

# Policy Note on Reforms in the Voluntary Sector



## Voluntary Sector in India

The social development sector has been given various names across the world like non - governmental organisations, voluntary organisations, third sector, non - profit sector, civil society etc. In the Indian context, the most prevalent term used to describe initiatives which aim at socio - economic and political development of poor, marginalised and needy is “voluntary”. Voluntary initiatives, voluntary associations, voluntary organisations etc. describe a wide array of voluntary actions. It describes the grassroots level initiatives and includes people’s organisations, community based organisations and also individual initiatives. Voluntary organisations (VOs) have played a prominent role in supporting the government as a partner in development. Historically, Indian voluntary development organisations have played three types of roles–

- providing basic services, with a focus on health, education, water and sanitation to the remote locations in the country,
- research and evidence based advocacy, especially to analyse the efficacy, outreach and effectiveness of various government programmes and policy.
- rights based approach and entitlements by educating and empowering the community.

## Challenges faced by the Voluntary Sector - Major Findings from Enabling Environment National Assessment (EENA)

### Confused identity of the Sector

1. **Every 'type' under one umbrella** - large private hospitals to private corporate schools, sports club foundations etc. are registered under the same Act that is applicable to voluntary organisations (VOs). This has led to ambiguity about the identity, nature, scope and scale of the voluntary sector engaged in development work.

*According to the report published by VANI on "Status of the voluntary sector in India", most of the big education and health institutions, which are making big bucks and greater profits, are registered under the Societies Act. Government does not consider them as separate entities and they are treated equally as any small or medium sized VO that is providing voluntary services. It is time that the government realises this fact and considers these organisations as separate entities. There is a need for proper legislation made exclusively for not-for-profit organisations that separates these from all other types of organisations that have an objective to generate profit.*

*"There are 1.5 million VOs operating in Uttarakhand receiving around 700 crore funds from Foreign Contributions Regulations Act (FCRA). Out of which religious organisations are receiving 90% of the funds. The religious organisations, hospitals, clubs are also registered under the society registration act. There is an immense need to amend the act so that voluntary development organisations are categorized distinctly. In this way, the real picture will come out."*

**Mr. Mahendra Singh Kanwar, Secretary, Himalayan Action Research Centre**

2. **The sector lacks representation at the Government level** – No Ministry or single department deals extensively with the issues of voluntary organisations in India. The study brings out a concern that a greater interface between voluntary sector and government is required. The Ministry of Corporate Affairs, for example, is responsible for the overall regulation of companies, similarly, voluntary organisations also need an appropriate representation from the ministry for raising the issues related to voluntary affairs in India. This is pertinent for creating a good visibility of the sector at the national and international levels.

*"It looks ironical that the registration of voluntary organisations is often handled by the Department of Industries and not by a department dealing with social sector programmes. Should we not understand that the philosophies underlying the management of factories, industries and companies are not the same as those for managing voluntary organisation?"*

**Dr. Sushil Srivastava, Director General (Retired), Central Statistical Organisation**

### Sector being controlled rather than regulated

1. **Outdated laws of registration** – The legal framework for the registration of voluntary organisations in India is based mostly on colonial era legislation not taking into account the constitutional imperatives of a democratic India. The VOs in India are most commonly registered under Society Registration Act, 1860. They can also be registered under the Trust Act, 1882 and the Companies Act, 2013. The 1860 Society Registration Act is more than 150 years old. It is even older than the Indian National Congress and there are arguments that those rules were laid down with an ulterior motive to keep an eye on the people's organisations that came together during the struggle for independence. Civil action in 2014 does not address the same issues nor has the same features as voluntary organisations in 1860. Under Section 20 of the Act, societies which may be registered Act range from charitable societies, military orphan funds,

foundations or societies for maintenance of libraries or reading rooms etc. This signifies the age of the law and need for redefining organisations that can register under the Societies Act. At the time, these laws were written, no one had any idea that VOs would play such a vital role in moulding the society, generating social movements and designing public policies. This issue was however addressed in the 2007 National Policy on Voluntary sector; and it is hoped that the Government will take this up at the earliest, so that Indian VOs can benefit from and be protected by a suitable law.

*“In India, we do not have a modern contemporary system or forms for legal incorporation of wide variety of institutions, including non – profit organisations. This framework of legal incorporation is outdated, irrelevant and does not meet the current need of institutions even in general, leave alone the non-profit or civil society sector. This has been explicitly stated in the National Policy for Voluntary Sector which says that a modern, contemporary, revised form of incorporation should be developed.”*  
**Dr. Rajesh Tandon, President, Society for Participatory Research in Asia (PRIA)**

**2. Resistance to rights based work** – The relationship of the voluntary sector with the government is mixed, faced by ups and downs. When interests converge, support and cooperation from the government is observed but as soon those interests diverge, a resistance to the activities of VOs is noticed, certainly when it concerns the activities of right based VOs. For example a voluntary organisation collaborating with government agency on establishing a drinking water programme in a village, will hardly lead to a clash. But when the organisations raise questions on the policies or actions of the government or against corruption, then the relationship becomes confrontational. To control the activities of the sector, stricter provisions in laws such as the Foreign Contributions Regulation Act, 2010 and Direct Tax Code Bill, 2009 have been introduced. It is felt by a majority of the representatives from the sector that FCRA, 2010 has been introduced to restrict the flow of foreign contributions to the voluntary sector. The recent Information Bureau Report blamed the sector for causing a loss to GDP growth using foreign money and has also specifically targeted some organisations working on rights based issues. Similarly, in the framework of Direct Tax Code, the government has refused to introduce clauses which could facilitate a more sustainable and diversified resource base for the voluntary sector. This has led to the shrinking of space for voluntary action in India.

***Mass cancellation of FCRA registrations by the Ministry of Home Affairs in the year 2010 and unexplained provisions in the new FCRA act, 2010 (restrictions for organisations of political nature not clear) adds to the agony of the sector.***

*The Government ordered suspension of the FCRA account of Indian Social Action Forum (INSAF), a network of more than 700 VOs across India on 30th April, 2013. Groups in the network campaign for indigenous peoples’ rights over their mineral rich land and against nuclear energy, human rights violations and religious fundamentalism; nearly 90% of the network funding comes from overseas. In its letter to INSAF, the Home Ministry said the group’s bank accounts were frozen and foreign funding approval suspended because it was likely to prejudicially affect the public interest. A government official stated that they are not against criticism but a VO must not use foreign donations to criticize Indian policies, adding that VOs should use foreign funding to do development work instead. INSAF on August, 2011 had filed a petition in the Supreme Court challenging the amended FCRA, 2010 rules which prohibit rallies, demonstrations and protests. The petition was later admitted on by the Supreme Court on 2nd January 2012, which ordered the government to file a reply but the government failed on its part to do so. Following this the Home Ministry ordered freezing of the bank account of FCRA and temporary suspension of FCRA account.*

*However in this particular case, the judgment was in favour of INSAF as the suspension was withdrawn on 10th October, 2013 raising a hope among the voluntary organisations fighting for a true verdict against victimisation.*

**3. Restrictive clauses on Income Tax** – The Income Tax (IT) Act is designed to prevent leakage of tax revenue, rather than allow VOs to raise resources and spend them as per needs, as an alternative to government spending. In case of the current provision in section 2(15) of the IT Act, even the nominal recoveries made from beneficiaries are considered profitable by the taxation system in India. The nominal recoveries are not made for profit but to ensure efficient use of material, to give more control to beneficiaries and for ensuring sustainability of the interventions. Similarly, as per the existing provisions of the Income Tax Act, 1961 surplus income can be accumulated for a maximum period of five years for specific projects. Such provisions are restrictive and create hardship for a large number of voluntary organisations. On the other hand, taxation authorities do not understand the non-profit sector and often confuse the terms “bidding and contracts” as a profit making business. It is due to their lack of knowledge about the sector and its functioning that the organisations have to suffer from these taxation issues. The complex administrative procedure for taxation has been reported as a major problem by the voluntary sector.

*“International tax policies for the sector are more liberal than one existing in India. For example in United Kingdom the charities are allowed to run businesses as long as the profit is ploughed back to the charity while in the US surplus in kind could also be ploughed back to the charity. It is important for India to look at these liberal and enabling provisions to help the sector do better. There is a need for deeper introspection about the impacts of taxation policies on the sector. Given that wealth creation in India is expected to scale to unprecedented heights in future, the time has come to change our system of inheritance taxation to inculcate and encourage the habit of philanthropy among the rich and wealthy.”*

**Mr. Mathew Cherian, Chief Executive, Helpage India, New Delhi**

#### **A Ray of hope**

*In a recent case in the state of Tamil Nadu (TN), the income tax department decided to restructure itself after a cabinet decision as there was little scrutiny over the work of NGOs. Following the Information Bureau (IB) report, which remarked that the sector in TN is receiving the highest number of foreign donations and many of the organisations working on anti-national activities, the income tax department is now set to open 10 more offices in smaller districts for ensuring speedy registration of NGOs and enhanced scrutiny of their annual tax returns. Special offices will also be opened in some districts to look into the matters of tax-exemption under section 80G, which offers tax benefits to the donors of the VOs. However, many organisations in state like Gandhigram Trust reported that there are cases where taxation authorities have taken action against those institutions which are involved in section 2(15) under the pretext that they are doing business. On one hand, while the opening of new district offices will ensure smooth and speedy control over the dubious activities of fake organisations, at the same time the genuine organisations should not be harassed in the name of scrutiny. This case however presents a ray of hope for the sector in the state since the authorities have realised the demand for regular interface with the sector and addressing their taxation related grievances timely, which has been raised as a serious concern many-a-times by the sector.*

### **Changing Nature of Resources/Support**

**1. Reduced flexible grants/funds to Voluntary organisations** – The voluntary sector in India depends on three major types of resources for funding – foreign funding, government resources and the private sector. But the status of all the three, as has emerged from the study, is experiencing negative trends. While foreign funding is shrinking due to rise of India as a middle income nation and its engagement as a donor to other poorer countries, the existing government funding does not recognise the independent status, role and nature of the work of voluntary sector. The relationship with government has moved from being partner in development to being a sub-contractor. It was also observed that government of India funds solely projects on service delivery, while there are no funds available for the activities of VOs, such as monitoring the implementation of laws and rights based work. With the private sector entering the field of social responsibility, opportunities for collaboration have opened up. However, most VOs felt that the emergence of corporate foundations aimed at the delivery of social responsibility has led to a fierce competition within

civil society. Many feel that the resources of the emerging foundations is not reaching small or medium sized VOs. These are still fighting for funds in a race of survival of the fittest. On the other side there are various foundations and corporations which are showing openness and eagerness to work in partnership with VOs. So there is a sense of dichotomy prevailing among the sector.

One of the challenges for the voluntary organisations has been the lack of adequate institutional support by funders. The flexibility of grants for the capacity development of human resources and institutions has shrunked to the extent that the voluntary sector is facing a serious resource crunch.

*“One of the major challenges for the voluntary sector in India is that organisations receiving funds from government are made to compromise on their mission by reshaping their agenda hereby reducing their independence. Government does not support funding on issues that pertain to rights and entitlements of communities and involve community mobilisation for holding the administration and government accountable. Organisations working on governance, rights access, government responsibilities and accountability issues etc are thus forced to change their mandate to continue receive government funding.”*

**Head of an organisation in New Delhi (Name not to be disclosed for confidentiality reason)**

**2. *Curbing the expression and peaceful assembly of voluntary organisations*** – The Constitution of India guarantees freedom of expression and peaceful assembly to its citizens and by way of its ratification of the Universal Declaration of Human Rights (UNDHR) and the International Covenant on Civil and Political Rights (ICCPR), it is liable to provide these rights to its citizens. But the experiences have proven that these same rights are curbed in the interests and name of national security and maintaining friendly relations with other states. These clauses are misused and thus the rights violated by the authorities to curb genuine democratic voices which question the laws and policies.

*In a well-known case in India, Anna Hazare, a social activist, and a number of his supporters were arrested in New Delhi on 16 August 2011 and detained because the police claimed they were likely to “breach the peace”, by proceeding with a planned fast and protest without undertaking in advance to comply with the conditions imposed by the Delhi Police. They were released shortly thereafter but Hazare refused to leave the prison unless the police allowed the fast and protest to proceed without any conditions. An agreement was then reached and the fast and protest was allowed to go ahead, with an undertaking reportedly signed by Hazare and other organizers.*

**Amnesty International**

## Accountability and Transparency

**1. *Lack of visible signs of good governance*** - There has been much public debate on the voluntary sector, particularly its governance, accountability and transparency. It is widely believed that the voluntary sector must address these issues through suitable self-regulation. VANI being the apex body of Indian VOs took some important initiatives in this direction. VANI defined set of norms and standards of good governance practices for its member organisations. VANI’s campaign to reform the policy and regulatory environment for voluntary organisations in the country is based on this premise of making the governance of such institutions more transparent, accountable and effective. It is also a strong aspect of the National Policy on Voluntary Sector in the country. Various other organisations are also working in this direction. In 2001, an independent institution named Credibility Alliance (CA) was initiated to develop a set of norms for the voluntary sector. Another initiative for promoting transparency is through an initiative called Guide Star India, which showcases the work of VOs, and makes their information accessible to donors, policy makers, government, academia, media etc.

The efforts of self-regulation are coming from the sector itself, which is a good sign. However, it is mostly due to vastness of the country, geographical differences and lack of funds which have considerably minimized the frequency of local, national and international level meetings/face-to-face interactions and partnerships.

## Need for reforms in the sector

1. Effective national law regulating the registration of VOs giving a clear identity and definition to the voluntary sector.
2. Collectivisation and collaboration within the sector so as to raise a collective voice and demands for the sector.
3. To understand the business models of Corporate Social Responsibility for engaging effectively with the private sector.
4. Pro-active engagement with the government as partners in development, not as sub-contractors.
5. Regulation of the sector by reviewing restrictive clauses of FCRA, 2010 and Income Tax Act, rather than controlling it.
6. Replication and upscaling of innovative models developed by voluntary organisations at the macro and meso levels.
7. Self-regulation and ensuring high standards of transparency and accountability - Internal management and governance.

## Steps towards achieving the reforms in the voluntary sector

### A National Registration law for voluntary organisations:

1. **An updated regulatory mechanism of registration for the voluntary sector will professionalise the sector.** It will also prevent mis-use of the current outdated Act (more than 150 years old) by fake and not credible organisations. Currently any non-for-profit entity ranging from large private hospitals to private corporate schools, foundations and even smaller voluntary development organisations are registered under the same act. This has created ambiguity of the nature, scope and scale of the voluntary sector as also created question of identity within each set of entity. A national registration law will thus provide uniformity of regulatory and reporting mechanism as well as exclusive identity to the voluntary development organisations.
2. **A regulatory body or a separate Ministry of Voluntary Affairs** needs to be in place which deals extensively with the issues of voluntary organisations in India. In the absence of such a mechanism, there are no uniform reporting guidelines, systematic facilitative efforts and it also prevents from developing productive partnerships between various development initiatives of the government and contribution of voluntary organisations. Currently, a medium sized organisation has to report to multiple ministries with various reporting requirements and no reliable data about the sector is available, leading to ambiguities.

### Reviewing the current taxation regime for VOs

1. **Overly broad provisions which are used as a weapon against VOs should be clearly defined.** The terms like “national interest”, “Dharna, agitations”, and “political interest” need to be clearly defined as today they are broad and open to abuse. Peaceful demonstration like “satyagraha” or taking a small delegation to the district collector could also be termed political interest. These definitions thus need to be demystified and detailed out to avoid ambiguities and abuse.

2. **No certificate or document is issued by the FCRA department after receiving annual returns from the registered organisations.** The liability always remains with the registered organisation to get their records updated with the department. The case of the cancellation of 4000+ organisations has shown that. Being managed by the Home Ministry, the VOs do not have physical access to the officials in the building and there is no provision of getting acknowledgement or certification. This not only makes voluntary organisations vulnerable due to uncertainty but also helps touts to misguide and exploit innocent and law abiding citizens. This must be looked into immediately for avoiding any inconvenience to the VOs
3. **There is an urgent need to inculcate the accountability of the actions of the FCRA department, by time bound investigations.** The investigations must be completed within the stipulated timeframe under the law.

### Reviewing Certain faulty provisions and practices in Foreign Contribution Regulation Act, 2010

1. Since the Indian voluntary sector is moving into the direction of generating resource from local sources with lesser dependency on foreign funding sources in order to strengthen the Indian voluntary organizations to continue contributing towards nation building a couple changes are needed in the Income Tax Act of 1961:
2. **Excluding recoveries for concessionally priced goods and services from first proviso to sec. 2(15)** - The present provision to sec. 2(15) covers even nominal recoveries made from beneficiaries. These are not made for profit but to ensure efficient use of material, and to give more control to beneficiaries. This creates hardship for a large number of voluntary organisations. Inserting a clarification after first proviso will help achieve the desired relief without diluting the purpose of the section
3. **Section 11 (4A) must include a new provision which provides that the business or any commercial activity by voluntary organisation is integrally related to the charitable or religious activity of the organization** - Many Indian voluntary organisations solicit financial support from individual or institutional donors through selling of greeting cards or mementos, but these also attract taxation. Such income must not be considered as profits and gains of business by trust or an institution because the entire income is applied for charitable purposes or religious purposes.
4. **Most of the government resources are available through a tendering system which is also considered as a business like activity by the tax administration** - The process of tendering and open bidding attracts tax on the VOs. Unfortunately, even if these projects are in line with the main objective of the organisation and fall under charitable purpose, they are considered as trade, business and commercial activity. Such a clause in Section 2(15) of the IT Act, 1961 is threatening for the sector.

### Self regulation and accreditation of voluntary development organisations

1. The recommendation in the National Policy of Voluntary Sector of 2007 regarding a transparent, accountable and participatory apex body for accreditation agency on the lines of Press council or Bar council. Press council in India is a mechanism for the press to regulate itself, which gives it the power to be free and responsible in the democratic society. Such a mechanism should also be in place for the voluntary sector. It is pertinent to protect and promote the genuine and law abiding voluntary development organisations as it plays an important role in nation building along with the government and private sector.

**About EENA study:** The Enabling Environment National Assessment (EENA) methodology was developed jointly by CIVICUS and the International Center for Not-for-profit Law (ICNL) as part of the Civic Space Initiative (CSI) program, to provide a step-by-step guide to thoroughly characterize the nature of the enabling environment for civil society at the national level. The assessment is focused on the legal, regulatory and policy environment for civil society in the country through desktop review, interviews and focus group discussions.

In India, the study was initiated through a consultation with experts at New Delhi followed by four regional focus group discussions to gain insight on the status of voluntary sector and emerging challenges. Personal interviews of representatives of the sector were also conducted to gather data on the status of voluntary sector vis-a-vis the given dimensions. The study can be accessed at <http://www.vaniindia.org/publicationpdf/septpub.pdf>.

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**About VANI:** Voluntary Action Network India (VANI) is an apex body of the Voluntary Organisations.

- Founded in 1988 to act as a promoter/Protector and collective voice of the voluntary sector.
- Base of 8000 non-governmental organisations spread in 25 states of India.
- Resource Centre for publications, research work, articles, important documents and information about and related to the voluntary sector.

**Objectives:**

- As a platform, to promote voluntarism and create space for voluntary action.
- As a network, attempt to bring about a convergence of common sectoral issues and concerns for building a truly national agenda of voluntary action in India. In addition, facilitate linkages of various efforts and initiatives of the Indian voluntary sector, which succeed in strengthening a united and sustainable movement of change.
- An association, work towards fostering value based voluntary action and long term sustainability especially amongst our members.

**Areas of work**

- Promoting practices of good governance in the voluntary sector.
- Strengthening networks
- Articulating independent voices of the sector.
- Research and advocacy of policies and law effecting the voluntary sector

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VOICE OF THE VOLUNTARY SECTOR  
VANI

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