a stable and predictable framework for Accountability in NGOs. The board of an organization should set goals and decide an action plan. The action plan should be revisited at periodic intervals to ensure implementation.

Procedures for evaluation of the Board should be in place. This will bring in board accountability. Being at the apex of the organization, the board is accountable to the staff of the organization as well as other stakeholders.

## 5. CONCLUSION:

NGOs are committed to the highest level of accountability and the board of an organization has the capability as well as the authority to steer the organization in the right direction. In doing so, the first step would be putting 'SYSTEMS' in place. The governance processes in an organization, to a great extent determine the organization's effectiveness. Thus, an open, transparent and accountable governance system is quintessential for an organization's growth, sustainability and effectiveness.

# "Office or Place of Profit" in the backdrop of Voluntary sector

**- *Sameer Thapa***

Governance in the voluntary sector in India has assumed more importance in the recent times given the fact that it deals with public funds and exists to save the disadvantaged sections of the society.

However, lack of clear framework for Governance has been a limiting factor. The regulatory laws i.e. Societies Registration Act, Companies Act, Indian Trusts Act, Income Tax Act and Foreign Contribution (Regulation) Act do not prescribe a very clear model for governance.

One of the most important features of good governance in an organization is the transparency in the dealings of the governing body members of the organization. The concept of "Office or Place of Profit" is of critical importance in assessing the accountability aspect of the transactions in an organization, and is inserted by way of section 314 of the Companies Act, 1956. It imposes certain restrictions on the holding of office or place of profit in a company by the directors and their associates. The objective behind this section is to prevent the persons occupying fiduciary position in the company from misusing their position directly or indirectly, except with the permission of shareholders in certain cases. Section 314 of the Companies Act, 1956 is of valuable importance in explaining and interpreting the concept and application of "office or place of profit" in context of NGOs.

***The objective behind this section is to prevent the persons occupying fiduciary position in the company from misusing their position directly or indirectly, except with the permission of shareholders in certain cases***

Similarly, the important functionaries of the trust who are in a position of authority to derive benefits from their position in a voluntary organization are required to be accountable. The accountability has to be not only out of conscience or sense of ethics but also by the obligation in abiding to the laws and regulations prescribed to reinforce the rightful behavior. The relevance of concept of "office or place of profit" is of much importance to the voluntary sector as it helps in enhancing transparency and accountability of the activities of the NGOs and consequently enhancing their credibility. The present article aims at discussing the meaning and concept of "office or place of profit" and how it can be introduced legally to NGOs workings and transactions through the relevant Section 13(1) (c) of the Income Tax Act, 1961.

## 1. Meaning and Concept of "Office or Place of Profit"

In simple words the "office or place of profit" can be explained by way of position held in an organization involving monetary consideration. An office of profit means a position that brings to the person holding it, pecuniary advantage or benefit. It may be an office or place of profit if it carries some remuneration, financial advantage, benefit etc. The amount of profit is immaterial. In simple terms the "Office" or "Place of Profit" can be defined as below:-

"Office" can be defined as a position or place to which, certain duties are attached. So, in order to constitute an office there must be a permanent, substantive position which must exist independent of the holder of the office and is expected to be always there irrespective of the change in the person holding it.

"Place of Profit" on the other hand means any office or place which is capable of yielding profit or pecuniary gain. There may or may not be the receipt of profit but it should accrue or arise. The "place of profit" must be capable of giving benefit to the concerned person or the benefit should accrue to the concerned person. There need not be a permanent position unlike "office", where there is a permanent position.

**"Place of Profit" on the other hand means any office or place which is capable of yielding profit or pecuniary gain.**

## 2. "Office or Place of profit" in the context of NGOs

Income Tax Act, 1961 provides exemptions on income derived from the property held under charitable or religious trusts under section 11 of the Income Tax Act, 1961. However, the exemption is subject to fulfillment of certain conditions. It also states certain conditions under which benefits are denied, if the income is not applied in the manner specified in section 13(1). These conditions or circumstances are in the nature of transactions, which will not be deemed to be application of Income of the NGO for direct or indirect benefit of the functionaries of the organization. The Income Tax Act does not allow such an application and the contravention has the effect of forfeiture of exemption of income which otherwise is available to the NGOs.

The main objective behind 13(1) (c) seems to be, to ensure that the duties of certain persons related to the formation or management of the trust or the institution do not come into conflict because of transactions entered into with other trusts or institutions. Hence, section 13(1) (c) is a relevant provision for explaining the concept and application of "office or place of profit" in the context of NGOs. It is of considerable importance as its strict observance ensures probity and integrity in the transactions and dealings entered into by the trust/institution. It will also impart good governance practices in the trusts and institutions. The adherence to provisions of Income Tax Act will not only act as a bulwark against any insinuation of wrongdoing but will also aid in enhancing the credibility of NGOs. It will help them in developing guidelines for the transactions and dealings of a trust or institution resulting in transparency in the working of an NGO.

## 3. What section 13(1) (c) conveys?

Section 13(1) (c) essentially means that any trust or institution created after 1.4.1962.which uses or applies income or any part of income or any property of the trust/institution in such a manner which benefits directly or indirectly to the person referred in section 13(3) then, it may lead to the denying of exemption to the trust/institution under section 11 of the Income Tax Act, 1961. Even if a small portion of the income is used or applied for the benefit of the person mentioned in section 13(3), the entire income of the trust/institution is denied the exemption, except where the total funds of the trust and institutions inverted in an organization where the related person has a substantial interest does not exceed five percent of the capital of the concern {Section 13 (4)}.

So, if the Income of the trust or institution for charitable or religious purpose is used in a manner which benefits or is likely to benefit anyone who is in a position to remotely influence the working or decision making of the trust/ institution, then the benefit of exemption of income available to the concerned trust/institution for charitable or religious purpose under the Income Tax is likely to be withdrawn. The persons who are capable of influencing the decision making of Trusts or Institution are provided under section 13(3) which explains *'Interested person'*.

The trusts/institutions are required to be careful while entering into transactions with '*Interested person*', so, that the transaction might not lead to the direct or indirect benefit to the *'Interested person'*. The word *'benefit'* has not been defined and explained in the Act. Thus, what constitutes benefit will depend upon the facts and circumstances of the case. However, any use or application of the income of the trust for the benefit of *'Interested person'* or otherwise should be considered and measured against the propriety of the transaction entered.

***Analysis of section 13(3) brings out the fact that anyone who has the ability to control or influence the decision making process of the trust or institution will be included within in the purview of definition of 'interested person'.***

The term used in the Act is *'direct or indirect benefit'*. The impact of benefit may be felt directly by the persons mentioned in the section 13(3) or it may have indirect bearing on the *'Interested person'*. How indirect is the benefit will depend on the facts and the circumstances of the case. The purpose of above-said provision is to restrain *'Interested person'* who are more likely to be connected with the creation and conduct of the trust or institution from diverting or utilizing income of the trust or institution to their benefit.

## 4. Who are the *"Interested persons"* mentioned under section 13(3)?

The following persons referred to in section 13(3) should be cautious while dealing in transactions with the trust or institution:

- The author of the Trust or the founder of the institution
- Any person who has made a substantial contribution to the Trust or Institution, that is to say, any person whose total contribution at the end of relevant previous year exceeds 50,000/-.
- Where such author, founder or person is a Hindu Undivided Family or a member of the family.
- Any trustee of the trust or the manager of the institution.
- Any relative of any such author, founder, person, member, trustees or manager as aforesaid.
- Any concern in which any of the person referred to in clauses (a), (b), (c), (d) and (e) has a substantial interest.

Analysis of section 13(3) brings out the fact that anyone who has the ability to control or influence the decision making process of the trust or institution will be included within in the purview of definition of 'interested *person*'. This provision fosters responsibility on the person mentioned in section 13(3) to

uphold propriety in their dealings with the Trust or institution. As most of the top functionaries are covered under the above definition of 'Interested Person', it is imperative that the functionaries act in a manner consistent with the Act to avoid any unpleasant incident in the management of the NGO.

## 5. Who will be treated as *"Relative"* as per section 13(3)?

It is not only the persons specified in section 13(3), who will be treated as '*interested person*' for assessing direct or indirect benefit. Explanation 1 to section 13 *'Relative'* in relation to an individual, means,-

- Spouse of the individual;
- Brother or sister of the individual;
- Brother or sister of the spouse of the individual;
- Any lineal ascendant or descendant of the individual;
- Any lineal ascendant or descendant of the spouse of the individual;
- Spouse of brother or sister of the individual, spouse of the brother or sister of a spouse of the individual, spouse of any lineal ascendant or descendent of the individual, spouse of any lineal ascendant or descendent of the spouse of the individual;
- Any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

The above explanation to the section 13 is comprehensive in its coverage and covers all the near relations or relations which in most likely circumstances can be employed for passing the benefit directly or indirectly in the garb of office or place of profit. So, the persons referred in section 13(3) have the responsibility to prevent any relations as mentioned above, coming into the picture in his dealings with the Trust or Institution.

**6. What is the meaning of "Substantial interest" under section 13(3)?**

Section 13(3) includes within its purview any concern in which any of the person referred to in clauses (a), (b), (c), (d) and (e) has a *'substantial interest'* as an *'interested person'*.

Explanation 3 to section 13 reveals that a person shall be deemed to have a 'substantial interest' in a concern,

a) In case of a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less then twenty percent of voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in subsection (3);

b) In any other case, if such person is entitled or such person and one or more of the other persons referred to in section 13(3) are entitled in aggregate, at any time during the previous year, to not less than twenty percent of the profits of such concern.

The explanation makes it amply clear that the '*direct or indirect benefit*' by way of "office or place of profit' not only affects individuals and his relations but body corporate as well. The purpose of this section is to prevent any concern or body corporate from benefiting through any person listed in section 13(3) as *'Interested person'* having any kind of control or financial advantage by way any arrangements.

**7. What are the circumstances which will lead to deemed application of income or property for the benefit of *'Interested Person'*?**

Section 13(2) of the Income Tax Act, 1961 gives certain circumstances where it will be deemed that the income or property is deemed to be used or applied for the benefit of *'Interested person'*. These are specific cases of benefit, and in any way do not affect the generality of the section 13(1) (c), which is applicable on a wider scale.

a) Interest free loan or loan without security to '*Interested person*' out of income or the property of the trust or institution for any period during the previous year.
For e.g. if any loan without interest or security is granted to the brother of the spouse of an individual, who is trustee of a trust, then the loan amount granted will be deemed to be applied for the benefit of a person referred in section 13(3).

b) Letting out or Use of property without charging adequate rent: any property of the trust or institution made available for use of *'Interested person'* for any period during the previous year without charging adequate rent or other compensation will deemed to be applied for the benefit of '*Interested person*' specified in section 13(3).
For e.g. if an institution lets out a building to a partnership firm in which trustee is partner for a nominal rent, the above-said requirement is attracted consequently, trust will lose its exemption.

c) Excessive payment of services: any payment out of resources of trust or institution, in excess of what may be reasonably paid for the services rendered by *'Interested person'* referred to in section 13(3).
For e.g. if a manager of a trust has no prior

experience in managing a trust and is paid salary at the market rate at par with persons having 15 years experience, the case is likely to attract provisions of section 13(2) (C).

d) **Provision of services of trust or institution for inadequate remuneration:** If the service of trust or institution is provided to *'Interested persons'* without adequate compensation.

For e.g. if a concern in which a trustee holds more than twenty percent of voting rights during the previous year is provided with consultancy in rural development by the trust and nominal fee is charged in return, then the case will fall under 13(2)(d).

e) **Purchase of share securities or other properties from specified person for excessive consideration**: If any property or share or security by or on behalf of the trust or institution from any *'Interested Person'* referred in section 13(3) during the previous year for a consideration which is more than adequate.
For e.g. If a trust purchases any property from the sister of the spouse of the member of he Board of trustees and the cost of purchase is more than the prevailing market rate of the property being purchased, than the case will attract the provision under section 13(2)(e).

f) **Purchases made by the 'Interested Person" specified in section 13(3):** if any purchase of share, security and the property is made by a person referred to in section 13(3) during the previous year for inadequate consideration.
For e.g. if a HUF , a member of which is a trustee of a trust, purchases a piece of land from the concerned trust for a consideration which is less than the market price of the land, the transaction will attract the provision under section 13(2)(f).

g) **Diversion of income or property exceeding Rs.l000/-:** If any resources of trust or institution is diverted during the previous year for benefit of any *'Interested person'* referred to in section 13(3) and the total value of such resources is more than Rs.1 000/ , the provision of section 13(2) (g) are attracted.

For e.g. if any travel cost, of a son of a trustee, for attending his graduation ceremony is reimbursed by the trust and the value of reimbursement is more than Rs.1000, then the provision of section 13(2)(g) will be applicable and trust may lose its exemption.

## 8. What are the exemptions available from the section 13 (1) (c)?

The condition of section 13(1) (c) does not apply in following exceptional circumstances. Also any benefit to the '*Interested person'* shall not attract the likelihood of loosing exemption and consequently the exemption shall be allowed:

a) Where the use or application of any income or property of charitable or religious trust /institution is for the benefit of any specified person, is by way of a mandatory term of the Trust, or a mandatory rule governing the institution. It means that if the terms of trust are such that it is mandatory that specified person shall be benefited out of the income of the trust then the trust/institution will continue to be benefited from the exemption.

b) Where the benefit out of income, or the property or both, diverted during the year in favor of a specified person does not exceed Rs.1000/-.

c) Where the aggregate of the funds of the trust or institution, invested in a concern in which any of the specified persons has a substantial interest, does not exceed 5 percent of the capital of that concern, the exemption under section 11 and 12 shall be allowed in relation to income arising to the trust/institution other than income from such investment.

d) Where charitable or religious trust running an educational or a medical institution or a hospital, has provided educational or medical facilities to the specified persons.

## 9. Conclusion

'Office or Place of a profit' is of much importance in terms of regulating the governing behavior of the trustees or the members of a governing body of an NGO. However, there is a lack of direct reference with regard to this in the regulating Statutes for the NGOs, unlike in Companies Act or the Constitution of India which restrains the interpretation of the concept.

Lack of direct reference means that provisions should be made with regard to the above concept in prevailing laws applicable to NGOs. Section 13(1) (c) of the Income Tax Act is of considerable importance as the objective behind it is similar to the concept of 'office or place of profit' as provided in the Constitution & the Companies Act, and help in importing the concept of 'office or place profit' in the provisions of Income Tax laws. As discussed above in the article, section 13(1)(c) and its related provisions, more or less bring out in essence the intent and purpose of concept of 'office or place of profit' and can go long way in improving the conduct of Trustees and members of governing body.

# The Micro, Small and Medium Enterprises Development Act, 2006 - An Overview

- *Sanjay Agarwal*

***The Micro, Small and Medium Enterprises Development Act, 2006 (MSMEDA, 2006), which aims to facilitate promotion, development and enhancement of micro, small and medium enterprises' competitiveness, has come into force from 2nd October, 2006. The Act will apply to almost every enterprise as a buyer and also as a reporting entity. This article provides an overview of the Act.***

The Micro, Small and Medium Enterprises Development Act, 2006 came into being on 16th June, 2006. Though the Act empowered Government to notify different dates for enforcement of different provisions of the Act, the whole of the Act came into force in one go on 2nd October, 2006. By virtue of section 32 of this Act, 'The Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993' stands repealed w.e.f. 2nd October 2006.

The Act aims to facilitate promotion, development and enhancement of the competitiveness of micro, small and medium enterprises through skill development, technological upgradation, and preference in procurement by Government, government aided institutions and public sector enterprises. The Act also seeks to provide protection to such enterprises by making provisions for timely release of payments due to these organizations.

Though the Act is in furtherance to the Industries (Development and Regulation) Act,1951, it overrides that Act so far as classification of enterprises is concerned. This is because the relevant section 7 starts with the words "Notwithstanding anything contained in section 11 B of the Industries (Development and Regulation) Act, 1951."

## 1. Criteria to determine Micro, Small or Medium Enterprises

Section 7 (1) of the Act empowers Central Government to classify, by way of notification, any class or classes of enterprises, whether proprietorship, HUF, AOP, Co-operative society, Partnership firm, Company or undertaking, by whatever name called into Micro, Small or Medium Enterprise. The relevant notification 2 issued on 29 th September, 2006 has adopted the classification and investment criteria as prescribed in the Act itself. Perhaps to remove any doubt, the notification has included 'any other legal entity' within its fold. Thus, Trusts and other charitable institutions are also eligible for registration and protection under this Act. Table-I (on next page) summarizes classification and investment criteria:-

List of industries in the First Schedule to the Industries (Development and Regulation) Act, 1951 is very exhaustive running into 38 groups and bifurcated into several sub-groups:

Explanation 1 to section 7(1) clarifies that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified by notification, shall be excluded. Accordingly a notification dated 05.10.2006 was issued which lists several other items like loose tools, power generator sets, extra transformers, storage tanks and fire-fighting equipment, etc. to be excluded while calculating investment. In case of imported plant and machinery, the import duty, shipping charges, customs clearing charges etc. are to be included. For service enterprises, section 7(1) (b) of the Act has used the word 'equipment' and not 'plant and machinery: Explanation 1 also uses the words 'plant and machinery: Notification dated 05.10.2006 refers to only section 7(1) (a).Combined effect of all these establishes that no exclusions are provided for enterprises engaged in providing or rendering services. By virtue of explanation 2 to section 7(1) read with section 29B of the Industries (Development and Regulation) Act, 1951, Central government reserves the power to exempt, by notification, any industrial undertaking or class of industrial undertakings from all or any of the provisions of this Act.

| Classification | If engaged in the manufacture or production of goods pertaining to any industry specified in the first schedule to the Industries (Development & Regulation) Act, 1951 | If engaged in providing or rendering of services |
|---|---|---|
| Micro Enterprise | Investment in plant and machinery does not exceed twenty five lakh rupees | Investment in equipment does not exceed ten lakh rupees |
| Medium Enterprise | Investment in plant and machinery is more than five crores but does not exceed ten crore rupees | Investment in equipment is more than two crore rupees but does not exceed five crore rupees |

2. Recognition as Micro, Small or Medium Enterprises

Section 8 of the Act provides for filing of a memorandum to be recognized as Micro, Small or Medium Enterprise. The authority with whom such memorandum is to be filed is specified by notification by Central Government (in case of medium enterprise) or State Government (in case of micro and small enterprises). Central Government has specified the General Manager, District Industries Centre or any district level officer of equivalent rank in the Directorate or the Department dealing with Micro, Small and Medium Enterprises of the State Government or the Union Territory Administration as the authority with which the memorandum is to be filed in case of medium enterprises. Requirement of filing of Memorandum as per section 8 of the Act is summarized below:-

| Classification | If engaged in the manufacture or production of goods pertaining to any industry specified in the first schedule to the Industries (Development & Regulation) Act, 1951 | If engaged in providing or rendering of services |
|---|---|---|
| Micro Enterprise | Discretionary | Discretionary |
| Small Enterprise | Discretionary | Discretionary |
| Medium Enterprise | Mandatory | Discretionary |

It should be noted that for the purposes of this Act, Industrial Undertakings investing in plant and machinery between 'more than twenty-five lakh rupees but not exceeding five crore rupees' are classified as small enterprise, for whom filing of Memorandum with the authority specified by State Government is discretionary. Yet proviso (b) to section 8 creates another category whereby existing industrial undertaking 'having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees' who have filed an Industrial Entrepreneur's Memorandum will have to file a fresh Memorandum mandatorily with the authority specified under this Act. Such memorandum is to be filed within 180 days from the date of commencement of this Act. Thus such enterprises, having investment between Rupees one crore to Rupees five crore and with investment of more than rupees five crore but up to rupees ten crore are required to submit fresh memorandum in accordance with this Act by March 30,2007.

It is better for every enterprise whether in manufacturing industry or in service industry to file the memorandum as required under section 8 as the protection under this Act is available to only such micro or small enterprise which has filed memorandum. This has been achieved through definition of "supplier" in section 2(n) of the Act. Otherwise definition of term "supplier" is very large as sub-clause (iii) include enterprises "engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises" within definition of term Supplier.

### 3. Wide Coverage Affecting Almost Every Enterprise

Provisions affecting almost every enterprise/ organisation are contained in ChapterV - of the Act which consists of sections 15 to 25 under the heading 'Delayed Payments to Micro and Small Enterprises'

Section 15 stipulates that buyer must make payment to the supplier for the goods supplied or services rendered (i) on or before the date agreed upon or (ii) on or before 16th day of delivery of goods or rendering of service. Section 15 further stipulates that 'in no case the period' of payment' agreed upon"in writing shall exceed 45 days: As the law is to be followed as it is, even in cases where as per prevailing commercial practice payment is made beyond the period of 45 days, payment terms will have to be modified to complete the process within 45 days. In some cases, transaction may be under a usance letter of credit, having payment terms of a period of 60 to 90 days, through banking channels with interest clause. Strictly speaking present Act does not allow even such transactions and requires payment process to be over within maximum 45 days. Section 15 does not confer any power to the Government to relax this time limit, even in genuine cases and even generally for any class of enterprises.

Section 16 of the Act provides for payment of' compound interest with monthly rests' from the date of default in payment as per section 15 'at three times of the bank rate notified by the Reserve Bank: As provided in section 23 of the Act, such interest 'payable or paid' shall not be allowed as deduction under the Income Tax Act. Central Board of Direct Taxes has already issued instruction no. 1212006 dated December 14, 2006 to bring provisions of this Act, to the notice of all assessing officers, for effective implementation. Similar provision existed in now repealed 'The Interest On delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.

Section 26 of the Act empowers Central or State Governments to appoint officers for the purposes of this Act. On appointment, such officers would be empowered to call for such information, in such form, as may be prescribed.

**4. Penal Provisions:** Section 27 of the Act has penal provisions. Penalty can be imposed if:

(i) Memorandum is not filed as per requirements of section 8

(ii) Information is not furnished as per requirements of section 26(2) and,

(iii) Disclosures are not made in Accounts as per requirements of section 22 of the Act.

For the offences (i) and (ii) on the first time contravention, maximum penalty of Rupees one thousand will be imposed, which in second or subsequent convictions can be extended up to rupees ten thousand. Contravention (iii) i.e. non-disclosure in Accounts as per requirements of section 22 is viewed more seriously where minimum penalty of rupees ten thousand is prescribed with no maximum limit.

5. Comparison with the Interest on delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 Act:

A comparison of some of the relevant clauses of 'The Interest On delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993'vis-a-vis 'The Micro, Small and Medium Enterprises Development Act, 2006' is given below:

| **Subject** | **Act of 1993** | **Act of 2006** |
|---|---|---|
| Appointed day | 31st day from the day of acceptance (date of delivery) or deemed day of acceptance of goods or rendering services | $16^{th}$ day from the day of acceptance (date of Delivery) or deemed day of acceptance of goods or rendering services |
| Date of payment | On appointed day | On day agreed or on appointed day |
| Rate of Interest | One and a half time of prime lending rate of State Bank | Three times of the bank rate notified by the Reserve Bank |
| Disclosure Requirements | Amount together with the interest as remains unpaid at the end of each accounting year | i) Principal and the interest due thereon (to be shown separately) ii)amount of interest paid along with the amount of payments made beyond the amount day iii)amount of interest due and payable (where the principal has already been paid but interest has not been paid iv) the amount of interest accrued and remaining unpaid at the end of each accounting year v)the amount of further interest remaining due and payable even in succeeding year, until such date when the interest dues as above are actually paid for the purpose of disallowance as a deductible expenditure under Income Tax |
| Appointment of Officers and Furnishing of Information to Them | No Such Provision | Section 26 empowers the Central or State Governments to appoint officers and furnishing of prescribed information to them |
| Fines or penalties | No fines or penalties prescribed | Penalties of Rupees one thousand to an unspecified maximum amount are livable |

There appears some overlapping in different sub-clauses of disclosure requirements.

6 Some more disclosures: As can be seen from the table, section 22 of Act of 2006 has elaborate and exhaustive disclosure requirements in Audited accounts. Non-adherence to these disclosure requirements have severe penal consequences which may extend to any amount. Though 'The Interest On delayed Payments To Small Scale And Ancillary Industrial Undertakings Act, 1993' also had disclosure requirements for unpaid amount and interest, perhaps nobody would have seen such disclosures in the published accounts of companies. Things were going smoothly, as there were no penal consequences for such contravention of disclosure requirements. Present Act of 2006 is very specific about disclosures and with penalty provisions; its adherence is now inevitable.

***Section 8 of the Act provides for filing of a memorandum to be recognized as Micro, Small or medium Enterprise. The authority with whom such memorandum is to be filed is specified by notification by Central Government (in case of medium enterprise) or state Government (in case of micro and small enterprise)***

Schedule VI to the Companies Act already requires separate disclosure of' Total outstanding dues to small scale industrial undertakings' as on the date of Balance Sheet. Disclosure requirements under 'The Micro, Small and Medium Enterprises Development Act, 2006' are very exhaustive and by default cover the existing requirements of Schedule VI. Though ICAI may come out with guidance note in future for manner of compliance of these disclosure requirements, it appears that disclosures in totality (without specifying names and amount for each supplier) would suffice the requirement. Now all entrepreneurs will have to go through their vendor list afresh to segregate Micro, Small and Medium Enterprises. As the disclosure requirements are with respect to 'supplier' and supplier is one who has filed Memorandum as per section 8 of the Act, it is not possible for any buyer to know on its own as to particulars about which vendor are to be disclosed. Some mechanism will have to be developed for capturing this information and then continuous updation of the same.

As clause (iii) of sub-section (n) of section 2 includes 'co-operative society, trust or a body' by whatever name called registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprise, its scope has become very large. These bodies are not required to get themselves registered with the specified authority. Perhaps this clause is to cover various agencies formed by Governments for marketing of produces of Khadi, Village industry or handicraft products. Sometimes NGOs also form these types of bodies for marketing of above captioned products.

For the on-company business or non-business organizations, who are required to get their annual accounts audited under any law, this would be new exercise. An enterprise may be a buyer and supplier both at different points of time. There is no threshold limit for compliance with requirements of payment period, interest rate and also disallowance under Income Tax Act. These are applicable to every buyer, whether it is required to get its accounts audited or not.

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# NCCI Delegation Meets Parliamentary Standing Committee Regarding Foreign Contribution (Regulation ) Bill, 2006

A delegation of the National Council of Churches in India met the Department-related Parliamentary Standing Committee on Home Affairs on Tuesday, 17th July 2007 at the Parliament House, New Delhi and submitted concerns on behalf of the Protestant and Orthodox churches in the country in respect of the Foreign Contribution (Regulation) Bill 2006.

The Parliamentary Standing Committee on Home Affairs was chaired by Hon'ble Smt. Sushma Swaraj, Rajya Sabha MP of BJP, which has membership of 31 MPs representing the Rajya and Lok Sabha.

The Committee heard the views of the NCCI delegation since the Foreign Contribution (Regulation) Bill 2006 seeks to replace the existing Foreign Contribution (Regulation) Act, 1976 by legislation to regulate the acceptance and utilisation of foreign contributions. The Committee assured the NCCI that due consideration will be given to the submission made by the delegation.

The NCCI delegation was led by the Rev.Dr. Enos Das Pradhan, General Secretary and Chairman NCCI Commission on Polity and National Governance and Mrs. Sharada M. Rao, NCCI Vice President and included H.G. Bishop Pathros Mar Osthatheos, of Malankara Jacobite Syrian Orathodox Church, Auxiliary Bishop of Syrian Orthodox Archdiocese of Greater India, Bishop S.S. Singh of Methodist Church of India, Delhi Regional Conference, Rev. Jeyan Thomas Diocesan Secretary of Mar Thoma Church, Delhi Diocese, Mr. Sanjay Patra, Executive Director, Financial Management Systems Foundation and Mr. Joselyn Martins of J.A. Martins & Co, Chartered Accountants and Mr.S. Raju, Administrative Officer of NCCI Delhi office.

Earlier, the NCCI Delhi office coordinated the study of the provisions of the Bill undertaken by an ecumenical Task Force chaired by Dr. Shailendra Awale, Chief Coordinator of CNI-SBSS.


## NCCI Delegation Meets Defence Minister regarding FCR Bill, 2006

A NCCI delegation met the senior Congress leader and Defence Minister in the UPA government at the centre Mr.A.K. Antony on Friday 3rd August 2007 regarding the Foreign Contribution (Regulation) Bill, 2006.

The NCCI delegation highlighted the contradictions in the implementation of government policies since some provisions of the Foreign Contribution (Regulation) Bill, 2006 restrict developmental initiatives of the voluntary sector including church related institutions. Instead of creating enabling environment as stated in the National Policy on Voluntary Sector, subjective and selective interpretation of the provisions of the FCR Bill 2006 has the potential to interfere with and curb the programmes and activities committed to the wellbeing of the Indian citizens.

The NCCI delegation which met the Defence Minister included Rev.Dr. Enos Das Pradhan, General Secretary, CNI Synod and Chairman, NCCI Commission on Polity and National Governance, Mrs. Sharada M. Rao, Vice President, NCCI, Bishop S.S. Singh of MCI, Delhi, Rev. Jayan Thomas of Mar Thoma Church, Delhi, Mr. Joselyn Martins, FCA, Mr. Sanjay Parta, FCA, and Mr. S. Raju, NCCI Delhi.

# Brief Report on the Workshop on Social Accountability Standards

Social Accountability as a part of governance mechanism of NGOs has been in the focus of FMSF in the recent years. In fact, Social Accountability is an issue which all of us are trying to deal with in our own contexts. However, difficulty in formulating it in a comprehensive and integrated manner caused it to be a nebulous idea for a long time. In the light of the above drawback, FMSF started the process of developing some bench mark on Social Accountability by holding workshops on this topic with voluntary organisations in the last few years.

The process of consultations and workshop resulted into development of eleven ***"Social Accountability Standards"*** by consolidating tools and practices developed for enhancing accountability of the NGOs. Social Accountability Standards developed was published as a book named "Social Accountability Standards for Voluntary Organisations" by FMSF during March 2007.

FMSF further realised that these ***"Social Accountability Standards"*** needs to be evolved and integrated into the organisational systems which will enable us to move forward from a "conceptual" level to an "implementing" level.

In order to impart skills and training on the above standards and discuss its applicability and relevance, FMSF organised a ***"Workshop on Social Accountability Standards"*** on **30th & 31st July, 2007** at its premises.

The workshop aimed to discuss the first 5 Social Accountability Standards (SAS) in these two days in 5 Technical Sessions with participatory discussions, group work and interaction. **The Standards were :**

1. **Fundamental Documents**
2. **Trustees and Board Members**
3. **Meetings and Resolutions**
4. **Accounting Policies**
5. **Social Accountability Reports**

About 20 participants, Chief Functionary along with the Senior Finance Staff primarily from various organisations based in North India and few based in South India had participated.

The resource team comprised of Mr. Sanjay Patra, Executive Director, FMSF and Mr. Manoj Fogla, FCA, both having expertise and experience in the development field.

FMSF plans to take it forward, region wise, in segments, in the near future.

# 1st Badal Sengupta Memorial Lecture

*Dr. Badal Sengupta who joined EED (then EZE) in 1973 in the Regional Desk dealing with partners and projects in Indian sub-continent. With his sharp analytical mind as well as with his increasing experience in dealing with a wide range of partners, he was soon able to realize that there was a need for change of approach to development work.*

*He was entrusted with the task of elaborating new concepts for the support of development projects in South Asia. Later, as the Head of the Consultancy Desk, he firmly believed that people had much potential which can be strengthened only if their own groups and networks are formed to enable them to find way to self reliance and thereby contribute in creating a better society at large.*

*He proved his belief by enabling the formation of various networks and also in bringing them all together under a common forum* ***"Collective Forms of Co-operation"*** *for capacity building and participatory planning processes. His style of facilitation, sharing and articulation of ideologies and concepts gave a new look to the workshops and consultations thus helping him to reach people beyond projects, regional and religious boundaries.*

*His passing away on 5th December 2006 has created a great void in the development sector. People who were closely associated were finding it very difficult to reconcile with this huge loss. They were determined to keep his ideologies and concepts alive and strive to take it forward.*

***Badal Sengupta Memorial Lecture*** was organized in Bhubaneswar, Orissa on the *6th of August 2007* for paying tributes to his rich and enormous development work. The programme was organized by Forum for Collective Forms of Cooperation, colleagues of Sengupta and ODAF. Dr. Badal Sengupta, fondly known as Badalda, was an eminent development professional who had made significant contributions to the development world in South Asia and was an inspiration to many.

While delivering the first memorial lecture, noted social scientist and mentor of many of the civil society organisations and Governor of Orissa, Shri. Rameshwar Thakur said the governments should try to minimize differences among various sections of society and the programme implementation process should see that there is no violation of people's right. He also added that people's participation should be encouraged.

Former vice-chancellor of Ranchi University Dr Ram Dayal Munda said the difficulties of the marginalized people of the Eastern India should be addressed properly. Otherwise, there would be unrest among people despite more and more investment through Indian and multi-national companies in the mineral rich region, he warned.

On the occasion, the Governor also released a book titled ***"Badal Sengupta- Friend, Philosopher and Guide"***, the first copy of which was presented to Azizur Rahman Khan (Assad) of Bangladesh.

A CD on the memorable moments of Badalda's life was also released on this occasion.

Among others, Orissa Development Action Forum's (ODAF) Executive Secretary Mr. William Stanley, activist Mr. Pradip Baisakh, National Convener, Forum for Collective Forms of Co-operation (FCFC) Mr. Sailesh Chakravarty, and the Executive Director, of Financial Management Service Foundation (FMSF) Mr. Sanjay Patra, were present on the occasion.