

Role of Civil Society in Improving Governance

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The role of effective governance is vital with regards to non-profit organizations (NPO) considering their continuous rise in size and importance of late. The Board's role in the management of the organization is evolving and their contribution is pertinent for meeting their goals successfully. Since most of the funding provided to the NPOs come from external sources, transparency and accountability are of prime relevance. The governance mechanism is brought into force to ensure that the work done, especially at the grass root level, is duly evaluated and can stand public scrutiny. This will allow the authenticity of their work to be adjudged thereby guaranteeing continued funding by the public

The principles of corporate governance have been implemented in the for-profit sector in the recent past. However, the specific character of the non profit sector, i.e. goal structure, specific configuration of ownership rights, multi-stakeholder character, resource mix, culture, makes it difficult to implement these principles directly. They have to be adapted to fit the unique structure of NPOs. Though researchers have been grappling with this issue a formalized framework is yet to be developed. The most frequent application of the principles of governance with respect to the NPOs is the establishment of the Board but other mechanisms are also being developed.

The article will address the issues of the lack of a formal model of governance for the non profit sector and also discuss the importance of effective governance of NPOs especially in the Indian context. Such a model is of key importance in India due to the large number of NPOs operating at grass root levels with the nation's underprivileged population. These need a more effective governance to be able to perform their functions more effectively and yet maintain a high degree of accountability.

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I. Governance

A. Overview

Governance, with respect to business or even a non-profit organization refers to cohesive policies, consistent management and well defined processes and decision making with regards to the running of the organization. The United Nations Economic and Social Commission for Asia and Pacific (UNESCAP) defines "governance" as: *"the process of decision-making and the process by which decisions are implemented (or not implemented)."* Therefore, the study of governance involves a study of those who are involved in decision making. UNESCAP also gives good governance 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. Good Governance, with respect to the non profit organizations or the non governmental organizations, means effective management of NGO resources in a manner that is transparent, accountable and responsive to people's needs.

B. Governance in non profit sector

There are a number of Non-profit or Non-Governmental Organizations functioning these days in both International as well as national levels. India is estimated to have between one million and two million NGOs. Major sources of funding in these organizations include membership dues, the sale of goods

¹ <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp> last visited on January 12, 2009

² "What is an NGO?" (last modified January 5, 2007),
<<http://www.indianguos.com/ngosection/newcomers/whatisanngo.htm>>

and services, grants from international institutions or national governments, and private donations. The governments of the countries where such an organization works or is registered in may require reporting or other monitoring and oversight. Funders generally require reporting and assessment, such information is not necessarily publicly available. There may also be associations and watchdog organizations that research and publish details on the actions of NGOs working in particular geographic or program areas.

The main aims of non-profit organization or non governmental organization is to help better quality of life in all its realms through community mobilization, participatory governance based on sustainable natural resource management. Given the growth of non profit organizations in the recent past, both in size and in importance, issues regarding their governance have come under scrutiny. Over the last decade or two, there has been increasing interest in the composition, conduct, and decision-making of non-profit governing boards. The board-staff relationship has been at the centre of the discussion, but trustee characteristics, board role in planning and evaluation, committee involvement, fiduciary responsibility, legal liability, and other topics have received their share of attention.

The governance function of a non-profit is responsible to provide overall strategic direction, guidance and controls. Often the term "governance" refers to board matters. However, many people are coming to consider governance as a function carried out by the board and top management. Effectiveness of governance depends to a great extent on the working relationship between board and top management.³

Carter McNamara, *Basic Overview of Nonprofit Organizations*, - [np://managementhelp.org/org_thry/np_thry/npjntro.htm](http://managementhelp.org/org_thry/np_thry/npjntro.htm), visited on January 12, 2009

The role of effective governance is vital with regards to non-profit organizations (NPOs). Since most of the funding provided to the NPOs come from external sources, transparency and accountability are of prime relevance. The governance mechanism is brought into force to ensure that the work done, especially at the grass root level, is duly evaluated and can stand public scrutiny. This will allow the authenticity of their work to be adjudged thereby guaranteeing continued funding by the public.

II. Importance of Governance

We have been a witness to a number of corporate collapses in the past decade. Be it the Enron scandal or closer home the Satyam episode. The list of Board failures also includes much of the savings and the loan industry especially in the US which has been riddled with unscrupulous practices and unwise lending policies. The Non Profit sector has also been embroiled in controversies.⁴

Transparency and good governance are imperative for developing the credibility of non-profit sector. Without enhancing public trust in non-profits this increasingly valuable and vibrant sector is going to stay under utilized. Academic literature indeed argues that governance is more important among nonprofits than for profits. It has been argued that the lack of an active ownership market among non-profits accentuates the role of internal

⁴ Margaret Gibelman and Sheldon R. Gelman, *Very Public Scandals: An Analysis of How and Why Nongovernmental Organizations Get in Trouble*, paper presented at the International Society for Third-Sector Research at the Fourth International Conference, Dublin, Ireland, July 7, 2000, <http://www.istr.org/conferences/dublin/workingpapers/gibelman.pdf>, visited on January 12, 2009.

governance practices among nonprofits.⁵ It has also been argued that the complexity of the products and services created by the typical non-profit and the lack of a simple metric like profitability as a performance measure also put pressure on the governance skills of the non-profit board.

Moreover, adopting of good governance practices is of prime importance in the non profit sector to minimize the inconsistency between development of professionalism in NPO/NGO sector and charitable nature of this sector. Organizational development can be facilitated by building capacities of NPOs/NGOs to be strategic and effective through training leaders and key managerial personnel.

III. Problems of Governance in NPOs

While the Corporate Sector has attempted, and to some extent, succeeded, in institutionalising better governance practices, the Voluntary Sector or the non profit sector has unfortunately lagged behind. Increasingly however, the need for '*good governance*' is also being felt in the not-for-profit Sector. The principles of corporate governance have been implemented in the for-profit sector in the recent past. However, the specific character of the non *profit sector, i.e. goal structure, specific configuration of ownership rights, multi-stakeholder character, resource mix, culture, makes it difficult to implement these principles directly. They have to be adapted to fit the unique structure of NPOs.*

⁵ Eugene Fama and Michael Jensen, Separation of Ownership and Control, *Journal of Law and Economics*, June 1983, 301-26. *c/f* Millstein, O'Regan and Sharon Oster (eds.), *Governance Practices Among Nonprofit Organizations Contracting with New York City*, Yale School of Management, Working Paper Series E, Working Paper # 8, September 2000.

Ensuring the accountability of non profits involves first of all creating the conditions which will allow for open expression of views, free dissemination of information and the rule of law which is essential to the effective functioning of every NGO. These organizations are now being challenged and have been made to address issues concerning their accountability and representatives.

The key questions being asked are:

- To whom are NGOs accountable?
- Who or what do they represent?

Many non profit boards consist of voluntary directors who serve without pay. Such volunteer directors often believe they serve in an honorary and passive capacity. They believe they lack the authority to do anything but advise, counsel and approve. Rarely do they question, challenge, or oppose management when necessary. Yet, who do they serve when they give advice or counsel? Unfortunately, many directors mistakenly think they serve the organization's chief officer rather than the organization itself. They do not seem to realize that they are organizational governors who have certain predefined responsibilities.

Even in the for profit sector, many of the corporate collapses can be blamed on board failure since many times the directors either are unaware of actual state of affairs in the organization which the management keeps from them or they simply believe that it is the management that is accountable and not them. Sadly, these problems are more in the non profit sector where in fact good governance is of the similar, if not more importance, as in the corporate sector.

IV. Governance Principles for NPOs

The Following are certain basic principles that are of vital importance to promote the effective governance of NPO's:⁶

1. The board of directors of a non-profit corporation must engage in active, independent, and informed oversight of the activities of the corporation, particularly those of senior management.
2. Directors with information and analysis relevant to the board's decision-making and oversight responsibilities are obligated to disclose that information and analysis to the board and not sit passively. Senior management should recognize and fulfil an obligation to disclose - to a supervising officer, to a committee of the board, or to the board of directors - information and analysis relevant to such person's decision-making and oversight responsibilities.
3. Every non-profit corporation should have a nominating/governance committee composed entirely of directors who are independent in the sense that they are not part of the management team and they are not compensated by the corporation for services rendered to it, although they may receive reasonable fees as a director. The committee is responsible for nominating qualified candidates to stand for election to the board, monitoring all matters involving corporate governance, overseeing compliance with ethical standards, and making recommendations to the full board for action in governance matters.

⁶ Thomas Silk, Ten Emerging Principles of Governance of Nonprofit Corporations and Guides to a Safe Harbor, Volume 7, Issue 1, *The International Journal of Not-for-Profit Law*, November 2004 available at http://www.icnl.org/knowledge/ijnl/vol7iss1/art_3.htm visited on January 12, 2009.

4. Every non-profit corporation with substantial assets or annual revenues should develop and implement a three-tier annual board evaluation process whereby the performances of the board as a whole, each board committee, and each director are evaluated annually. The board should also develop and implement a process for review and evaluation of the chief executive officer on an annual basis.
5. Each board of directors is responsible for overseeing corporate ethics. Ethical conduct, including compliance with the requirements of law, is vital to a corporation's sustainability and long-term success. To establish an ethical corporate culture, the board should consider the following actions:
 - communicate to personnel at all levels of the corporation a strong, ethical "tone at the top," set by the board, the chief executive officer, and other senior management, establishing a culture of legal compliance and integrity;
 - assign to the chief executive officer or other officer the specific task of serving as compliance officer;
 - adopt a Conflicts of Interest policy;
 - include ethics-related criteria in employee qualification standards and in employees' annual performance reviews.
6. Every non-profit corporation with substantial assets or annual revenue should be audited annually by an independent auditing firm. The corporation should change auditing firms or the lead and reviewing audit partner periodically to assure a fresh look at the firm's financial statements.

The audit committee should be composed of completely independent directors and should set rules and processes for complaints concerning

- accounting and internal control practices. It is responsible for hiring, setting compensation, and overseeing the auditor's activities.
7. The chief executive officer and the chief financial officer of every non-profit corporation should review any annual information returns filed by the non-profit organization with the authorities.
 8. Any law practitioner providing legal services to a non-profit corporation who learns of evidence that the practitioner reasonably believes indicates a material breach of fiduciary duty or similar violation should report that evidence to the chief executive officer of the non-profit corporation and, if warranted by the seriousness of the matter, to the board of directors.
 9. Every non-profit corporation should adopt a written policy setting forth standards for document integrity, retention, and destruction.
 10. Every non-profit corporation should adopt a written policy to permit and encourage employees to alert management and the board to ethical issues and potential violations of law without fear of retribution.

V. A Comparison of the Indian and Chinese Approaches

At present the two fastest growing economies are India and China, these two can be considered as the engines of economic growth today, and even with the global recession are still showing comparatively healthy growth rates. The problem that arises is that with regards the industrial sector rapid development has taken place and numerous structural changes have accordingly been incorporated into the sector to compensate for the same. This had the ultimate effect of allowing for a more professional approach to allow for the organisations to be brought into conformity with global standards. A similar analogy can be seen for the Non Profit sector. Besides the rapid economic development in the nations there is still a wide disparity in the

populations. It is for this reason that global standards need to be incorporated in the non profit sector also to allow for its effective development. Moreover, both nations have very divergent approaches with regards their regulatory systems, thus a comparison of these two nations will put forward their respective distinct approaches to a similar issue.

A. The Indian Scenario

In India, even the right to participate in NGOs and the types of NGOs are specifically laid out in the Constitution.⁷ Often Indian NGOs provide services for a fee while working as a contracted service provider acting as a liaison between service users and private sector providers; or as collaborators between the government and the private sector advising on policy; social innovators; playing the role of social critic and public advocate; or building institutes that provide welfare services. Thus, Indian NGOs almost functions on the same level as government agencies with the office of charity commissioner or other registration institute governing them. Accordingly, the government institutes all aspects of operation from establishment, to funding, from tax requirements and tax benefits, to the handling of foreign donations. However, most laws or acts governing NGOs are relatively lenient except for those governing foreign donations and the activities of the Foreign Contribution Regulations Act of 1975. It requires an organization to go through several steps in order to receive contributions and basically acts as a tool of the Home Ministry to bring NGOs in line. However, here again, as in the case with Bangladesh laws governing the management of boards which

⁷Articles 19(1)(c) and 30

should act as the main vehicles for governance, legal mandates are outdated and need revisions in order to make them functional tools of governance. The Indian government, recognizing the need for better governance in NGOs, have set up a 5-year plan to encourage Indian NGOs pursue good governance. They have plans to make amendments to the constitution to create legal bodies to help accelerate democratic decentralization of governance; encouraging increased public participation; reforming the revenue system; and assuring the right to information.

Efforts towards self-governing are seen in the formation of Credibility Alliances which calls NGOs to voluntarily abide by standards to promote norms in the sector through registration. The ultimate goal of these credibility alliances is to act as nodal agencies in the sector . They have called individual organizations to state clear objectives and make a commitment to practicing good governance. It is an initiative by a collective of voluntary organisations committed towards enhancing accountability and transparency in the voluntary sector through good governance. CA was registered in May 2004 as an independent, not-for-profit organisation after an extensive consultative process over a period of two years involving thousands of voluntary organisations all over India⁹. Other organizations in the sector, such the GIVE¹⁰ (Giving Impetus to Voluntary Effort) offers consultation and assistance to NGOs on how to raise funds and promote transparency and good governance. In terms of utilizing technology, only a few organizations utilize

⁸ http://www.credall.org.in/about_us/faq.htm last visited on January 13, 2009 '
<http://credibilityalliance.org/general.htm>, visited on January 13, 2009

⁹ Choudhury, Enamel and Shamima Ahmed, 2002. "The Shifting Meaning of Governance: Public Accountability of Third Sector Organizations in an Emergent Global Regime", Vol.25(14), *International Journal of Public Administration*, 561-589.

contemporary technology to facilitate communication, documentation and awareness of the work that NGOs do.

B. The Chinese Scenario

The Chinese government's response to the growing role of NGOs in democratic governance has been lukewarm at best. As the government and its state-owned enterprise sector can no longer bear the full burden of tackling growing societal problems, it began to rely on social service groups to offer services to the needy under the auspices of the Ministry of Civil Affairs. In addition, the transition from a planned economy to a 'pseudo' market economy meant that social welfare services that were plentiful in the old system need to be cut back. The government is experimenting with a contractual or delegation approach in terms of allowing community organizations and social organizations to take on more responsibilities in this area. China seems to be cautious about any form of political activity by NGOs by strictly enforcing regulations. In addition, a series of cases of misappropriation of funds have discredited NGOs, prompting the government to put in place fiduciary monitors for GONGO (government funded NGOs) and grassroots organizations. Although the regulatory framework surrounding NGOs is still in early phase of development, the Chinese government has sought to secure fiduciary responsibilities and public accountability from the NGO sector.

A two-fold system makes up the administrative and regulatory framework for China's NGOs. Agencies must register with the Ministry of Civil Affairs and must have a separate registration and administrative internal

bodies responsible for management. Governing boards exist but their roles are also highly restricted by the government which selects 60% of the members and are required by law to hold regular meetings." Issues regarding the internal governance in Chinese NGOs arise at the academic level and thus resulting in the pursuit of initiatives seeking to promote accountability and good governance through research and training. One such effort is the collaboration between the conference of government agencies and the president of Evangelical Council for Financial Accountability. In addition, the Chamber of Congress set forth detailed rules for foundation administration.

VI. Suggestions

The non profit or non governmental organizations can improve their governance and operations by adopting the following guidelines :

- Stating their mission, values and objectives clearly and ensuring that their strategies and operations are at all times within them;
- Better management processes as well as financial management, accounting and budgeting, systems;
- Better human resource development and training within the organisation-of managers, administrators, project staff, board members, beneficiaries, members and volunteers;

"Ku-Hyun Jung, Park Tae-Ku, and Chang-Soon Hwang, *"Korea" c/f Thomas Silk(ed), Philanthropy and Law in Asia: A Comparative Study of the Nonprofit Legal Systems in Ten East Asian Societies* (San Francisco: Jossey-Bass Publishers, 1999) .

² Thomas Silk(ed), *Philanthropy and Law in Asia: A Comparative Study of the Nonprofit Legal Systems in Ten East Asian Societies* (San Francisco: Jossey-Bass Publishers, 1999)

³ <http://www.vaniindia.org/Reports/Good%20Governance%20and%20NGOs.ppt>, visited on January 12, 2009

- Better procedures to ensure that men and women have equal opportunities to participate effectively at all levels of the organisation, from members to leaders;
- Better means by which both the organisation, and its projects, services and activities are monitored, evaluated, and reviewed;
- Consistent efforts towards capacity building and evaluation of human resources;
- Ensuring absolute independence of auditors;
- Stratified participation from the grass root;
- Evaluation in terms of the objectives achieved rather than amount of funds utilized;
- Implementing systems which are essential though not legally mandatory;
- Better information provision by and about NGOs;
- Better networking and alliance-building among NGOs.

Some of these guidelines have been seen in practice but a more widespread and consistent usage will definitely result in better accountability levels in the non profit sector.

The organization must definitely avoid:

- Weak Governance, Leadership and Management
- Abusive Leadership and Management
- Vague Strategic Decision
- Unclear Roles and Responsibilities
- Unclear Expectations

VII. Conclusion

As a process, governance may operate in an organization of any size: from a single human being to all of humanity; and it may function for any purpose, good or evil, *for profit or not*. A reasonable or rational purpose of governance might aim to assure, (sometimes on behalf of others) that an organization produces a worthwhile pattern of good results while avoiding an undesirable pattern of bad circumstances. In terms of the non profit sector, which functions mainly on outside funding, the need for good governance practices is unquestionable to preserve their credibility. Most NGOs are funded by international donors, which make specific accountability/evaluation demands. The NGOs' employees, board, and constituents are also significant stakeholders. As an NGO grows in size and scope it faces the challenge of trying to balance its liabilities to its donors, and other stakeholders, as well as retain the organization's creativity and flexibility.

It is important to realize and act upon the notion that good governance is ultimately important to not only for the sustainable growth of the NGO sector but also to maintain public trust in civil society. To this end, the governments and NGO sectors have made concerted efforts to shore-up internal governance and organizational effectiveness of NGOs. It is also important to realize that reforming NGO internal governance mechanism must be based on long-term perspective and one that is linked to their organizational mission and client service. To this end, although self-regulation on the part of the NGO sector is critical in the success of securing internal accountability of NGOs, the strategic partnership between the state and the NGO sector is also a key component. Because civil societies in the region are said to be early in the phase of development, instituting an enabling

environment without much heavy-handedness of the state will be critical to the 'institutionalization' process, which include both internal governance structures as well as management schemes.