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Editorial

Living on the edge: The Indian Voluntary Sector

Dear Members, Associates and Friends

For almost a decade, Indian voluntary organisations are living on the edge of a blade on a daily basis. They have to survive with the stigma of being sub-contractors or under the perennial threat of being black listed. Unfortunately, this situation is further complicated by the 'so-called' leaks in media which could never be verified. Whenever, there is such leak highlighted by the media, every law abiding voluntary organisation runs to check their name in the list. The situation is such that sometimes people working for the development and growth of the country through non-governmental framework question their relevance in today's market dominated discourse. Many times we read articles written to malign the sector without even having the basic knowledge of laws or the very nature of the sector with such accusations remaining uncontested. I sometimes believe that best way to get story printed on the first page of any newspaper is to write an article accusing 'NGO' by referring it to some undisclosed source in the Ministry of Home Affairs.

The regulatory regime of Indian Voluntary Sector needs serious review and reform. The old and outdated regulations not only make this sector vulnerable but also expose it to corrupt practices. Most of the laws applicable on the Indian NGOs are either too weak to professionally regulate the sector and focus only on control.

It was almost two decades ago, that liberalisation of economy started wherein not only registration laws of the corporate sector where streamlined and professionalized, but even controlling regulations were made transparent. Somehow, it was resolved that it is only private sector which can deliver growth and people questioning it should be made irrelevant. Let's analyze the regime of registration of voluntary sector in India. The inspector raj was reduced for corporates and imposed on NGOs. The most commonly used is Societies Registration Act, 1860. It is almost a two century old law and currently listed as state subject. Every state government treats the registration of NGOs in its peculiar way. For example, in UP one has to renew the registration after every five years, whereas in Delhi no one bothers if the registered organisation is alive or dead. Any seven persons can register an NGO. No data is available today in the country about the number of NGOs. Every one working as 'Non-Profit' can be termed as NGO. Today the list includes the rich sports clubs, resident welfare organisations, five star corporate hospitals or posh educational institutions. Even numerous NGOs

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promoted and run by government are in the list. The figure of 1.5 million which is always bloated in media does not have scientific calculation but is only a mere projection. Needless say that such situation has not only created confusion in the minds of people but also put voluntary organisations engaged in development activities at very disadvantageous position. We sometime say that old and outdated law has facilitated the entry of all fly-by-night characters in the field. That is the reason why people say NGOs could be bought, sold or given in dowry. Most of the scandals are done by such NGOs but it is the problem of negative generalization that the whole sector suffers. Such scandalous behaviour also gives enough fodder to prosecute genuine ones.

The second law which is supposed to define and differentiate the sector, is Income Tax Act, but again its section 2(15) fails to define the sector as per its operational realities. It has six arms, and most of the development organisations come under its last arm. All other categories are allowed to generate resoucres and use them for achieving their charitable goals, but it is only last category wherein limit of 25 lakhs is imposed. It says that if you generate income through business or consultancy even if you want to use it for charitable purposes, it should not be more that 25 lakhs. Interestingly, all others are allowed to raise as much as they can. For example, a private five star hospital registered as NGO under 'delivery of health' can generate as much resources which will remain tax free. The situation is further complicated by the nature in which government engages voluntary sector in its projects. Many times these engagements are based on an open tender system, where it is defined as a business by the assessing officer. Say for example, if an organisation has worked for the capacity building of women since its inception and this task is their main purpose, but they can work with government only as sub-contractor.

Another scary law controlling Indian voluntary sector is the Foreign Contribution Regulation Act (FCRA). It is one of the most secretive laws applied on the citizens without any transparency or accountability. Even if any organisation has been filling due returns and following the law in its true spirits, they can never be assured of their status with Ministry. There is no system of acknowledgement of receipt, so anytime a department can say that they have not received returns. The only proof they have is the acknowledgement receipt of speed post. Just like Income Tax department, no certification of acceptance is received. Even if rules of current FCRA say that organisations have to keep records of only six years, the investigations demand data since inception of the organisation. The NGO can't access the department and can only receive notification or keep checking the website of ministry to see if they are blacklisted. The onus of implementation is on the recipient and not on ministry to keep and store the documents. Even it is the duty to check and see if their addresses are updated by the ministry. All the investigations are done by IB, which can take years, if not decades, but no one can question these delays. Since such reports are not covered under RTI the VOs seldom know the reason of their punishment. A half paragraph letter can lead to freezing of their bank accounts for years with no scope of appeal. We have cases wherein investigations are going on since the last four years.

All the above fact highlights the need to have regulatory reform of the sector. We need to have a national registration law for Indian NGOs/ voluntary sector, which is capable of not only keeping weeds out of the field but also categorizes the sector. We need to develop a system of on-line compulsory reporting of NGOs in some centralized ministry. All regulations related to Voluntary sector needs to be brought into one single roof to develop mutual accountability and transparency. It was former Prime Minister Sh. Atal Bihari Vajpayee who for the first time called a national convention of Indian voluntary sector and asked then planning commission to develop 'National Policy for Voluntary Sector'. This policy was developed in 2007, but was never followed by the past government. We do hope that since the current government has assured to review all the sectors of economy it will also form a commission to reform the voluntary sector. This will not only boost confidence but also rescue the sector from its decay. Today if you see in the field those who have spent their lives in developing innovations are working as sub-contractors to donors, and those who had contributed in epistemology of development have become nonprofit consultancy firms.

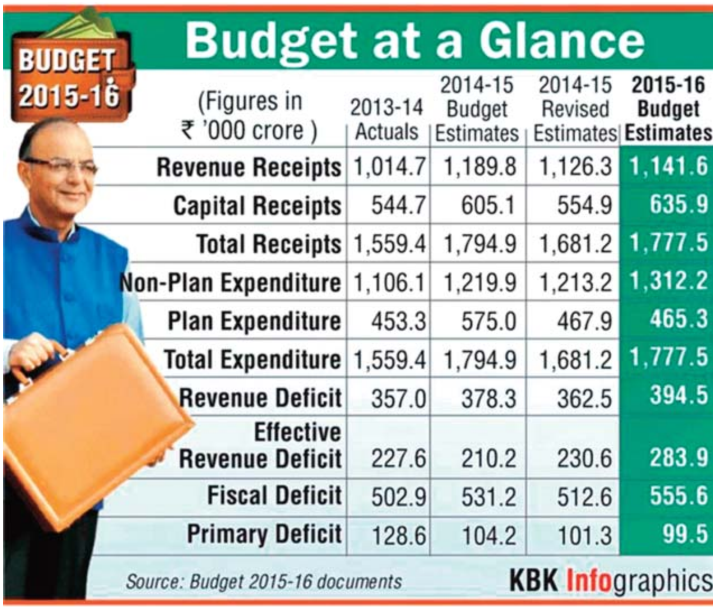
Regards,

Harsh Jaitli
Chief Executive Officer

Budget 2015: Balanced or Biased?

— By Arjun Kumar Phillips, Communication Executive, VANI

Two words became ubiquitous when the Finance Minister patiently came forward with the Budget 2015: Development and Optimism. The magnitude of its occurrence resonated everywhere, hailed with sobriquets of being 'growth-oriented', 'development mandate' and 'vision for the future'. The rhetoric of development is what plunged the NDA government into achieving a definitive majority, with a minuscule opposition scattered about in the lower house of the parliament. The electorate saw in Mr. Narendra Modi, the dynamism and the manifestation of an authoritative leadership with the political sinew desperately needed by a country reeking of corruption and a degraded economic growth. As a normative of parliamentary politics, it was ostensibly quid pro quo between Mr. Modi, his party and the masses, 'give us votes for development in return'. Hitherto given the entire hullabaloo over certain ideological persuasions making their foray now and then, the incumbent government maintained their commitment towards development and growth. And the culmination of all these promises transforming into realities was awaited in the release of the Budget 2015.



(Figures in ₹ '000 crore)	2013-14 Actuals	2014-15 Budget Estimates	2014-15 Revised Estimates	2015-16 Budget Estimates
Revenue Receipts	1,014.7	1,189.8	1,126.3	1,141.6
Capital Receipts	544.7	605.1	554.9	635.9
Total Receipts	1,559.4	1,794.9	1,681.2	1,777.5
Non-Plan Expenditure	1,106.1	1,219.9	1,213.2	1,312.2
Plan Expenditure	453.3	575.0	467.9	465.3
Total Expenditure	1,559.4	1,794.9	1,681.2	1,777.5
Revenue Deficit	357.0	378.3	362.5	394.5
Effective Revenue Deficit	227.6	210.2	230.6	283.9
Fiscal Deficit	502.9	531.2	512.6	555.6
Primary Deficit	128.6	104.2	101.3	99.5

Source: Budget 2015-16 documents KBK Infographics

In all eagerness the Budget 2015 was exuberantly expected as a watershed in realigning economic growth and encouraging development. The sectorial division on expectations was overtly discernible especially the enthusiasm of the corporate sector for which it readily obliged. Everybody expected to get a piece of the pie but in analyzing its overall distributions has it really served all sections? Apart from its pragmatism of stabilizing the economy and providing a business friendly environment the budget has disappointed many on the social sector expenditure. In one straight shot the government has contracted allocations for social sector schemes. Schemes mainly based on health, women and child development have suffered the most with the economic justification emanating from a compulsion to contain the fiscal deficit. It is understandable that reducing expenditures is a necessity in making a robust economy work but this cannot be at the expense of the marginalized, poor and the downtrodden. As described above the budget empathized with needs of the corporates and immediately earned their recognition and acknowledgement but its alienation of the poor was explicitly visible. However not all social schemes were trimmed off, the incumbent government did introduce new wine in an old bottle, renaming some of the old UPA's legacies to the likes of their own party's founders and stalwarts. Sequentially followed regressive taxation and anticipated tax cuts installed for corporates.

Subsidy reduction

In the modern economic discourse, subsidies are seen as a relic of the soviet system breeding inefficiency and placing expenditure burdens on the state. Justified! Since subsidies do create an imbroglio for growth as expenditure allocated for infrastructure and manufacturing is directed to selling food at lower market rates. Our fiscal deficit overshoot had acquired worrisome overtones requiring an immediate gap reduction between the expenditures and receipts. The NDA government in its budgetary allocation reduced the targeted subsidies owing to a dip in the global prices of oil, which have a cascading effect in increasing the prices of food, petroleum and fertilizers. The finance Minister passionately stood up and defended his government's stance on subsidy slashing as the concern for the hour was controlling leakages in the targeted subsidy system in contrast to its complete elimination. But what comes as despair is the moderate allocation towards food subsidies in a country where 42% of children under five suffer from malnourishment and 80% of India's population of 1.2 billion lives on less than 2 dollars a day. Access to food in India is only limited to 20% of the population while 80% suffer from chronic hunger and poverty. The Economic Survey had noted that that the inefficiency of the Public Distribution System had cost the exchequer crores, primarily contributing to a bloated fiscal deficit. Strengthening the PDS system by finding urgent solutions to these leakages need to be addressed and dealt strictly. The government's intention is to have fiscal consolidation but such an exercise cannot be achieved by alienating food subsidies to the poor.

Social Sector Expenditure trimming

The budget evoked positive responses for its astuteness in the judgment of allocation. The announcement of massively investing in infrastructure by creating a National Infrastructure and Investment Fund with an initial capital of Rs.20000 crore and Rs. 25000 crore allocations towards the Rural Infrastructure Development Fund reinvigorated many, as this domain, oddly has remained dormant. The commitment towards poverty alleviation and national priority schemes will be continued but with deletion of a few. Beneath all the cheering and applause lay the scissoring of social sector schemes targeting children. In terms of percentage decrease, budgetary allocations for Sarva Shikha Abhiyan have been reduced from 0.16% to 0.13%. An astounding reduction was visible in flagship programmes such as Integrated Child Development Scheme with a 51%

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reduction from Rs. 21,193.88 crore to Rs. 10,382 crore. Not to mention that these schemes have been partially successful in their targeted implementation. For example ICDS was a success across the south in comparison to the BIMARU states, reducing malnutrition if not successfully eliminating it. Similarly Sarva Shiksha Abhiyan's project to universalize education was found to be a quantitative success with out of school population coming down from 28.5 per cent of the six-to-14 year age group in 2001 to 6.94 per cent by the end of 2005. Allocations to education have been dismal with an overall 17% decrease. Even if the government is going bravado with 'Nai manzil' an education and livelihood scheme for minorities, it has no reason to feel proud as it was the same policy announced last budget with a different name this year.

Another disappointment glaring amongst the glitterati was the lowered investment for the health sector. While the Finance Minister announced the setting up of AIIMS in five states, substantial reductions were announced in programs such as AIDS control and a measly allocation of Rs.33,150 crore for universal health mission, a retraction from the government's intended 2.5% expenditure in the draft national health policy.

In a surprise move the incumbent government decided to make a parsimonious increase for MNREGA a diversion from PM Modi's overt criticism of the UPA's brainchild program. Noting that the efficacy of the program had to be qualitatively improved, the total allocation for this 'wage for asset creation' program was enhanced to 39,699 crore. It is not only that flagship programmes have seen reductions in their funding but overall outlay earmarked for the social sector ministries have registered a decline from 1.92 % of GDP in 2013-14 to 1.68 % of GDP in 2015-16. However not everything is gloomy on the side of social sector expenditure. In what was a breakthrough in the budget, the share of states in the Centre-State resource pool has been increased, an inclination towards the recommendations of the 14th Finance Commission. By bestowing autonomy to the states and discretionary fiscal devolutionary powers, the states would be enabled to expend more on targeted state schemes. Such fiscal federalism of tax devolution and increasing the share pool of resources can be expected to percolate and be of benefit.

Indirect Taxes: A burden for the poor

The Budget's leniency towards the corporate sector was obliged by a reduction in the direct taxation regime while indirect taxes affecting the middle and poor classes saw an augmentation. Fiscal conservatives were quite glad to welcome such a regressive tax structure in comparison to 'burdening' the corporate class. Centre for Budget, Governance and Accountability (CBGA) notes that the incidence of increasing indirect taxes has been increasing for a decade at the cost direct taxes. This is in a country where the 1 percent of the wealthy has an equivalent wealth of the 49% of the population. Despite the increases in surcharges announced on the super-rich, revenue–raising will be primarily accounted from indirect taxes. This is not the first time that indirect taxes have been employed to safeguard the direct taxation regime. It was déjà vu with the NDA as it chose to follow in the footsteps of the UPA's tax policies. Paraphrasing the Finance Minister, the plausibility for reducing corporate tax was compelled by the need to stimulate growth and investments as higher corporate taxes resulted in exemptions and no revenue! One such wonders whether the pinnacle is to induce investment or reduce the already burdened common man of his economic miseries, which in this case seem to favor the former argument.

What came out good?

In all respects, the budget was distinguishably pro-

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corporate but in its entirety it has managed to squeeze in some consideration for the social sector. As elaborated above, most schemes faced the axe in funding particularly those linked to the UPA but the progenies of the incumbent such as Swacch Bharat Mission were granted 100 percent deduction under Section 80G of the Income Tax. The setting up of a MUDRA Bank (Micro Units Development Refinance Agency) for micro financing is commendable, which will refinance microfinance institutions across the country. As an initiative ensuring financial inclusion, this will boost the growth of SHG's and micro finance enterprises. The Pradhan Mantri Krishi Sanchal Yojana with its slogan of 'Har Khet Ko Pani' might be the only agricultural program that has been monetarily strengthened in comparison to other schemes facing huge cutbacks.

Agricultural spending remains weak and experts have expressed dejection of not receiving much allocation. In appreciating their efforts particularly for curbing black money, the NDA government proposed a law indicting those who conceal their foreign assets with prosecution resulting up to 10 years. In analyzing the whole budget one may infer that while it was more of a balanced approach ironically it ended up as being more accommodative to the concerns of the industry and corporates. For it maybe that development can be achieved with such financial outlays, but whether it will reach everyone can only be speculated.

— Mr. Arjun Kumar Phillips, Communications Executive, VANI, New Delhi

Carving a space for Voluntary Organisations in SAARC

— By Shivani Vaishnava, Programme Officer, VANI

South Asia is a region of contrasts. Dynamic, diverse and developing at one hand, while simultaneously plagued by extreme poverty, human rights violation and malnourishment. The region's highly stratified social composition is compounded by its poor internal governance.

India plays a dominant role in the South Asian region by the virtue of its size – economic, political and population, and with its representation at various global forums. Political and economic decisions taken by one country have the potential to cause a profound impact on the other neighbouring countries. Because of the close historic, economic and ecological linkages between the states, regional cooperation has become all the more necessary for socio-economic development. In 1985, a positive step in this direction was taken with the establishment of South Asian Association for Regional Cooperation (SAARC), comprising of Bhutan, Bangladesh, Sri Lanka, Pakistan, Nepal, Maldives, India and Afghanistan (which became a member in 2007).[1]

Because of the close historic, economic and ecological linkages between the states, regional cooperation has become all the more necessary for socio-economic development. In 1985, a positive step in this direction was taken with the establishment of South Asian Association for Regional Cooperation (SAARC), comprising of Bhutan, Bangladesh, Sri Lanka, Pakistan, Nepal, Maldives, India and Afghanistan (which became a member in 2007).

We, the people

'People-to-People Contacts' is one of the Areas of Cooperation stressed under the mandate of the SAARC. It emphasises upon strengthening mutual understanding and goodwill amongst the people of this region. Unfortunately, the interpretation of this solely means maintaining relations between governments, and that betrays the intention and possibility of the mandate. Further, the red-tapeism and bureaucratic lethargy with which SAARC and its member states suffer deflates much of the enthusiasm for the transformation and integration of the region. If this mandate is interpreted flexibly it opens a big space for other stakeholders, including the civil society organisations (CSOs) and the private sector to step in. Successive SAARC Summits have emphasised upon the need to promote people-to-people contact at various

[1] *Like SAARC, other regional intergovernmental organisations are African Union (AU), Arab League, Association of Southeast Asian Nations (ASEAN), European Union (EU), Organisation of American States (OAS), Caribbean Community (CARICOM) and Union of South American Nations (USAN).*

levels, particularly outside the ambit of the state. The recent eighteenth SAARC Summit held in Kathmandu in November 2014, reiterated the importance of people's participation in promoting transparency and accountability at all the levels of governance, and contextualisation of the Sustainable Development Goals (SDGs) regionally, as part of the Post- 2015 Development Agenda.

Moreover, the SAARC Secretariat in Kathmandu, SAARC Development Fund in Bhutan and other eleven regional centres, comprising of SAARC Secretary- General, members of the Ministry of Foreign Affairs and staff members unfairly prejudices the system in favour for institutional relations. The very structure and processes of these institutions exclude participation of South Asian civil society in the implementation of agenda and agreements of SAARC.

Under the SAARC Social Charter formulated during the tenth Summit in Colombo (1998) and signed during the twelfth Summit in Islamabad (2004), it was envisioned that the "principal goal of SAARC is to promote the welfare of the peoples of South Asia, to improve their quality of life, to accelerate economic growth, social progress and cultural developments and to provide all individuals the opportunity to live in dignity and to realise their full potential." But the implementation of the Social Charter has been entirely left to the governments of the member countries, bypassing the South Asian civil society. The alienation of the civil society from the mandate has made it impossible for the regional body and its members to achieve the targets of "poverty eradication, population stabilization, empowerment of women, youth mobilization, human resource development, promotion of health and nutrition, and protection of children". Even during the formation of the SAARC Social Charter, the civil society was kept out of the consultative process. The South Asia Centre for Policy Studies (SACEPS) came forward and framed what later came to be known as the Citizen Social Charter by incorporating the concerns of CSOs across South Asia. But unlike EU and ASEAN, which have a framework for wider participation of CSOs in their agenda, SAARC lacks any official mandate on engagement with civil society. SACEPS-led efforts forced SAARC to take the Citizen Social Charter into consideration. This participatory and inclusive way of drafting the Citizen Social Charter was in complete contrast with SAARC's closed institutional mechanisms.

One step forward, two steps back

Traditionally, voluntary organisations (VOs) in this region have been involved in work related to development, poverty alleviation, capacity building and service delivery. Internal conflicts, civil war and militancy in South Asia have a spill-over effect beyond the boundaries of a state. This has increasingly left a lacuna for CSOs to fill in the process of peace building, conflict transformation and human rights. For example, the South Asia Human Rights Documentation Centre (SAHRDC) and South Asia Forum for Human Rights (SAFHR) are networks of organisations and individuals working in the field of human rights in South Asia.

After over decades of intimate experience with VOs there is a disgruntled murmur against them across the region. One of the major factors contributing to this sense of disillusionment is VOs predominant model of functioning: funds are raised through a third party to make a substantial social change. The legitimate criticism that VOs often face - regarding the sustainability of such a model is one that is being asked not just in India, but across the region.

After over decades of intimate experience with VOs there is a disgruntled murmur against them across the region. One of the major factors contributing to this sense of disillusionment is VOs predominant model of functioning: funds are raised through a third party to make a substantial social change. The legitimate criticism that VOs often face - regarding the sustainability of such a model is one that is being asked not just in India, but across the region. In Nepal, micro-finance and impact investment funds are quickly filling the space for sustainable social change. The lines between the private sector and social sector are blurring with increasing emphasis on promoting mutually beneficial joint ventures in South Asia.

There have been some positive success stories to build on. People-to-people interaction was further made possible in the year 2000, with the creation of South Asia Foundation (SAF) by Madanjeet Singh, a UNESCO Goodwill Ambassador. Comprising of eight autonomous chapters in each of the SAARC countries, SAF is a non-political and non-profit organisation with the core agenda of regional cooperation. The South Asia Women's Network (SWAN) is one of the programmes supported by SAF, which is currently operating from the Academy of International Studies, Jamia Millia Islamia in New Delhi. Based on the premise that women in South Asia experience similar challenges of poverty, illiteracy, inequality and violence against women, this programme aims to address these challenges by sharing of ideas and working across the SAARC countries and Myanmar. In 2009, SWAN brought together women parliamentarians, civil society activists and media personals working in areas like economy, health, environment and education at one platform. SAF's contributions towards regional cooperation and socio-economic development has been recognised during the SAARC's twenty- seventh Session of the Council of Ministers in Dhaka (2006), where it was granted the status of the SAARC Apex Body.

Another progress in this direction was made during the sixteenth SAARC Summit (2010) held in Thimpu, which resulted in formation of the South Asia Forum. The Forum's agenda emphasised "for the generation of debate, discussion and the exchange of ideas on South Asia and its future development." In September 2011, this Forum organised by the SAARC, Ministry of External Affairs, India (MEA) and the Federation of Indian Chambers of Commerce and Industry (FICCI) brought together "eminent personalities of diverse backgrounds." The Forum decided towards strengthening "public-private partnership lines… for multiple inputs beyond Governments" for the development of this region. The success of SAARC and its mechanisms was linked with the need to include people from different sections of this region, like "its students and youth, private sector, think tanks, civil society and institutions of economic development" in a formal institutionalised manner.

Any discussion on the relationship of SAARC and CSOs is incomplete without recognising that civil society is not an integrated unit. It comprises of a wide range of actors like think tanks, academics, VOs, grassroots organisations and activist groups. Divisions within South Asian civil society can be attributed to the fact that multiple tracks exist in the non-government domain, with little or no coordination. As a result, they have varied interests and contributions to make towards strengthening the South Asian community and region. Civil Society networks like People's SAARC (PSAARC) help in bringing these various groups to support issues of common interest to this region. PSAARC holds People's Summit parallel to the SAARC Summits in order to create an alternative socio-economic, political and cultural system that promotes South Asian regionalism.

South Asian civil society groups, through their focus on people centric development, can lead the way for cooperation and regionalism in South Asia. Unlike government agencies which are burdened by the shackles of political and diplomatic give and take, CSOs can function independently. Grass root organisations working across South Asia often need a platform from which they can share their experiences adding to the collective resource pool of the region. Organisations like VANI can continue to take up the mantle of this challenge and collaborate with similar organisations in the region. The possibility exists; we just need to exercise our will.

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The missing voice of Kenya's civil society

— By Hawa Noor, Junior Researcher, Governance, Crime and Justice Division, ISS, Nairobi

Since the 1990s, when multi-party politics was re-introduced in Kenya, the country has seen numerous political transitions. In 2010, a new constitution was promulgated, paving the way for the devolved system of government.

This constitutional transition, though welcomed with optimism, has since become bogged down by numerous challenges, hampering its implementation. It is against this backdrop that political agitation for yet another referendum has emerged.

In Kenya, like in other developing countries, the role of civil society is crucial in the quest for social justice, transparency and accountability. Civil society activism has often provided an objective voice to temper political extremism.

In Kenya, civil society is often credited with giving momentum to the struggle for constitutional and democratic reform. An example is the wave of reforms in the 1990s that led to constitutional change and the re-introduction of multi-party democracy, which ultimately resulted in the collapse of the dictatorial, single-party regime of President Daniel Arap Moi.

Civil society's role has also been synonymous with the call for a new constitutional dispensation in Kenya. It played a crucial role in the 2005 constitutional referendum as well as the one in 2010, educating citizens on the review process and the content of the proposed new constitution. However, the period after the 2010 constitutional referendum has witnessed a decline in the assertive role and voice of civil society on critical national issues and debates.

The decline has been largely attributed to internal wrangles fuelled by ethnicity and political patronage among civil society members. Furthermore, some civil society organisations have co-opted into government over the last decade, which has also depleted their dynamism. This has left a noticeable void, characterized by a profound silence in the face of ongoing human rights abuses, impunity, and a lack of transparency and accountability.

These concerns were raised at a recent meeting of civil society organisations held in Nairobi, convened by the Uraia Trust. The meeting noted that the prominence of civil society as the voice of reason has declined while impunity is increasing, manifesting itself through extrajudicial killings, arbitrary arrests and the suppression of mass media freedom.

It was further noted that these developments could threaten the progressive constitutional and democratic demarches and see Kenya return to the dictatorial rule of the 1990s. Surreptitious amendments to the Public Benefits Organisations (PBO) Act of 2013 have further exasperated the efforts of civil society. These amendments have been cited as an indicator of the government's resolve to intimidate civil society into silence.

Despite hopes fostered by the promulgation of the new constitution and the devolved system of governance, which has brought with it significant transformation in public service delivery, the central government has been accused of frustrating the process by withholding funds and implementing parallel governance structures to maintain control.

It is in part due to these challenges that two new initiatives for referenda have emerged, namely Pesa Mashinani and Okoa Kenya. The former is being led by the Council of Governors (COG), while the latter is headed by a coalition of opposition parties under the umbrella Coalition for Reform and Democracy (CORD), which is led by the former Prime Minister Raila Odinga. Speculations are on the rise that the two initiatives might soon merge.

Public focus has rested primarily on the fierce political tussle between the COG and CORD coalitions, on the one hand, and the government/ruling coalition of President Uhuru Kenyatta on the other. While this has dominated media and public awareness, the voice of civil society remains conspicuously absent.

The Pesa Mashinani initiative is agitating for an increase in national revenue allocated to supporting devolved structures in the counties. The campaign says that the current allocation of 43% is based on the 2009/2010 national revenue collections, which is not up to date with the current reality. However, based on recent scuffles between members of county assemblies and their governors (which has led to a number of impeachment motions), some see the initiative as a spurious tactic to acquire more funds for political reason, rather than development and improvement of the welfare of citizens at the county level.

The Okoa Kenya initiative, on the other hand – which was founded on failed demands by CORD for political dialogue with Kenyatta's government back in July 2014 – is focusing on a 13-point agenda centered on devolution, judicial and electoral reform, land, national cohesion and insecurity. Its opponents see this as a strategy to discredit the government so as to gain political millage.

While the Pesa Mashinani initiative may be motivated by political self-interest, the Okoa Kenya initiative is mired in complexities and questions to which it does not seem to provide suitable answers. More generally, the CORD coalition, as the main opposition, has so far not demonstrated to the public its idea of good governance structures, or how these could work in Kenya. Entrenched ethnic politics continue to serve as one of the primary dividers and obstacles to a coherent and united political agenda for all Kenyans.

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Overall, the two initiatives, as well as those by the ruling coalition, are caught up in a political context characterized by heightened political temperatures, confusion and an obvious lack of objectivity. The voice of reason is absent from the debate, and the need for a neutral and objective arbitrator to promote citizens' understanding, involvement and participation is critical.

This is a role traditionally undertaken by civil society, and it must reclaim this by doing what it has done in the past: informing and educating the public, and providing platforms for citizens to engage with the government, opposition and other stakeholders. But first, it is imperative that civil society should also reclaim its collective voice, devoid of ethnic politics and manipulation by the political elite, and seek to regain its vibrancy as the custodian and protector of citizens on issues that affect them.

— By Hawa Noor, Junior Researcher, Governance, Crime and Justice Division, ISS, Nairobi

Leader's Speak: P. V. Rajagopal

In this interview we speak to Gandhian stalwart P.V. Rajagopal, patron of Ekta Parishad and Ex- Working Committee member of VANI. The interview was taken on the sidelines of his 'jan andolan' or people's movement against the land ordinances promulgated by the government with the subsequent decision to introduce the Land Acquisition Bill in the Parliament. In protest against its ratification, the Ekta Parishad organized a march from Palwal in Haryana on 23rd February to Delhi which ended with a sit in dharna on 25th February at Jantar Mantar. The event was attended by a massive crowd of 5000 tribals from the regions of Madhya Pradesh, Chhattisgarh and Jharkhand and had also witnessed participation of various social activists especially the anti-corruption crusader Anna Hazare & Swami Agnivesh

Mr. Rajagopal can you explain what exactly is the motive of this movement?

This movement is against the land acquisition bill that the government intends to introduce in the parliament. What we see is a blatant trample on the rights of the poor and marginalized. The government intends to have fast track mechanism that will make it easier for them to get land without the consent of the people and then sell them at exorbitant rates to the corporates. The government keeps harping on development for all (sabka saath sabka vikas) but is it possible to imagine it without including the tribals, dalits and other socially excluded communities? One should recall what Gandhiji had spoken of 'sarvodya vikas' which was development and benefit for all.

The government was elected on the promise of delivering development to the people. But is such development tenable which wants to achieve results early at the expense of the poor? Of course nowhere are we against development but when such kind of development hampers the livelihoods and homes of millions then what choice do we have by not protesting? It is time that government starts developing a model of development not based on western concepts but on indigenous systems. We have heard the Prime Minister often that his government is here to provide employment to the people. But how is a promise of employment sustainable when the government is bent on curbing the livelihoods

of the poor. With the installation of the land acquisition act, the government only seeks to destroy their livelihood. After all this is struggle for livelihood and adivasis only have land as their sole source for it.

From the ramparts of the Lal Qila, we had heard the Prime Minister asserting that his government would provide employment to millions but is it a sustainable option when the government comes and purloins the livelihood of the downtrodden.

The government was elected on the promise of delivering development to the people. But is such development tenable which wants to achieve results early at the expense of the poor? Of course nowhere are we against development but when such kind of development hampers the livelihoods and homes of millions then what choice do we have by not protesting?

Mr. Rajagopal what have been your demands from the government for amending the Land Acquisition Act?

We have placed four demands before the government

- Introduce the Homestead Bill 2013 in Parliament
- Reconstitute the National Land Reforms Council
- Approve the Land Reforms Policy 2013
- Strengthen the Forests Rights Act 2006

I am sure these are not demanding and would be easy for the government to accept them. Apart from this we would also like to see the repeal of ordinances.

Do you believe that the government will act on your demands?

I am always optimistic. The Prime Minister himself has emerged from the grassroots; he should be able to empathize with us. This movement marks itself as a colossus in the history of padyatra's taken place in our country. We appeal to our government to take into consideration the vast majority of rural adivasis dependent on land as their source of livelihood.

Do you see any perceived risk with this padyatra to the farmers and adivasis?

The movement was always at risk ever since it commenced from Palwal. What bigger threat can be perceived when the sole landholdings of the marginalized are at a risk of being thwarted? Although it may be that some sort of vandalism will take place on the properties of farmers and adivasis in their absence. This is a legacy of colonialism which the government has no qualms in implementing.

Do you see voluntary organizations playing a crucial role in the movement?

I do not think so because this is a more movement oriented platform that we are building. Of course they are welcome to join us in this initiative but the viability of their participation cannot be confirmed. Also if they participate then it is very possible that the government will find some excuse to target the movement on issues such as FCRA or taxation. In a way this has to be convergence of people's movements. Only can this be a way forward for the people's movements to consolidate on future struggles.

— Interview taken by Mr. Arjun Kumar Phillips, Communications Executive, VANI, New Delhi

Organization Profile: Disha Social Organization

Disha Social Organization was formed in 1984 in Sultanpur, a semi-urban area in Saharanpur district, to address concerns of the vast rural population, particularly women, dalits and minorities.

Beginning from initial activities that included training to traditional weavers, organisation of baan workers (mainly dalit landless), stitching training school (for dalit and Muslim women), education centres for women and men, and health training, Disha has today emerged as a professionally managed organisation working in a large area in two northern states Uttar Pradesh and Uttarakhand with some 4 million people.

Vision

To establish an equitable society where there is no discrimination on the basis of gender, race, religion and caste and which provides equal social, economic and political opportunities

Mission

To mobilise women, poor, downtrodden and weaker sections into sustainable groups so as to achieve their social, economic and political empowerment

Strategy

To mobilise the target group and strengthen them in a manner that they are able to address their

Disha Social Organization operates in Uttar Pradesh and Uttarakhand. Under its operational ambit of Uttar Pradesh, the organization is based in Saharanpur and also functions in Dehradun, Uttarkashi and Haridwar.

Programmes of DSO

1) Livelihoods

Disha's work in Livelihoods is now managed under Disha India Micro Credit through which it reached out to 29,724 clients across 326 villages in two states. Disha follows both self-help group (SHG) and joint liability group (JLG) methodology. By bringing savings, credit and insurance to thousands of rural women, Disha has given a massive boost to enterprise development in Saharanpur, Roorkee and Dehradun where its programme units are based

While enterprises are mainly for women from the families whose primary occupation is not agriculture, the organisation has given equal emphasis on agriculture also. It has successfully implemented a project on diversification of agriculture in Saharanpur district and is currently implementing a similar project in Rampur and Moradabad districts.

2) Women Empowerment

One of the core programmes of Disha is to empower the marginalized and socially exclusive sections of society. The organization's tirelessly works towards achieving gender parity in society through various programmes and education centres. Disha firmly believes that a change in the status of women can be brought only by changing mindsets of the people. Towards this end the organisation is intervening with a number of stakeholders through a number of activities. Some of the recent activities are:

- Students' rallies at different places of the operational area
- Yatras and meetings
- Street plays and puppet shows
- Holding of workshops and seminars
- Participation in workshops and seminars

In its programmes Disha also intervenes by

a) Performing advocacy against women violence

b) Organizing Nari Adalats

c) Organizing advocacy and awareness workshops for women equality

d) Organizing women rallies and street plays with students

Education for Adolescent Muslim Girls

Disha has a rich and varied experience in promoting education through a number of interventions. Over the years, the organisation has implemented programmes on adult literacy, improvement of elementary education, total literacy campaign in partnership with the Government of India and education for adolescent Muslim girls which is now the highlight of its education initiatives.

Ten villages are selected every three years to enable (mainly) Muslim girls pursue basic primary curriculum and finish it in three years so that they can join mainstream secondary education in state schools, if they wish to do so. Between 2009-12, approximately 366 girls enrolled in Disha's 10 education centres across 10 villages, finishing their primary education. Most of the girls are in the age group 12 to 18, predominantly from Muslim communities and have never had any formal or other education in their lives.

This also involves positively engaging parents and the community in order to create an enabling environment for girls.

Additionally, the examples of girls who have pursued higher education and made a difference in their lives now encourage parents to think positively about their daughter's education. Meetings with parents are regularly organised at the education centres and information such as accessing social security, land rights and employment opportunities through MNREGA is disseminated.

For continuing education Disha has established rural libraries close to education centres for girls. More than 300 children and adults can access books, newspapers and other information from these libraries. Girls from education centres have made the most of this facility and availability of books has encouraged them to read and seek information beyond the prescribed curriculum books.

Community Development through Morcha

The two Community Based Organisations (CBOs) – Ghad Khsettra Mazdoor Morcha and Mahila Mazdoor Evam Laghu Kisan Morcha, together popularly called morchas, owe their roots to a few people's struggles including equal wages and land right movement led by Disha in 1980s and 90s. Through community mobilisation they continue to address various rural development issues in the operational area.

The morcha is divided into four village clusters and meetings of all four clusters are held on 24th of every month at Disha Training Centre. Issues and concerns are discussed and strategies are developed to deal with them. Morcha members work closely with the local self governing bodies (gram panchayats) in the villages.

Each morcha cluster has a number Area Level Morcha Committees. Currently capacity building of Area Level Morcha Committees continues on pre-identified issues (land, wages, social service, natural resources, social harmony, political processes, violence against women, employment and right to information).

The morcha members/activists are involved in advocacy and direct action

at the village, block, tehsil and district level and thousands of poor in the villages have claimed their entitlements for housing, jobs, pensions, rations and the like through the assistance of morcha activists.

Aaroh Campaign

Aaroh is a campaign for asserting rights and demanding justice for women farmers in Uttar Pradesh. Disha is a regional coordinating organisation for Western Uttar Pradesh and is working with several voluntary organisations in as many districts of the region. In all there are five in different regions of Uttar Pradesh and the campaign is being coordinated by Gorakhpur Environmental Action Group (GEAG) with support fromOxfam (India) Trust.

Women farmers represent one of the crucial development forces in the world. They grow, process, manage and market most of the food and natural resources. They are the largest workforce in India. According to a study, nearly 84 per cent of all economically active women in India are engaged in agriculture and other allied activities. Agriculture employs 4/5th of all economically active women; they make 1/3rd of the agriculture labour force and 48 per cent of self-employed farmers.

According to another study, Uttar Pradesh, where 72 per cent population is involved in agricultural activities, is one of the largest contributors of food production towards the nation's granaries. Though women constitute 48.5 per cent of the total population of the state, women in agriculture are still a neglected workforce. Although they are responsible for more than 75 per cent of agricultural activities, their share in agricultural productivity was shown only 12.9 per cent despite the work participation rate of 18.4 per cent, according to Census 1991.

The number of total workers in Uttar Pradesh, according to Census 2001, is 54,180,232, of which men are 76 per cent and women are merely 23 per cent. Amongst these women, only 34 per cent are classified as cultivators and 41 per cent as labourers, whereas amongst men, 42 per cent are cultivators and 20 per cent as labourers. This clearly explains that the work opportunity in the sector to women is merely 23 per cent and they are mostly working as labourers – the category of cultivators being so small. However, the contribution of such a large working population cannot be simply ignored.

In terms of wages, in spite of being the highest contribution of food grains to the national food stock, the wage rates for unskilled labourers in Uttar Pradesh is much lower as compared to the other states. The state of women's control over the land also presents a gloomy picture in the state. Only 6 per cent women are legally owner of land while joint ownership over the land is astonishingly merely 3 per cent.

Disha India Micro Credit

DIMC, a subsidiary of Disha Social Organizations functions as a company registered under Section 25 of the Companies Act, 1956 functioning to bring in financial inclusion of the poor and the marginalized. Through the help of Self Help Groups DIMC caters to villages in the region by furnishing the demand for credit. During the years, DIMC has actually seen an increase in its outreach to communities. DIMC works through existing SHG's created by Disha Social Organization and Joint Liability Groups (JLGs). DIMC membership for SHG's comes to around 32,180 with an active borrower base of 23,089 people and total loan disbursement of Rs. 3,164.14 lakh.

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VANI holds its 27th Annual National Consultation

On 18th-19th February 2015, Voluntary Action Network India conducted its annual two day National Consultation "Need for Regulatory Reforms" at Vishwa Yuvak Kendra, Chanakyapuri, New Delhi which was attended and represented by at least 250 organizations from around the country. The voluntary sector has been struggling with issues which can only be corrected by pursuing regulatory reforms, which for long have been denied to it. The purpose of this annual mammoth exercise was to address issues facing the sector and provide answers by giving a critical analysis of the legal and regulative environment for voluntary organizations/NGO's/CSO's. The necessity to attach importance to this topic was apparent from the current climate existing for voluntary sector by which many organizations were facing regulatory problems in their day to day operations. The impending renewal of FCRA registration that has been a cause of concern for many organizations was perplexing with regards to its process. Therefore, this year's national consultation was aimed to deliver demystification on regulatory reforms and appeal to the need of instituting them urgently.

The inaugural session was paneled by a series of experts from the sector which included the likes of

Dr. Jayant Kumar, Chairperson, VANI -spoke of how the current issues were threatening the sector's existence with a special reference to the decline of financial resources.

Ms. Mini Bedi, Patron, Development Support Team- The need for convergence among organizations to come forward on the needs of the sector and collectively work under the aegis of VANI

Mr.P.V.Rajgopal, Patron, Ekta Parishad- Spoke on the struggle for the space of voluntary sector was about to get more intensive in the coming years.

Mr. Jagadananda, Member Secretary, CYSD- Urged voluntary organizations to follow accountability standards and compliance mechanisms.

Ms. Nisha Agarwal, Oxfam- Listed the troubles the sector has to put up with foreign funding and intrusive regulation.

Session I: Regulatory Environment – FCRA

Government adopted the new Foreign Contributions Regulation Act in the year 2010, the rules of which were notified in the year 2011. The primary purpose of this enactment was to ensure that foreign contributions are utilized for bonafide activities without any compromise to the national security. However during the last few months, the voluntary sector has faced various challenges due to the implementation of the Act. This session in the national consultation was organized with an aim to focus on the regulatory reforms vis-à-vis the challenges faced by the sector in complying with the FCRA Act. It also aimed to increase compliance with the law and develop a collective understanding of the voluntary organizations about the FCRA Act for supporting them in their larger goal of community development, holistic growth of the voluntary sector and effective partnerships. The renewal processes that were in the immediate pipeline saw many organizations facing burning questions on its procedure.

The session was moderated by Mr. Harsh Jaitli, CEO,VANI and the panelists included Mr. J.K. Chattopadhyaya, Ex-Deputy Secretary (FCRA), Ministry of Home Affairs and Mahendra Singh Kunwar, Secretary, Himalayan Action Research Centre (HARC)

Session II: Regulatory Environment - Income Tax

Income tax was introduced in the year 1861. During that time Income Tax was related to charitable purpose which was exempted from tax. Over the years the Income Tax underwent several changes to ensure such exemptions are not misused. There are several exemptions which are still entitled to the VOs but there has been a regulatory provision which has been incorporated in the act which needs to be followed for exemptions. It is often felt that the Income Tax simplifies the procedures for corporates and other tax payers but it reverses its approach towards VOs. The VOs are often targeted and subjected to harassment by the Income Tax department. This session gives a brief about some of the specific problematic laws under the Income Tax.

The session was moderated by Mr. Matthew Cherian, Chief Executive, Helpage India and the panelists included Mr. Sudhir Chandra, Ex-Chair, Central Board of Direct Taxes (CBDT), Mr Deepak Bansal, Chartered Accountant, Subhash Mittal & Associates and Mr. Sanjay Patra, Executive Director, FMSF

Session 3: Registration Law

The voluntary sector faces a host of problems related to the registration laws governing the sector. The most widely used out of them, the Societies Registration Law, is antiquated, being over 150 years old and at cross purposes with the spirit of the sector, having been formulated with the intent of controlling the burgeoning social movements and associations post the 1857 revolt. Additionally, registration of societies is a state subject leading to numerous variations in the adoption of the law in different states. This lack of uniformity leads to discrimination and functional complications for voluntary organizations all over the country.

The session was moderated by Mr. Harsh Jaitli, CEO VANI and the panel was constituted by Mr. Sanjay Agarwal, FCA, AccountAid and Dr. Mazher Hussain, Executive Director, COVA.

Session IV: Internal Governance

This session discussed various issues and challenges related to the internal governance of VOs. The

importance of following the norms of governance, accountability and transparency at all levels of functioning and processes was reiterated. Accreditation/validation process is done by an independent third party through a systematic assessment process. This is done in order to certify the VOs that comply with the norms of governance. Good governance is related to the compliance of the organization with policies and norms of transparency, accountability and credibility, like the board rotation policy and human resource policy. Availability of proper documentation related to finance, auditing, annual report, etc., to the larger public is increasingly becoming necessary. Internal governance is important for the people associated with the organization, as well as for strengthening the voluntary sector. The session was moderated by Dr. Jayant Kumar, Chairperson, VANI and paneled by Mr. Gautam Vohra, Chairperson, Credibility Alliance, Dr. Namrata Jaitli, Head- Programmes, CAF India and Mr. Datta Patil, Executive Director, Yuva Rural Association

Session V: Management (Self-Certification)

This session focused on self-certification, which has become an important issue to the management of any organization in the voluntary sector. In an increasingly tough environment, where organizations are under constant scrutiny and face an ever shrinking pool of resources and space to function in, assertion of credibility in the form of self-certification has become vital to the survival and growth of an organization. Since self-certification is a continuous process, the session strived to highlight how organizations may embark on undertaking the work required to give them recognition.

The session was moderated by Mr. A.K. Goldsmith and the panelists included Mr. Manas Satpathy, Mr. Dhaval Udani and Maj Gen. Surat Sandhu.

IT IS NOT MANDATORY TO FILE NIL RETURN FOR CONTRIBUTION RECEIVED IN KIND (ANALYSIS OF RETURNS TO BE FILED UNDER FCRA, 2010 FOR ARTICLES & SECURITIES)

INTRODUCTION

1.1.1 Under Foreign Contribution Regulation Act (FCRA), 2010, three types of Annual Returns are required to be filed. Namely, FC-6 for consolidated Foreign Contribution, FC-7 for Articles received from Foreign Sources and FC-8 for Securities received from Foreign Sources.

1.1.2 The FCRA, 2010 requires that even in cases where no contribution is received during the year, the organisation is required to file nil return every year. There is a confusion regarding filing of nil return in FC-7 and FC-8 in addition to FC-6. In other words, there are conflicting views; some consultants and organisations are not clear whether filing of nil return in FC-7 and FC-8 is also compulsory, in addition to FC-6.

1.1.3 There is nothing in the Act and Rules to suggest that filing of FC-7 and FC-8 is compulsory, in those cases where the organisation has not received any articles or foreign securities.

1.1.4 If one carefully reads Form FC-6 then it is evident that it is an all inclusive form for reporting all types of foreign contribution received and utilised during the year. In other words, FC-6 includes all types of foreign contribution including cash, bank receipts, articles, securities etc. It will not be proper to compartmentalize Form FC-6 along with FC-7 and FC-8. It cannot be said that Form FC-6 is for cash & bank receipts and FC-7 and FC-8 are for articles and securities.

1.1.5 It may further be noted that Form FC-6 does not use the words articles or securities, it uses a very broad term 'contribution received in kind' which includes articles and securities. Further if the organisation has received articles or securities then it is required to file FC-7 and FC-8, additionally.

1.1.6 Even if it is assumed that the requirement of filing FC-7 and FC-8 is also compulsory, then it will be a violation since the enactment of FCRA 2010 was from 1st May 2011. The FCRA department levies very heavy penalties for delay in filing of returns. Kindly see Annexure 1. The penalties are for delay in filing of any type of form, the penalties are not confined to the delay in filing of FC-6 only. It may also be noted that the FCRA department does not have any discretionary power to condone the delay in filing of returns. Therefore, it is not advisable to file delayed returns with a request for condonation of delay, as the delay cannot be condoned without penalties.

1.1.7 A technical analysis of the return filing requirement under FCRA has been provided in this issue.

RETURNS, STATEMENTS & CERTIFICATES TO BE FILED

1.2.1 Rule 17 provides that the annual return accompanied by Income and Expenditure statement, Receipt and Payment Account and Balance Sheet shall be submitted by 31st of December. The requirement regarding filing of annual returns is as under :

- Annual return shall be filed in Form FC-6, accompanied by
- Audited Income and Expenditure Account - Audited Receipt and Payment Account - Audited Balance Sheet
- A copy of bank statement certified by the bank
- A nil return is required to be filed even if there are no transactions

1.2.2 The law pertaining to filing of return and statements is provided in Section 18 of FCRA 2010 and Rule 17 of FCRR 2011 which are as under :

Section 18 – Intimation

"18.(1) Every person who has been granted a certificate or given prior approval under this Act shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government, and such other authority as may be specified by the Central Government, as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received, and the purposes for which, and the manner in which such foreign contribution was utilised by him.

(2) Every person receiving foreign contribution shall submit a copy of a statement indicating therein the particulars of foreign contribution received duly certified by officer of the bank or authorised person in foreign exchange and

furnish the same to the Central Government along with the intimation under sub-section (1)."

"Rule-17. Intimation of foreign contribution by the recipient. –

(1) Every person who receives foreign contribution under the Act shall submit a report in Form FC-6, accompanied by an income and expenditure statement, receipt and payment account, and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.

(2) The annual return in Form FC-6 shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.

(3) If the foreign contribution relates only to articles, the intimation shall be submitted in Form FC-7.

(4) If the foreign contribution relates to foreign securities, the intimation shall be submitted in Form FC-8.

(5) Every report submitted under sub-rules (2) to (4) shall be duly certified by a chartered accountant.

(6) Every such return in Form FC-6 shall also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank.

(7) The accounting statements referred to above in the preceding sub-rule shall be preserved by the person for a period of six years.

(8) A 'NIL' report shall be furnished even if no foreign contribution is received during a financial year."

1.2.3 It can be seen that Rule 17(1) requires that all types of foreign contribution should be reported in Form FC-6 by 31st December 2015. Further Rule 17(8) requires that a nil report shall be furnished even if no foreign contribution is received during a financial year. In context of Rule 17(8) two things should be noted

(i) the requirement of nil report stands complied by filing of Form FC-6 as its includes articles and securities

(ii) the sub rule does not use the word 'report' in plural as three types of reports are required to be furnished under Rule 17. Therefore, it is not necessary to file FC-7 and FC-8 if the organisation has not received any articles or securities from foreign sources.

WHAT IS THE PROCEDURE FOR FILING ANNUAL RETURNS

1.3.1 An association permitted to accept foreign contribution is required under law to maintain separate set of accounts and records exclusively for the foreign contribution received and submit an annual return, duly certified by a Chartered Accountant, giving details of the receipt and purpose-wise utilisation of the foreign contribution. The return is to be filed for every financial year (1st April to 31st March) within a period of nine months from the closure of the financial year i.e. by 31st December each year. Submission of a 'Nil' return, even if there is no receipt/utilization of foreign contribution during the year, is mandatory. The return is to be submitted, in prescribed Form FC–6, duly accompanied by the Balance Sheet and Statements of Income & Expenditure and Receipt & Payment, certified by a Chartered Accountant. The form is available on MHA's web-site– http://mha.nic.in/fcra/forms/fc-6.pdf.

AUDITED CERTIFICATE AND STATEMENTS WITH ANNUAL RETURN UNDER FC-6

1.4.1 Along with FC-6 return, a certificate of the Chartered Accountant and audited Income & Expenditure Account, Receipt and Payment Account and Balance Sheet should also be submitted. On the basis of the relevant books and vouchers, the Chartered Accountant is required to certify the following :

(i) the brought forward balance of the foreign contribution at the beginning of the year.

(ii) the foreign contribution received during the year.

(iii) the unutilised balance of foreign contribution at the end of the year.

(iv) certify that the association has maintained the account of foreign contribution and records relating thereto in the manner specified in Section 19 of the Foreign Contribution (Regulation) Act, 2010 read with Rule 17 of the Foreign Contribution (Regulation) Rules, 2011.

(v) the information furnished in the certificate and in the enclosed balance sheet and statement of receipt and payment are correct.

1.4.2 It may be noted that the certificate under form FC-6 does not mention Income and Expenditure Account to be certified by a Chartered Accountant. However, it is advised that all the financial statements including Income and Expenditure Account should be certified by the Chartered Accountant.

1.4.3 The Ministry of Home Affairs has provided a charter for the Chartered Accountants which provides the procedures and compliances to be followed by Chartered Accountants. The Charter is provided in Annexure 2.

OTHER CERTIFICATES BY CHARTERED ACCOUNTANT

1.5.1 Every organisation which receives foreign contribution in kind or as securities is further required to furnish certificates from a Chartered Accountant. The following additional certificates are to be furnished wherever applicable:

- Certificate for foreign contribution in kind under Form FC-7.
- Certificate for foreign contribution in securities under Form FC-8.

1.5.2 The proforma of the certificate to be given by the Chartered Accountant is provided in the respective forms.

1.5.3 It may be noted that Chartered Accountants shall be required to provide certificates with regard to the foreign contributions in kind or as securities in monetary terms in Indian rupees. Therefore, the Chartered Accountants shall be required to certify the value of the goods and securities. There is no guideline provided for such valuation. It is expected that an approximate and reasonable valuation shall be made by the Chartered Accountants. For this purpose, Chartered Accountants may use the facts and declaration provided by the management of the organisation as a basis for such valuation.

FILING OF NIL RETURN

1.6.1 If an organisation having FCRA registration does not receive any foreign contribution during the year even then it should file nil return. It is mandatory to file Form FC-6 every year. It may be noted that one of the conditions for cancellation of certificate, as prescribed under section 14 of FCRA, 2010 includes no reasonable activity for two consecutive years. Therefore, continuous filing of nil return is necessary and at the same time more than two years of “nil activity” can be a reason for cancellation of registration.

DECLARATION AND AUTHENTICATION

1.7.1 The FC-6 form is required to be signed by the Chief Functionary of the organisation and a certificate is also required to be given by a Chartered Accountant giving a brief summary of the FCRA funds movement and the opening and closing balances of FCRA Funds.

1.7.2 The Term “Chief Functionary” has not been defined in FCRA 2010 or FCRR 2011. Normally the head of the organisation should be construed as the Chief Functionary. The organisation may also designate any office bearer as the Chief Functionary through a General Body/Governing Body resolution, for the purposes of filing the FCRA returns, Forms etc.

SEVERE PENALTY FOR DELAYED FILING OF FC RETURNS

1.8.1 The FCRA department, Ministry of Home Affair’s (Foreigners Division-FCRA) has issued notification No. II/21022/23(49)/2012-FCRA-III, dt. 26th April, 2013 through which it has provided stringent penalties for delayed filing of annual return under FCRA.

1.8.2 It may be noted that currently the last date of filing Form FC-6, FC-7 and FC-8 is 31st December, i.e. nine months from the end of the financial year. The penalty proposed are as under :

- 2% of the amount received or ` 10,000/- whichever is higher, if the delay is within by 90 days.
- 3% of the amount received or ` 25,000/- whichever is higher, if the delay is between 90 to 100 days.
- 5% of the amount received or ` 50,000/- whichever is higher if the delay is more than by 180 days, plus ` 500/- per day for every day beyond 180 days.

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