

# Enabling Environment of the Voluntary Sector in India

A STUDY REPORT



VOICE OF THE VOLUNTARY SECTOR  
VANI

Voluntary Action Network India (VANI)

## **Enabling Environment of the Voluntary Sector in India: A Study Report**

**Author:** Voluntary Action Network India (VANI)

June 2014

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## Preface

Voluntary organisations all over the world are going through a crisis as their role and relevance is being questioned. It is mostly the rights based organisations, which advocate for people's rights and question the government programmes and policies, that are facing the toughest times. Recently, in India an intelligence bureau report to Ministry of Home Affairs was leaked to the media which blamed NGO's for causing a loss to GDP growth by 2-3%. It specifically targeted those NGO's that have impeded economic development projects of the government as these projects led to displacement of poor and marginalised. It is evident that the increasing role and influence of and the numbers in the voluntary sector has led to this conflicting situation with the government. In India, the sector has made significant impact in the lives of common citizens especially in improving their quality of life by means of providing services, support, capacity-building and research based advocacy. It is working in almost all the areas concerning the socio-economic development of common people in this country. Yet the sector faces huge challenges in India, which starts with a lack of own independent identity of this sector. A number of entities such as private hospitals, religious associations, foundations, schools, sports club and resident welfare associations are also defined and registered under the same category. Many government run organisations are also registered as non-governmental organisations. It is this loose composition which has led not only to an increase in numbers of non-governmental/voluntary organisations but also an increased lack of transparency and accountability from the sector as a whole. The Acts governing the registration of these voluntary organisations date back to 19th century, after which a number of changes have occurred in the identity and functioning of the sector, which have not yet been incorporated in the legal enactments. The complex situation for the sector has further deteriorated with funding scarcity as international donors move out of the country with India emerging as a middle income nation. Indian government is also tightening the noose around the sector with stricter laws such as the Foreign Contributions Regulations Act, 2010 and the Direct Tax Code Bill, 2010.

It is this overall disabling environment for the voluntary sector which triggered VANI to undertake this study. These complexities have also been discussed at length during numerous discussions with the voluntary sector, which expressed the need for a study on the status and challenges faced by the sector vis-à-vis the legal and policy framework. The Enabling Environment National Assessments methodology, jointly developed by CIVICUS and ICNL, correspond to this assessment need.

Though the study seems to be very ambitious and readers may try to find answers to all their concerns, the sector is very diverse and the study was done during a short period of time (six months), it may fail to capture the views of all the stakeholders. We have tried our best to bring out within these six months key issues that affect the voluntary organisations in India today and through numerous consultations, tried to emerge with some concrete recommendations. It is however not an end process, this study will be the basis for an action plan which VANI aims to undertake for advocating towards an enabling environment for the voluntary sector in India.

It will be highly beneficial for the whole sector if you can take some time to read this report and give your valuable inputs which will shape our advocacy and action plans. Here, I would also like to thank VANI team especially Ms. Nishu Kaul for writing this report and Dr. Jyotsna Mohan Singh for coordinating the study. I would also like to thank my other programme team members Ms. Ratna Manjari, Ms. Pavneet Kaur and Ms. Tarushikha Yadav for reviewing and providing their inputs in the study. A special thanks to Mr. Arjun Phillips and Mr. Raj Kumar for handling the communication and publication of this study report.

This study will not have been possible without the support of CIVICUS and we would like to specially thank Ms. Ine Van Severen for her support and guidance throughout the study. A number of people and organisations have been approached during the course of this study, who have offered immense help and we would like to acknowledge their support.

We hope that this report generates collective understanding of the sector on various issues concerning it, which will lead to individual and collective actions towards an enabling environment.

Harsh Jaitli  
Chief Executive Officer

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## List of Abbreviations

ADM	Additional Divisional Magistrate
AGNA	Affinity Group of National Associations
AIDS	Acquired Immuno Deficiency Syndrome
ASSOCHAM	The Associated Chambers of Commerce and Industry of India
CA	Credibility Alliance
CASA	Church's Auxiliary for Social Action
CC	Charity Commissioner
CII	Confederation of Indian Industry
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
DAC	Development Assistance Committee
DEA	Department of Economic Affairs
DIB	District Intelligence Bureau
DPA	Development Partnership Administration
DTC	Direct Tax Code
EAP	Expert Advisory Panel
EENA	Enabling Environment National Assessments
FCRA	Foreign Contribution Regulation Act
FGD	Focused Group Discussion
FICCI	Federation of Indian Chambers of Commerce and Industry
GDP	Gross Domestic Product
HIV	Human Immunodeficiency Virus
IB	Information Bureau
ICCPR	International Covenant on Civil and Political Rights
ICNL	International Center for Not for Profit Law
IFP	International Forum of National VO Platforms
INR	Indian Rupee
INSAF	Indian Social Action Forum
MHA	Ministry of Home Affairs
MoA	Memorandum of Association
MSSR	Multi State Society Registration Bill, 2012
NGO	Non Governmental Organization
NRI	Non Resident India
OECD	Organization for Economic Cooperation and Development
PAT	Profit After Tax
PMO	Prime Minister Office
PRIA	Participatory Research in Asia
UDHR	Universal Declaration of Human Rights
VANI	Voluntary Action Network India
VO	Voluntary Organizations



# Chapter 1

## INTRODUCTION

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 the individual initiatives. However the definitions are changing and the term “civil society” is recognised as encompassing far more than the mere sector dominated by the NGO community. It typically includes non-governmental organisations (NGOs), non-profit organisations which are registered entities and have an organised structure or activity; social movements which may be online or physical; religious leaders and faith based organisations; labour unions; grassroots institutions; cooperatives etc. Broadly speaking, civil society involves a wide spectrum of civil society actors and entities with a wide range of purposes, structure, degrees of organisation, membership and geographical coverage<sup>1</sup>. Voluntary organisations (VO) are part of a larger civil society. For the purpose of this study, only voluntary organisations have been studied which are registered entities engaged in social change with a non-profit motive (see below for a detailed account of what is considered as a VO). As the study can not capture the status of diverse civil society in a vast country such as India within the limited timeframe of six months, it was not even attempted. Thus, the term, voluntary organisation will be used throughout the study rather than the term civil society.

The voluntary sector of India is widely recognised by the world community for its vibrancy, innovations and research based advocacy. It has played a prominent role in supporting government as a partner in nation-building. Since its independence, India faced the challenge of a lack of resources and a huge expectation for improvement of quality of life of its citizens. This all had to be delivered by maintaining its tradition of world’s largest democracy. Historically, Indian voluntary development organisations have played three types of roles. India, being a vast country, requires an extensive network of basic service providing institutions. Indian voluntary organisations (VOs) worked not only as the extended hand of the Indian government in delivering basic services such as health, education, water and sanitation including to the most remote locations of the country, but also developed various innovative models for these services. The second category comprises of VOs that are engaged in research-based or evidence-based advocacy. These organisations have analysed the efficacy, outreach and effectiveness of various government programmes and policies. This information is fed to the government and used for policy change for improving the quality and delivery of services and to seek accountability from the government. The third category is those who work on rights-based approach/entitlements. A country with a vast population and people living in remote locations sometimes don’t get access to their entitlements. These organisations work for the marginalised communities in getting access to basic services. Their modus operandi is primarily to educate and empower communities about their entitlements and they review the government schemes and policy for its efficacy.

Voluntary sector in India has always had a mixed relationship with the government. We have examples where VOs work hand-in-hand with the government machinery at times of disasters or delivery of services at the time of national crisis. Starting from the early days of independence, the VOs were inspired from the philosophy of Father of nation,

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<sup>1</sup>. Tandon, R. (2002). *Voluntary Action, Civil Society and the State*. New Delhi: Mosaic Books. Pg 13 - 15

Sh. Mohan Das Karamchand Gandhi, also popularly known as “Gandhian Institutions” and worked as an extended hand of the government. We also have a long history of numerous religious institutions providing basic services to people without discriminating on caste, religion or creed. Even during the contemporary period, many national flagship programmes were the scaling up of the innovations of the VOs by the government. Some examples include the right to information, the rural livelihood programme and universal health care etc. The Indian VOs are also involved in the consultations for reviews and formulations of national plans.

However, the negative side of the relationship between the two is primarily based on the refusal of government to understand the complexity and reality of the voluntary sector. During the last decade the availability of resources has drastically changed for the sector. In its relationship with the government it is moving from ‘partner in development’ to ‘sub-contractor’ in development. The availability of flexible grants to the VOs, both from government or from international donors is diminishing due to changes in policies of donors and government. Most of the bilateral donors have left India and those who still remain, are either funding government projects or funding VOs with very specific thematic lines. Currently the VOs have to go through the open tendering system and the language used in contracts leads them to be considered business activities by the taxation authorities.

In India, the legal framework governing the sector is focused more towards controlling the sector than its regulation. Most of the VOs are incorporated through the Societies Registration Act (1860), an act that is very old. There are no records about the active number of VOs in India. Similarly, the Income Tax Act is also not in line with the operating realities of the sector. The new Foreign Contribution Regulation Act, 2010 (FCRA) also focuses more on controlling the sector rather than facilitating its growth. Both of these acts are used to create fear among the VOs, especially those who are engaged in critical analysis of government schemes and policies or working at the grassroots levels. An increasing number of challenges and restrictions is being imposed on the VOs and this situation is becoming increasingly challenging due to the huge curtailment of funds for this sector.

This in-depth analysis of the enabling environment for the voluntary sector in India was conducted by VANI. Although since its inception VANI has conducted numerous analyses of not only the legal and funding environment but also on issues such as internal governance and management systems. The capacity building interventions and advocacy initiatives of VANI are based on such studies. However, VANI felt the need to have a comparative analysis of the Indian voluntary sector, which can be compared with other countries undergoing assessment. The methodology was developed by CIVICUS: World Alliance for Citizen Participation (CIVICUS)<sup>2</sup> and the International Center for Not-for-Profit Law (ICNL)<sup>3</sup>, and is being implemented in several countries across the globe.<sup>4</sup> The Enabling Environment National Assessment (EENA) is focused on assessing the legal, regulatory and policy environment for civil society. It deals with legal and regulatory frameworks and their implementation, the resource environment for VOs, and practical experiences of the sector. CIVICUS provided technical support throughout the EENA process.

## **Objective of the Study**

- To assess the status of voluntary organisations in India vis-a-vis the dimensions as per the EENA guidelines.
- To generate a dialogue among the voluntary sector through regional and national consultations on challenges being faced by it vis-a-vis the legal, regulatory and policy environment and suggestions for improvement.
- To prepare an advocacy plan based on the emerging key challenges and suggestions.

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<sup>2</sup> CIVICUS is an international alliance of civil society organisations dedicated to strengthening citizen action and civil society around the world.

<sup>3</sup> ICNL is the leading source for information on the legal environment for civil society, philanthropy, and public participation

<sup>4</sup> The Enabling Environment National Assessments (EENA) are part of the Civic Space Initiative, implemented by CIVICUS World Alliance for Citizen Participation in partnership with the International Center for Not-for-Profit Law, ARTICLE19, and the World Movement for Democracy, with support from the Government of Sweden.”

## Research Methods

This study aims to present the findings on the key dimensions, necessary for the independent functioning of the voluntary sector, through a combination of three research methods.

### Desk research

The desk research involved reviewing laws, regulations, websites of journals and newspapers, government sites and non – governmental organisations and other relevant sources. Since VANI is an apex body of VOs and works towards promotion of the enabling environment of this sector, it regularly engages in discussions with voluntary sector and has undertaken a number of consultations, events and studies to assess the status of voluntary sector in India. These publications produced by VANI were the most significant knowledge sources used during the desk research.

### Focus group discussions

Focus group discussions were conducted with selected members through the four regional meetings<sup>6</sup>, where representatives from states were invited (Participants list enclosed in Annexure 1). Through these group discussions, qualitative inputs from the leaders and representatives of this sector were noted.

### Interviews

Personal interviews of heads of voluntary organisations were conducted to gather primary data for the study. Twenty interviewees were selected, mostly heads of renowned organisations to gather data for the study. (Attached in Annexure II)

The study was initiated through a consultation with experts at New Delhi followed by four regional level meetings to commence discussions on the status of voluntary sector with the aim of providing conclusive answers vis-a-vis the sector identity and emerging challenges. **During the consultation with experts, it was unanimously decided that the framework provided by CIVICUS and ICNL needed to be revised as per the Indian context.** The study looks at the five mandatory dimensions which assess the overall health of the legal, regulatory and policy environment for the voluntary sector in India –

1. Formation
2. Operation
3. Access to Resources
4. Expression
5. Peaceful Assembly

Besides the mandatory dimensions, the following optional dimensions were chosen as part of the EENA in India: Taxation, Government-CSO relations and CSO coalition and cooperation.

After following the above mentioned parameters, it was decided to divide the study into seven chapters:

1. The first chapter gives an introduction to voluntary organisations and rationale behind the study.
2. The second chapter defines in detail the methodology used for the study.

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<sup>5.</sup> West regional discussion held in Jaipur on 9th April, 2014; East regional discussion held in Bhubaneswar on 16th April, 2014; North regional discussion held in New Delhi on 23rd April, 2014 and South regional discussion held in Hyderabad on 29th April, 2014.

3. The third chapter looks at the mandatory dimensions of the study with following sections –
  - a) **Section I** – Formation provides details of the registration laws in India pertinent for existence of voluntary organisations in India. It also focuses on the ground realities, providing insights of the challenges faced by people and organisations.
  - b) **Section II** – Operation highlights the operational aspects of the organisations functioning and reporting relations with the government.
  - c) **Section III** – Access to resources provides a detailed account of the funding environment in India with focus on legal framework and the challenges for the sector.
  - d) **Section IV** – Expression highlights the constitutional guarantees to the citizens of India vis-a-vis the freedom to express and experiences of VOs in this area.
  - e) **Section V** – Peaceful Assembly studies the laws related to peaceful assembly and violations, if any. Right to peaceful assembly is guaranteed under Article 19 (b) of the Constitution of India.
4. The fourth chapter shares the findings related to the chosen optional dimensions. It is divided into following sections:
  - a) **Section I** – Taxation: Laws and challenges..
  - b) **Section II** – Government – Voluntary sector relations presents the findings on the relations between the two with a focus on the national policy for voluntary sector.
  - c) **Section III** – VO Cooperation and Coalition
5. The fifth chapter concludes the entire study with recommendations showing a future roadmap for providing an enabling environment to the sector.

# Chapter 2

## METHODOLOGY OF THE STUDY

The voluntary sector has been engaged in various developmental activities in the remote locations for upliftment of the downtrodden and marginalised. This sector has played an important role in the successful implementation of various welfare plans and projects of the government. Yet the sector faces many challenges which makes its survival and functioning difficult. On one hand, this sector faces threats because of its nature of work which involves being critical to the government policies and corporate irregularities. However on the other hand, increasing pressure on the sector is attributed to the weak transparency and accountability mechanisms within the sector. There is also an increasing number of corporate, semi-corporate and profit oriented agencies proliferating under the nomenclature of VOs, leading to an added misunderstanding about the sector.

Looking at this, it is pertinent to assess the environment of voluntary sector in India. The 10 dimensions for assessment provided by the EENA methodology, developed by CIVICUS and ICNL, include Formation, Operation, Access to Resources, Expression, Peaceful Assembly, Internet Freedom, Government – CSO relations, CSO Cooperation and Coalition, Taxation and Access to Information. The first five among these were referred to as mandatory dimensions while the latter five are optional dimensions, with the flexibility to study as per country specific contexts.

During the course of this study, all the mandatory dimensions have been studied and three optional dimensions were selected for inclusion in the EENA including Taxation, Government–Voluntary sector relations and Cooperation and Coalition amongst VOs. An attempt was made to assess the Indian legal framework in each of these dimensions governing the sector and the ground realities, which emerged through personal interviews and focus group discussions with sector representatives.

### *Data Collection*

Qualitative data for the study was collected through personal interviews and focus group discussions. Four regional meetings<sup>7</sup> were organised to capture regional variation across Indian states in the analysis. Primary data was collected through focus group discussions, interviews with heads of voluntary organisations and through telephone conversations with representatives across the country.

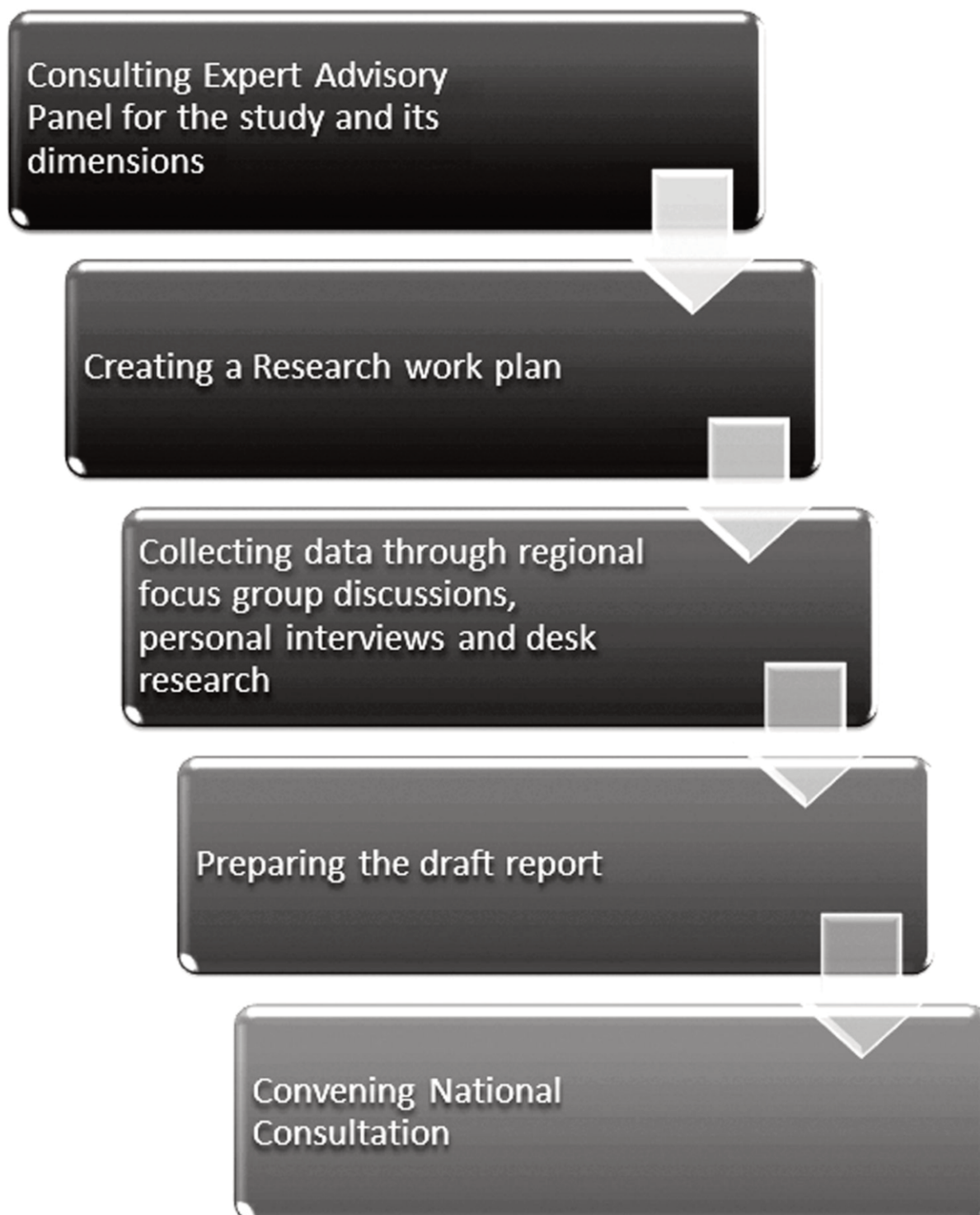
Secondary information was collected from VANI's published and unpublished meeting reports, citizen reports, studies and other reports and websites.

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<sup>7</sup> West regional discussion held in Jaipur on 9th April, 2014; East regional discussion held in Bhubaneswar on 16th April, 2014; North regional discussion held in New Delhi on 23rd April, 2014 and South regional discussion held in Hyderabad on 29th April, 2014.

The detailed process of data collection is mentioned below.

Process



## Consultation with Expert Advisory Panel

VANI organised an Expert Advisory Panel meeting on 18 February 2014 at the India International Center, New Delhi. The main aim of the meeting was to discuss the study and design a framework with focus on the Indian context to carry forward the assessment. The meeting was attended by various heads and representatives of voluntary organisations, funders, academics and researchers.

It was suggested by the panel that civil society organisations in India include a wide variety of institutions ranging from corporate foundations to religious institutions and many others and it will be difficult to assess them within such a short period of time (6 months). So, for the purposes of this study only voluntary organisations were studied. The panel also suggested that the questions framed in the guidelines are too generic for the Indian context, so there was a need to slightly revise the matrix developed by CIVICUS and ICNL as per the Indian legal framework. It was raised by the Expert Advisory Panel members that in India, some set of laws are common while some laws have regional variations. E.g. registration of societies in India is governed by different state laws. Thus, capturing these regional variations and advocating for a uniform set of laws in the country governing the sector was stressed. The experts came up with the suggestions and conclusion that four specific dimensions of registration, funding environment, taxation and Government–VO relation need to be reviewed and analysis be drawn through this study for larger national and global advocacy.

## Regional focus group discussions

The regional meetings were organised in the North, South, East and West regions and aimed at getting varied representation from the states within each region. These meetings were an important platform to discuss the multiple challenges with which the sector is confronted. The participating organisations discussed the state specific challenges that hinder their survival and growth. The meetings brought to light various issues including heavy registration fees in some states but nominal fees in others; the VOs relationship with government was considered to be one that was closer to sub-contractors rather than to partners; diminishing funding environment and shrinking spaces for rights and advocacy based work; problems of corruption in the government funded projects; strict tax laws etc. The following table provides the details of the workshops conducted:

Region	Date	Location	Number of Participants
West	9th April, 2014	Jaipur	10
East	16th April, 2014	Bhubaneswar	8
North	23rd April, 2014	New Delhi	14
South	29th April, 2014	Hyderabad	14

## Personal and Telephonic Interviews

The primary data was gathered through interviews with 20 individuals. Most of these interviews were conducted face-to-face or via telephone. Interviews were based on open questions, focusing on the aspects of registration of voluntary organisations, funding and taxation laws governing the sector, the main challenges and restrictions for VOs, ways to overcome these restrictions and on the overall enabling environment for VOs.

## **Desk Research**

The desk review involved reviewing relevant resources including laws and regulations, websites of journals and newspapers, websites of government agencies and non – governmental organisations. The existing vast literature of VANI on the subject including citizen’s reports, research reports and other unpublished materials were reviewed during this study. Various case studies were also adapted from the VANI reports for the purposes of this study.

## **Drafting the Country Report**

Based on the findings and discussions, a national report was drafted. The report focuses on the following significant aspects:

- Socio-political and legal environment of the voluntary sector with a focus on recent changes and developments;
- Challenges for Indian voluntary organisations with separate sections on the different dimensions: registration, operation, funding environment, taxation, govt-voluntary sector relations, freedom of expression and peaceful assembly etc;
- Suggestions and recommendations for improving the enabling environment of the sector;
- Major advocacy issues.

## **Convening the National Consultation**

The National Consultation, a multi-stakeholder dialogue, was held on 25th June, 2014 in New Delhi. Around 30 civil society representatives, key stakeholders and interested individuals from academia, government, funding organisations and the media attended the consultation (List of Participants attached in Annexure -III). The consultation aimed to sharing major findings from the draft national report and also to lay the foundation for the future advocacy plan.

## **Finalizing the National Report**

After the National Consultation, the initial Country Report was finalized and an advocacy plan was drafted, based on the comments and input provided by the participants during the National Consultation. Both documents were submitted for review to the Expert Advisory Panel (EAP) and ICNL/CIVICUS.



# Chapter 3

## MANDATORY DIMENSIONS

In this chapter, five dimensions related to the functioning of the voluntary sector are being assessed. These five dimensions are: Formation, Operation, Access to resources, Expression and Peaceful assembly. As the ability of VOs to freely form, operate without significant governmental interference, access resources without restrictions, effectively express particular opinions (particularly those critical toward government policies), and assemble and organise assemblies are key to fulfilling their important roles in a democratic society, a thorough assessment of these five dimensions is essential.

The five dimensions have been included in the following five sections.

### Section I – Formation of Voluntary Organisations

*“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*

Voluntary action in India has been an ages-old activity. All the religious books mention the importance of serving people and provide guidelines on ways to contribute towards the well being of others. There are thus various forms of voluntary actions that have gained ascendancy during different historic periods in India. Community-based organisations, social movements, development organisations, religious organisations etc. all co-exist at the same time, performing voluntary actions in different capacities. It is this diversity of voluntary actions which has led to identity crisis for the VOs engaged in development in India. This identity crisis is further enhanced by the process of registration of these organisations. Not only are the Acts under which a VO can be registered multifarious, but also they are not restricted to only VOs. Many private schools, hospitals, sports associations, corporate foundations which are profit-making bodies can also be registered under these Acts.

At the same time, a large number of VOs working at the grass-root level also remain formally unregistered, leading to a wide array of VOs in India. VOs in India can be registered under the following acts –

1. **Societies Registration Act, 1860** - As a society under the Societies Act for national level society at least 7 persons are required to register. It can be registered at New Delhi with the Registrar of Joint-stock Companies. There are some state-specific rules as per the different state society acts. However most of the state acts were simple adopted from the National SRA, 1860 with some minor changes regarding membership fee, number of members etc.
2. **The Trusts Act, 1882** - This Act of 1882 is essentially for private purposes, though it can serve public purposes as well. In some provinces like Maharashtra and Gujarat, there are separate public trust acts like Bombay Public

Trusts Act 1950 which is applicable in Maharashtra and also Gujarat with some modifications. However in the absence of a Public Trusts Act, the principles of the Indian Trusts Act 1882 apply to trusts registered in states or union territories where there is no public trusts act.

3. **The Companies Act, 2013** - As a non-profit company under section 8 of Companies Act (previously it was Section 25 under the previous Act of 1956).
4. **Proposed Multi-State Societies Registration Bill** has been proposed by the Central Government in 2012. This bill was proposed by Ministry of Corporate Affairs to regulate the various types of VOs operating in multiple states. This bill remains however yet to be enacted by the parliament. It has several draconian clauses which could severely hamper the autonomy of societies which have been elaborated later.
5. VOs can also get registered under **The Co-operative Societies Act, 1904 and The Trade Union Act, 1926**. Clearly, there is a distinction being made for co-operatives and trade unions which have separate legislation for incorporation and a somewhat more specific definition of what constitutes a co-operative and what constitutes a trade union.

In common practice, the bulk of the organisations in the sector are registered either as a Society or a Trust.

**Registration as a society** is the most common legal entity for a VO in India. The Ministry of Corporate Affairs regulates this national act. The Societies Registration Act is applicable throughout the Republic of India, with each state adopting certain modifications. A society can be registered either at the state level (in the office of the Registrar of Societies) or at the district level (in the office of the District Magistrate or the local office of the Registrar of Societies). Section 1 of the Act defines membership of the VO, according to which there is a minimum of seven managing committee members with no upper limit to the number of members that can register a society. Section 2 of the Act determines the main instruments for governing the society including memorandum of association and rules and regulations, which define the aims, objectives and mode of management of society.<sup>8</sup>

Normally a fee of INR 50 is payable as a registration fee of a society as per Section 3 of SRA, 1860 and it should accompany the request for registration payable in cash or by Demand Draft<sup>9</sup>. In the Union Territory of Delhi the Registrar communicates to the applicant society by a letter stating that all the formalities have been completed and the documents filed are acceptable. The applicant society is required to deposit the registration fee after receipt of this letter.

All the societies in India have to be registered under the Societies Registration Act 1860. By and large, the registration and filing procedures are similar in all the states. The only difference is that in some states there is a little more paperwork than the others.

It is possible to register a society in New Delhi under the Central Act, or register in any state capital or district headquarters with the local Registrar of Societies. In the states of Gujarat and Maharashtra, under the provisions of the 1950 Bombay Public Trust Act all societies that have a charitable purpose have to be registered with the Charity Commissioner. Although societies are registered by the Charity Commissioner's office as trusts, they are given two registration numbers: one under the Bombay Public Trust Act and another under the Registrar of Societies.

Under the Societies Registration (Uttar Pradesh) Act, 1974 there is a stipulation of renewal after a period of two years and in the Societies Registration (Kerala) Act, registration is valid for 18 months and thereafter the registration

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<sup>8</sup>. VANI. (2010). *Registration of voluntary organisations in India. Civil Society voices* .

<sup>9</sup>. *A demand draft is used by individuals to transfer payment from one bank account to another. It is different from cheque as it does not require signature in order to be cashed and one does not necessarily have an account with the bank.*

is to be renewed. In the state of Tamil Nadu, as per the provisions of the Tamil Nadu Societies Registration Act, 1975 societies have to renew their registration every five years. Renewal of registration has not been provided for under Societies Registration Act, 1860.<sup>10</sup>

The SRA Act of 1860 poses a number of challenges to the VOs in India, some of which are mentioned below:

- The national registration law is more than 150 years old and needs to be updated. The adaptation orders in the years between 1848 and 1950 placed the Act under the purview of state governments, leading to state amendments to the Act. However these state amendments brought various dimensions of state interferences into the original Act .
- There is a need for clear segregation and definition of the voluntary sector as any non-profit entity ranging from large private hospitals to private corporate schools, sports club foundations etc are all registered under the same Act. This has led to ambiguity about the identity, nature, scope and scale of the voluntary sector. Section 20 of the Act showcases the age of the law and the need for redefining the organisations that can register under the Societies Act.<sup>11</sup>
- The demand for periodic renewal of registration in some states has made it complex and difficult for the voluntary organisations.
- Societies registered in certain states are not allowed to operate activities outside the state of registration. This creates serious issues for VOs wanting to work in state cross-border areas or in multiple states.

## Key Sections of the Society Registration Act, 1860

### Section 1 – Societies formed by memorandum of association and registration

Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with Registrar of Joint-stock Companies form themselves into a society under this Act.

### Section 2 – Memorandum of Association

The memorandum of association shall contain the following things, that is to say,-

- the name of the society;
- the object of the society;
- the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.
- A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

### Section 3 – Registration and Fees

Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fees as<sup>1</sup>[the state Government] may, from time to time, direct; and all fees so paid shall be accounted for to<sup>1</sup>[the state Government].

<sup>10</sup> Adukia, S. R. (n.d.). Handbook on laws governing formation and administration of charitable organisations in India. Retrieved July 2014, 16, from [http://www.caaa.in/Image/hb-charitable\\_org.pdf](http://www.caaa.in/Image/hb-charitable_org.pdf)Adukia

<sup>11</sup> Sebastian, B. (2010, December). Existing Major Charity Laws in India - De we need a new legal framework? Civil Society Voices , pp. 17- 20.

#### **Section 4 – Annual list of managing body to be filed**

Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the societies is held, or, if it rules do not provide for an annual general meeting, in the months of January, list shall be filed with the Registrar of Joint Stock Companies, of the names, addresses and occupations of the governors, council, director, committee, or other governing body then entrusted with the management of the affairs of the society.

#### **Section 11 – Members guilty of offences punishable as strangers**

Any member of the society who shall steal, purloin, or embezzle any money or other property, or willfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the, society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence.

#### **Section 12 – Societies enabled to alter, extend or abridge their purposes**

Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society;

#### **Section 13 – Provision for dissolution of societies and adjustment of their affairs**

Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal court of original civil jurisdiction of the district in which the chief building of the society is situate; and the court shall make such order in the matter as it shall deem requisite.

*Assent required:* Provided that no societies shall be dissolved unless three-fifths of the members shall have expressed a wish for dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose:

*Government consent:* Provided that <sup>4</sup>[whenever any Government] is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved<sup>5</sup> [without the consent of the Government of the <sup>6</sup>[State] or registration].

#### **Section 14 – Upon a dissolution, no member to receive profit**

If upon the dissolution of any society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not

less than three-fifths of the members present personally or by proxy at the time of the dissolution, or in default thereof, by such court as aforesaid:

*Clause not to apply to Joint-stock Companies:* Provided, however, that this clause shall not apply to any society which has been founded or established by the contributions of share-holders in the nature of a Joint-stock Company.

### **Section 16 – Governing body defined**

The governing body of the society shall be the governors, council, directors, committee, trustees, or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

### **Section 19 – Inspection of documents**

Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection; and any person may require a copy or extract of any document or any part of any document, to be certified by the registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be prima facie evidence of the matters therein contained in all legal proceedings whatever.

### **Section 20 – To what societies act applies**

The following societies may be registered under this Act:-

*Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, [the diffusion of political education], the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.*

## **The Trusts Act, 1882**

The origin of ‘Trusts’ can be traced back to the ancient times when human motivation to do charity and dedicate property for charitable and religious purposes found its manifestation in the form of dharmashalas (rest houses), educational and medical institutions, construction of water tanks and wells, planting trees etc. The Trusts Act came into force in 1882 and was brought into effect primarily to manage the private trusts. The Private trust aims at benefitting particular individuals while public trust concerns some purpose of the common public or the community at large. Trusts are legally created for charitable and religious purposes. Trusts can be established for a number of purposes including relief of poverty, education, medical relief etc.

The issue of trust and trustees is a concurrent subject (Entry 10 of List III of Seventh Schedule to Constitution).<sup>12</sup> Thus the Indian Trusts Act, 1882 is applicable all over India except when specifically amended/alterd by the state government. However, the Act has been simply adopted by the states without any state specific amendments. In the absence of a state trust act, general principles of the Indian Trusts Act 1882 are applied.<sup>13</sup>

<sup>12</sup> The legislative powers of State and Union government as defined by the Constitution of India are divided into three lists – Union List, State list and Concurrent list. Concurrent list consists of 52 items and refers that any change in the provisions of the law made by state legislature or parliament can be applied if it is not repugnant to the parliament and receives assent of the president.

<sup>13</sup> VANI. (2013). *Enabling environment for voluntary organisations - A global campaign*. New Delhi: Voluntary Action Network India (VANI).

As per Section 3 of the Act, registration as a trust has four requirements: the trust property or trust money being the subject matter of the trust, settler or donor of the trust, the trustee or trustees and the beneficiary. The trustee is the legal owner of the trust property and the property vests with him/her. S/he holds the trust property for the benefit of beneficiaries and not on their behalf.

Public Trusts can submit an application for registration to the deputy/assistant Charity Commissioner having jurisdiction over the region/sub-region in which the trust is sought to be registered. While states like Maharashtra and Gujarat have a Charity Commissioner much of North and North-East India does not have a Charity Commissioner. The Bombay Public Trusts Act, 1950 is applicable only in the states of Maharashtra and Gujarat. Rajasthan, Gujarat and Tamil Nadu have their own Trust Acts. Most charities have to be registered as a Charitable Trust.

Due to the flexible nature of the Indian Trust Act, various players entered into the field, not necessarily to focus on charitable work. Trusts have also been established with a clear aim of making monetary rewards.<sup>14</sup> As a result, the image of non-profit organisations has taken a beating for lack of increased state control to prevent the mis-use of the Act. There is thus an emergent need for a new and stronger legal framework to regulate the voluntary sector.<sup>15</sup>

## Key Sections of Indian Trusts Act, 1882

### Section 1 – Short title and commencement

This Act may be called the Indian Trusts Act, 1882; and it shall come into force on the first day of March, 1882.

### Section 2 – Repeal of enactments

The statutes and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed, in the territories to which this Act for the time being extends

### Section 3 – Interpretation clause – “trust”

A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

*"author of the trust": "trustee": "beneficiary": "trust property": "beneficial interest": "instrument of trust":*

The person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust";

*"breach of trust":* a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust".

*"registered":* and in this Act, unless there be something repugnant in the subject or context, "registered" means

<sup>14</sup> Joseph, J. (2013, November 21). *The Times of India*. Retrieved June 30, 2014, from <http://timesofindia.indiatimes.com/india/CAG-questions-Rs-3000-crore-of-investments-by-two-Tata-trusts/articleshow/26116934.cms>

<sup>15</sup> VANI. (2010). *Registration of voluntary organisations in India*. *Civil Society voices*.

registered under the law for the registration of documents for the time being in force.

*"notice"*: a person is said to have "notice" of a fact either when he actually knows that fact or when, but for willful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872 (9 of 1872), section 229.

Expressions used herein and defined in the Indian Contract Act, 1872 (expressions defined in Act 9 of 1872), shall be deemed to have the meanings respectively attributed to them by that Act.

#### **Section 4 – Lawful purpose**

A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes, cannot be separated, the whole trust is void.

#### **Section 5 – Trust of immovable property**

No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered or by the will of the author of the trust or of the trustee.

*Trust, of movable property*: No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

#### **Section 6 – Creation of trust**

Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transferred the trust-property to the trustee.

#### **Section 7 – Who may create trusts**

A trust may be created-

- (a) by every person competent to contract, and
- (b) with the permission of a principal civil court of original jurisdiction, by or on behalf of a minor,

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust property.

#### **Section 8 – Subject matter of trusts**

The subject-matter of a trust must be property transferable to the beneficiary. It must not be merely beneficial interest under a subsisting trust.

### Section 9 – Who may be beneficiary

Every person capable of holding property may be a beneficiary.

*Disclaimer by beneficiary:* A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

### Section 10 – Who may be trustee

Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

*No one bound to accept trust:* No one is bound to accept a trust.

Acceptance of trust: A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

*Disclaimer of trust:* Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Sections 11 – 30 detail out the duties and liabilities of the trustee like execution of trust, prevention of waste, maintenance of accounts and information, investment of trust money etc.

Sections 31 – 45 include the rights and power of trustees which includes right to title deed, right to reimbursement of expenses, right to apply in court for opinion on management of trust property etc.

Sections 46 – 54 provide details of the disabilities of the trustees including failure to renounce after acceptance of the trust, trustees cannot delegate, failure of co-trustees to act singly, not charging for the services, not using the trust property for one's own profit etc.

**Indian Companies Act, 2013** allows companies to obtain non-profit status under section 8 of the Act. The Companies Act, 2013 passed by the Parliament received the assent of the President of India on 29th August, 2013. The Act consolidates and amends the law relating to companies. The Companies Act, 2013 has been notified in the Official Gazette on 30th August, 2013. It replaced the previous Companies Act of 1956. Some of the provisions of the Act have been implemented by a notification published on 12th September, 2013. However, the website of Ministry of Corporate Affairs states that provisions of Companies Act, 1956 are still in force.<sup>16</sup>

According to Section 8 (1) (a) of the Indian Companies Act, 2013, a Section 8 company can be established for promoting commerce, arts, science, education, research, social welfare, religion, protection of environment etc. This increases the scope of work for Section 8 companies as it includes the promotion of objects like education, research, social welfare, protection of environment which had not been specified in the earlier Act. This indicates that the central government is also committed towards promoting social development. A Section 8 company must apply its profits, if any or other income to the promotion of its objects and prohibits payment of any dividend to its members.

<sup>16</sup> Ministry of Corporate Affairs, Government of India. (n.d.). About Acts and Rules. Retrieved June 18, 2014, from Ministry of Corporate Affairs website: <http://www.mca.gov.in/MinistryV2/companiesact.html>



To obtain a licence under Section 8 of the Companies Act without suffixing the words ‘limited’ or ‘private limited’, an association in the application must include:

- copies of the memorandum and articles of association as well as a number of other documents, including a statement of assets and a brief description of the organisation’s objectives;
- list of companies, associations and other institutions in which such promoters are directors or hold responsible positions with description of the position so held;
- an estimate of the future annual income and expenditure, specifying the sources of the income and the objects of expenditure;
- a statement giving brief description of the work;
- a statement specifying briefly the grounds on which the application is being made;
- a declaration by each of the persons making the application that he/she is of sound mind and has not been convicted by a court for any offence and does not stand disqualified for appointment as a director.

A Section 8 Company needs a minimum of two members and there is no upper limit to the number of members. The governing structure of a Section 8 company is similar to that of a society. It is governed by directors or a managing committee or a governing council elected by its members. The new Act has also introduced the provision for amalgamation with any other company under this section and promoting the same objects.

Section 8 companies can be dissolved after settlement of all debts and liabilities, the funds and property of the company are to be given or transferred to some other Section 8 company, preferably one with similar objectives. It is illegal to distribute funds among the members.

According to Section 8 (11) of the Act, any default in complying with the requirements laid down in the section will be punishable with fine of minimum 1,000,000 INR to 10,000,000 INR and the directors and every officer of the company in default will be imprisoned for a term which may extend to three years or a fine of not less than 25,000 INR to the maximum of 25,00,000 INR or with both. The previous Act of 1956 was a bit relaxed with the offenders. Most of the interviewed respondents stated that registration under the previous Indian Companies Act, 1956 was the least exercised option by them because they considered it expensive and cumbersome in nature.

## **Key sections of the Indian Companies Act, 2013 relating to Voluntary organisations**

### **Section 1 – Short title, extent and commencement**

Companies Act, 2013, extending to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act

### **Section 3 – Formation of Company**

A company may be formed for any lawful purpose by—

(a) seven or more persons, where the company to be formed is to be a public company;

- (b) two or more persons, where the company to be formed is to be a private company; or
- (c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

#### **Section 4 – Memorandum**

*(1) The memorandum of a company shall state—*

- (a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company.

Provided that nothing in this clause shall apply to a company registered under section 8;

- (b) the state in which the registered office of the company is to be situated;
- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;
- (d) the liability of members of the company, whether limited or unlimited;
- (e) in the case of a company having a share capital,—
  - (i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
  - (f) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

*(2) The name stated in the memorandum shall not—*

- (a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
- (b) be such that its use by the company—
  - (i) will constitute an offence under any law for the time being in force; or
  - (ii) is undesirable in the opinion of the Central Government.

#### **Section 8 – Formation of Companies with Charitable objects etc.**

(1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

- (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to apply its profits, if any, or other income in promoting its objects; and

- (c) intends to prohibit the payment of any dividend to its members, the Central Government may, by license issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.
- (2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.
- (3) A firm may be a member of the company registered under this section.
- (4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.
- (ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.
- (5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by license, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.
- (6) The Central Government may, by order, revoke the license granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a license is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:
- Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:
- Provided further that a copy of every such order shall be given to the Registrar.
- (7) Where a license is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section
- Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

- (8) Where a license is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.
- (9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.
- (10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.
- (11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

**Proposed Multi-State Society Registration (MSSR) Bill, 2012** is addressed to societies that have multi-state operations. MSSR addresses the need to have a common law and framework applicable in the entire country to regulate such societies, thus all societies having a presence in multiple states will require registration under the proposed bill.

The MSSR Bill, 2012 is taking geographical presence as an important yard stick for organisations of national importance. The geographical yard stick will create problems such as (i) if an organisation donates for a calamity in another state does it become multi-state? (ii) if an organisation is doing research of national importance in one state does it become eligible for registration under MSSR Bill, 2012? (iii) if an organisation works on a mass scale or has a huge turn-over in one state will it become in eligible for registration under MSSR Bill, 2012? Therefore, it is important that the multi state concept should be revisited and it may be re-coined as organisations of national importance/presence. The proposed Act may be called National Not-for-Profit Organisations Registration Act, 2012.

VANI<sup>17</sup> has produced a detailed analysis on the proposed bill as it puts forward huge challenges for the voluntary sector:

- Currently non-profit organisations can be registered as Societies, Trusts and under Section 25 Companies (now Section 8 of the 2013 Companies Act). In all the 3 forms there is no legal bar to having branches for activities outside the state. Each state provides the registration for its own jurisdiction which cannot exceed the state

<sup>17</sup> VANI. (n.d.). *Analysis and Recommendations Multi State Societies Registration Bill 2012*. Retrieved May 16, 2014, from Voluntary Action Network India website: [http://vaniindia.org/pdf/Analysis\\_Recommendations.pdf](http://vaniindia.org/pdf/Analysis_Recommendations.pdf)

territory. However, any charitable organisation whether registered or unregistered can work anywhere in the country subject to any compliances applicable in the state or place of activity. Therefore, the Multi State Societies Registration Bill will add yet another form of registration which will restrict the functioning and scope of VOs.

- The MSSR Bill, 2012 under Section 5 provides that there cannot be any activity in case of pending registration: The MSSR Bill, 2012 requires existing societies to be registered but surprisingly it provides that during the period of registration all operations shall be suspended which is practically and legally not feasible.
- The MSSR Bill, 2012 under Section 26 provides that a society may be dissolved by the Government even for failing to amend its rules for 3 months: under the section various provisions are provided for dissolving a society, which includes that a society may be dissolved for failing to amend its rules within 3 months on receiving direction from the Registrar. Although, the proposed bill suggests that central government cannot pass orders for dissolution without giving an opportunity to the society to be heard, it has to be understood that the proposed bill itself will be the binding law and any serious action can be taken on violation of any provision.
- The MSSR Bill, 2012 under Section 28 provides that the government will decide the beneficiary organisation in case of dissolution: a Society or a Trust for public purposes is a private institution for public purposes, which implies that unless funded by government, societies are private institutions. Therefore, the right to decide the beneficiary organisation, in the event of dissolution, should remain with the members of the society. This provision and the above one together set up a potentially sinister scenario, where the government could dissolve a VO for failing to amend its rules in the given timeframe and then appropriate its money.
- The MSSR Bill, 2012 under Section 36 provides that the investigation into the affairs of multi-state society can be initiated on the recommendation of a single member of the society: such a provision which provides that a single individual can initiate investigation should have safeguards by defining a proper procedure and basis of such investigation.
- The MSSR Bill, 2012 under Section 37 provides power to the police authority of investigating suomotu<sup>18</sup> or on complaints from anybody: such a provision which provides that an inspector can initiate investigation should have safeguards by defining proper procedure and basis of such investigation. Such a provision will provide sweeping powers to the inspector and may lead to harassment of multi-state societies for bribes.
- The MSSR Bill, 2012 under Section 42 provides that the government may constitute a new board or take over the society without providing any opportunity of being heard: Such a provision is irrational and gives unfettered powers to the government to take over or interfere in the management of any society at its whim.

## Realities on the ground

Unfortunately, there are complexities around the registration process and VOs often feel burdened by the various legislation and authorities governing them.

- At the state level, the Charity Commissioner or the Registrar of Societies is responsible for registering the charity.
- At the federal level, it is the Income Tax Act which has the authority to register a charity for the purpose of tax exemption and deductions.
- If the organisation receives foreign contributions, the Home Ministry also begins to exercise its jurisdiction.

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<sup>18</sup> On its own motion.

Also, the various Trusts Act and the Societies Registration Act have, to an extent, become out-dated. For example, the Societies Registration Act is even older than the Indian National Congress and has arguably been a product of the historic Revolt of 1857.<sup>19</sup> 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. The pre-dominant basis for those rules was a master – servant relationship wherein the state was the custodian and the voluntary sector was the client. But since then sweeping changes have taken place across the globe at all levels. The voluntary sector is no longer considered as the sub-contractor to the state, but it is one of the strong pillars addressing the issues of democracy and development. In this context, there is a dire necessity to usher in a progressive set of legislation that would facilitate the growth of voluntary action in India. Dr. Rajesh Tandon, President, Society for Participatory Research in Asia (PRIA) shared during a national convention organised by VANI in 2011, *“In India, we do not have a modern contemporary system or forms for legal incorporation of wide variety of institutions, including non – profit. 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.”*

During the course of this study, it emerged through regional discussions and personal interviews that different states have differing norms and practices for registration. Some of these findings have been mentioned below.

### Eastern Region –

*“There is no uniform time-frame for registration. It depends state wise. However, having the right document does not hinder the process. But voluntary organisations in many states face high levels of corruption, which amount to as simple as asking for 1000rs or an even lesser amount. When we registered, we were made to change our name, terms of reference (MOA) etc. for no reason.”*

— **Amitabh Behar, Executive Director,  
National Foundation for India**

Focus group discussion in the eastern region highlighted the challenges faced by the voluntary sector in this region. Through focus group discussions (FGD) and a desktop review, the ground realities of following states (Bihar, Odisha, Jharkhand, West Bengal and North eastern states) are being shared below:

- In the eastern region, registration of a VO can be done at two levels – one at the state level with the Registrar of Society (IGR) and at the district level with the Additional Registrar of Society.<sup>20</sup> However, participants from West Bengal shared that only state registration exists with no provision for VOs to register at the district level. Adding to this, respondents from Odisha raised concerns related to district registration. It was shared that there are confusing by-laws at the district levels with no clarity on the operational areas of work e.g. an organisation may get registered at the district level but may want to upscale work at the same time in other districts as well, but there is no clarity on that in Odisha. Most of the respondents in this region have raised concerns related to registration and renewal of the registrations<sup>21</sup> which depends on the mercy of district administration.

<sup>19.</sup> Charities Aid Foundation. (n.d.). *Registering and Managing Voluntary Organisations*. Retrieved May 8, 2014, from Charities Aid Foundation Website: <http://www.cafindia.org/pages/Registering%20as%20a%20Charitable%20Organisation%20in%20India.pdf>

<sup>20.</sup> Focus group discussion in Orissa on 16th April, 2014

<sup>21.</sup> Some states demand for periodic renewal of registration which makes it difficult for VOs

- One of the inhibiting factors for small voluntary organisations to register is that the laws are written only in the English language. Smaller grassroots organisations may not be adept at the language and use regional languages and their mother tongue. Organisational representatives raised that the laws must be made available in simple regional languages.
- The issue of exhaustive documentation as a requirement for registration was also raised, varying from district to district. It was raised that almost 29 – 30 kinds of documents are asked for before registering an organisation in the region, which usually becomes an exercise to mint money and promotes corruption. The respondents noted that there should be a time-limit for registration as sometimes it becomes a cumbersome and never ending process. Some organisational representatives felt that there should also be an online system of registration of organisations at the state and national level to make the process fast, efficient and less prone to corruption.
- Most of the respondents stated they are not aware of rejections of registration if the documentation is complete but there is an indefinite delay due to reasons best known to the administration. In West Bengal it is mandatory to renew the registration. Some of the donors and even government funding requires an annual renewal form of the organisation as a necessary pre-requisite, which is usually a burden on the organisations.
- The issue of lack of cooperation from the Additional District Magistrate (ADM) office at the district level and overall corruption in registration of organisations was vociferously raised by participants. Many north eastern states reported interference of dalals (agents)<sup>22</sup> in the state registration office which makes the registration process more difficult and costly. Such practices have become a part and parcel of the system and are being accepted as normal.

*“...painfully slow process of verification for Registration renewal. It took us about 6 months and umpteen visits to the Registrar’s office to get the renewal.”*

*-- Foundation for Social Transformation, Assam.*

Tribal Social Development Society is a registered not-for-profit Society and works in the tribal district of Saraikela Kharsawan of Jharkhand district. The Society was registered in the year 1993-94 when Jharkhand was a part of the erstwhile Bihar State. After the division of Jharkhand in the year 2000, the Jharkhand Government made it mandatory for the VOs registered with the Bihar Society Registration Department to renew their registration with Jharkhand Societies Registration Department. The Society applied for the registration in the State in the 2006-07. The office bearers of the Society made visits to the registration department for their registration but the office staff of the department pointed some or other flaws in the documents. Their expenditure of every visit to the department from Saraikela was around INR 600. After five to six such visits, they had to relent to the demands of the office staff and they obliged the office staff with INR 5000. The following month the society was registered with the department. The Secretary of the Society Mr. Turaan Kumar agrees that it was a mistake to do so but says, “When you want to fight the system you have to equip yourself. We paid the money because we were losing money and time by coming to Ranchi. Further, we had to pay money to the consultants as well for any change or correction in the documents. Kya karre kabhi kabhi jhukna padta hai (Sometimes one needs to succumb to the realities, what to do?)”.

*Adapted from VANI citizen report*

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<sup>22</sup> Dalals or agents are middle men who ease the process of registration by way of their contacts, legal knowledge and corrupt practices.

## Western Region –

The findings from the Western region are represented below from the following states – Rajasthan, Gujarat and Maharashtra.

- In the states covered under the Western region, registration can be done at state and district level. Respondents from Rajasthan, however, raised the concern that the registration fee has increased enormously since 1996. Earlier the registration fee used to be INR 250, which is now INR 10,000.<sup>23</sup> It is yet unclear whether this is the registration fee or a corrupt practice of the officials at the registrar office. Respondents shared the concern that it is difficult for a non-profit organisation working for development to shell out so much of money on registration. This fee was not however applicable in other states of the region but corruption was a common problem reported by all the respondents during the registration process.

*One of the respondents from Maharashtra shared that, “For many years in Maharashtra Charity Commissioner (CC) office was charging 2% from VOs on the income including the grant. It was difficult for VOs as generally the grants weren’t supposed to be used beyond expenditure as per set objectives and activities. Since the last few years CC has stopped charging because of a court order.”*

In Rajasthan, the state government has constituted a Voluntary Sector Development Council under the Planning Department. This council under the chairpersonship of the Chief Minister guides the implementation of state voluntary sector policy, monitors orderly development and healthy contribution of the voluntary sector, steers the involvement of all government departments, agencies and private sector in voluntary sector activities to ensure harmonious operations etc. VOs interested in working with the government need to get registered with this council. Based on the set criteria the council decides on which field and subject the VO will work with the government. However, the respondents shared that although this is a remarkable initiative of government towards recognizing the voluntary sector, yet the information required for accreditation is complex and difficult for smaller organisations with limited skills and resources. There was an underlying fear among the participants that this system has been started to weed out the undeserving VOs from the system, which otherwise are strong implementers of the development projects. To get accreditation, VOs have to pay the initial fees of INR 5000 and then membership is INR 1000.<sup>24</sup>

- Most of the respondents from all the states felt that the knowledge and guidance on registration process of the VO is not easily available in public domain. At each level they felt too many formalities are required making it a lengthy process and requiring a lot of documentation. Adding to such situation they feel the officials approach is more bureaucratic and they need to have a lot of patience with the process of registration. This is practically more challenging for the small organisations having limited access to resources and networks through which they can gain knowledge about the process.
- In Gujarat, the respondents shared that in last 10 years, relations with the government have become more stringent. There is thus greater scrutiny on the registration process and overall the process is lengthy and cumbersome. It was however also shared by some of the participants that organisations having strong credibility and those who follow appropriate documentation requirements do not get affected by the power relations with

<sup>23</sup> Source: Response from Western Regional focus group discussion held in Jaipur on 9 April, 2014

<sup>24</sup> Planning Department, Government of Rajasthan. (n.d.). Voluntary Sector Policy. Retrieved May 9, 2014, from Planning Department, Government of Rajasthan Website: [http://www.planning.rajasthan.gov.in/voluntary/Voluntary\\_Sector\\_Policy\\_English.pdf](http://www.planning.rajasthan.gov.in/voluntary/Voluntary_Sector_Policy_English.pdf)



the government. They followed the legal procedures and have not faced any trouble in the process of registration. Many of the participants thus agreed that there are flaws in the system but if one is clear with the procedures and has legal knowledge, they are not faced with a hurdle.

- In Maharashtra state the Charity Commissioner (CC) also insists that a paid advertisement should be published in a registered news paper inviting objections (if any) from the general public with regard to registering a public charitable trust. If there are any changes in Board Members the VO must file a change report in the prescribed form with a court fee stamp of INR 100 getting a Notary to attest the same and even after filing the form the changes are not entered in the CC's records until the CC calls for a hearing and records the statements. Often this could take a few years.

### Northern Region –

*“It is increasingly becoming difficult for organisations to renew their registration which work on rights based approach and undertake advocacy work.”*

**— Dr. Sushant Aggarwal, Director,  
Church's Auxiliary for Social Action (CASA)**

The findings from the Northern region include information from the following states – Delhi, Uttar Pradesh and Uttarakhand.

- In the capital state of India, Delhi, the registration process is fairly simple and smooth with minimal eligibility requirements and a registration fee of INR 50. The registration requires submitting basic information about by-laws and contact details of the founding members. In Uttar Pradesh the registration is easy but a lot of paper work is required. There are incidences of harassment in the documentation process. In Uttarakhand, the registration fee is INR 5000 and there is a process of renewal of registration every 5 years.<sup>25</sup> While as in Delhi, no renewal is required but the basic contact information and by-laws need to be submitted annually.

*“...In the year 1992, I went to the society registrar office, Varanasi to submit by - laws for the registration of Bhartiya Jan Seva Ashram, Badlapur Jaunpur. In the beginning they charged me INR 50 extra while the registration charge was INR 150 only and gave me the receipt of only INR 150. When I asked the cashier, he said that it is the rule here. This was not all, during the next stages of the registration I was asked for INR 1500 as a bribe. As I denied giving it, I was made to run from pillar to post for eight months. At last, I requested one influential officer who was posted in Varanasi to look into the matter. Due to his pursuance, I got the registration of Bhartiya Jan Seva Ashram on 13-12-92 after eight months.”*

**— Daulat Ram, Bhartiya Jan Seva Ashram,  
Badlapur, Jaunpur (U.P.)**

- It was shared by one of the respondents during the focus group discussion that there are a few cases where the agents/dalals get the registration process done; write the proposal to get the funds in exchange of certain percentage cut of the entire project amount. One of the respondents stated, “There is money laundering system prevailing in Delhi and national capital region. With extra payment the middlemen/agents/touts also arrange for

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<sup>25</sup> VANI. Voice of the Voluntary sector in Uttarakhand. New Delhi: VANI.

the by-laws. This relaxed process has led to the entry of uncommitted individuals in the sector with an aim to mint money”.

- Many respondents reported that the registration process is made cumbersome as officers ask unnecessary and uncomfortable questions leading to delays in registration. One of the respondents also shared that, “There have been instances of questioning the caste/community of board members belonging to one particular category in case the organisation is working for scheduled castes or backward communities.”<sup>26</sup>.

### Southern Region –

The discussions held in the southern region included representation from the states of Andhra Pradesh, Karnataka and Kerala.

Voluntary organisations in Andhra Pradesh are registered under the **Andhra Pradesh Societies Registration Act, 2001**. The Act came into force on 10 December 2001 and extends to the whole of Andhra Pradesh.<sup>27</sup>

Fee Structure	
Purpose	Amount (in Rs.)
Registration of Society	200.00
For issue of duplicate copy of certificate of Registration and issue of certificate of registration on change on name of the society	100.00
For every inspection/ search of documents in the custody of the Registrar(search fee per year)	50.00
<b>Source:</b> <a href="http://registration.ap.gov.in/CitizenServices//ACT/Societies/HowToRegisterASociety.pdf">http://registration.ap.gov.in/CitizenServices//ACT/Societies/HowToRegisterASociety.pdf</a>	

VOs are not finding any difficulty in getting their organisations registered. The majority of respondent VOs stated that getting registered is not a complicated process for them but it is a lengthy one. However, there are also some cases of bribe taking and corruption in this process, which troubles VOs in the area.

- One of the respondent stated that Andhra Pradesh has one of the highest amounts of registrations. He shared that there is approximately one VO per 600 people however it is yet to be confirmed. As per the recent Central Bureau of Investigation (CBI) estimate given on the orders of the Supreme Court, it was found that one VO exists for every 600 people in the country but the data for Andhra Pradesh was not made available.<sup>28</sup>
- In Karnataka and Kerala, it was raised by respondents that smaller organisations working in remote areas need more support for registration. The documentary requirements are also minimal which includes basic contact information and by-laws. VOs are also not required to renew their registrations.

<sup>26</sup> Responses from the North regional focus group discussion held in New Delhi on 23 April, 2014

<sup>27</sup> Andhra Pradesh State Portal. (2001, October 10). The Andhra Pradesh Gazette. Retrieved June 13, 2014, from Andhra Pradesh Government Website: <http://www.ap.gov.in/Acts%20Policies/Societies%20Registration%20Act%202001.pdf>

<sup>28</sup> Mahapatra, D. (2014, February 23). India witnessing NGO boom, there is 1 for every 600 people. Retrieved June 9, 2014, from Times of India Website: <http://timesofindia.indiatimes.com/india/India-witnessing-NGO-boom-there-is-1-for-every-600-people/articleshow/30871406.cms>

- One of the participants from Hyderabad raised challenges related to reporting the changes in by-laws and membership of the organisation. Ms. Kalamani from Apmas, an organisation in Hyderabad shared her organisations experiences about the non-responsive attitude of the registrar office. She stated that recently the organisation made change in the by-laws and some members of governing board went there to submit it in person. They shifted their office and they simply said that they had lost the file. There was also an expectation for bribe which the organisation was not ready for. It was due to their mistake that the organisation had to suffer.

The state specific registration laws and practices have led to diverse regional experiences of VOs in registering their organisations. However, the need for registration of VOs in a transparent manner has been raised by respondents from all the regions. The need for simplifying the registration process has also been raised clearly in the study.

## **Section II – Operation of Voluntary Organisations**

The right of all citizens to form associations or unions is guaranteed by the Constitution of India, Article 19(1) (c). “Charities and charitable institutions, charitable and religious endowments and religious institutions” is a subject of the Concurrent list of the Seventh Schedule to the Constitution of India, where both the Central government and the States are competent to legislate and regulate charitable organisations. Under Schedule VII of the Indian Constitution, the subject ‘Trust and Trustees’ is mentioned at Entry No.10 in the Concurrent List and ‘Charities & Charitable Institutions, Charitable and religious endowments and religious institutions’ is mentioned at Entry No.28 of this list.<sup>29</sup>

Apart from the Constitutional provisions, there are various laws in India which govern the operation and functioning of VOs. These laws include various registration acts<sup>30</sup> (explained in earlier section) wherein the VO can register itself as a legal entity and is bound by the law for its formation, operation, dissolution etc. The legal framework governing the voluntary organisation depends on the form of business organisation that the VO decides to take. If a VO is formed as a society, it will be governed by the Societies Registration Act, 1860. If it decides to be formed as a trust, the general principles of Indian Trusts Act, 1882 will apply; and as a non-profit company under Section 8 of the Companies Act, 2013. Apart from the above legislations, the Income Tax Act 1961 is applicable to VOs. And if a VO is in receipt of foreign contributions, the Foreign Contribution (Regulation) Act, 2010 is applicable. The adoption of a legal entity, and government regulatory arrangements require each VO to have a constitution, by-laws, Memorandum of Association (MoA) or a similar document which establishes a framework for the governance of the organisation, as has been discussed in detail in the previous section on registration of VOs. The control of the organisation is in the hands of a board of management, through which a VO is accountable to the public, members, and/or beneficiaries of the organisation and the funders or donors. Largely VOs in India are principally self-governing organisations and they decide their own constitution and the system of governance without any external control. They have considerable autonomy and flexibility in the planning and management of their policies and programmes.

However, many state and central government agencies have regulatory authority over the functioning and operation of VOs. For example, all VOs are required to file annual tax returns and audited account statements with various agencies. At the state level, these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (referred to in some states by different titles, including the Registrar of Joint Stock Companies), and the Registrar of Companies (for section 25 companies). At the national or federal level, the regulatory bodies include the income

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<sup>29</sup> Adukia, S. R. (n.d.). *Handbook on laws governing formation and administration of charitable organisations in India*. Retrieved July 2014, 16, from [http://www.caaa.in/Image/hb-charitable\\_org.pdf](http://www.caaa.in/Image/hb-charitable_org.pdf) (pg 10 – 15)

<sup>30</sup> *Society Registration Act, 1860; Indian Trusts Act, 1882; The Companies Act, 2013.*

tax department and Ministry of Home Affairs (only for VOs receiving foreign contributions). But in practice organisations face some challenges. Most of the respondents from all the regions stated that there is very little oversight of government on the work of VOs, but vigilance of rights based, advocacy driven organisations and VOs working in extremist areas is very common. Respondents raised that annual reports are required to be submitted to the registrar; quarterly reports are to be submitted to state and central Intelligence along with the income and expenditure statement. Though these reports are not required, informal requests are made. Despite having the constitutional right of freedom to express, VOs are required to inform the concerned authorities about the key meetings especially the public meetings, meetings requiring participation of government officials and where the international participants are invited etc on accounts of law and order, social security and maintaining friendly relations with the state etc. These clauses are sometimes used as ways to inhibit the operation of VOs.

The issue of corruption is not limited only to the registration of organisations but goes beyond and takes the shape of harassment and over interference in the organisations day to day functioning.<sup>31</sup> One of the respondents shared that the government asks for project related questions after 15 years of completion of the project. As per state laws one has to keep records between 13-14years.<sup>32</sup> This harassment is more prominent for the organisations working on advocacy or rights based approach. They are either blacklisted which leads to cancellation of their registration or are never shortlisted for funding.

Accountability and transparency of VOs are the two important foundations for the sound governance of an organisation. The laws governing the registration of societies, the Foreign Contributions Regulations Act (FCRA) and the Income tax act give central government the power of scrutiny and the prevention of financial irregularities by the VOs. It is mostly when VOs do not abide by these laws that they have to face tighter scrutiny from the government. On the other hand, laws require amendments in their various draconian clauses, which has been discussed at length in the earlier and following sections.

### Section III – Access to Resources

*“There are 1.5 million VOs operating in Uttarakhand receiving 700 core funds from Foreign Contributions Regulations Act (FCRA). Out of this 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*

The health of any organisation and its ability to continue to working on social issues is governed by the funding environment in the country. The voluntary sector in India receives funds from three main sources for carrying out their tasks:

- funds received as grants from the government under various programmes and schemes;
- funds from foreign agencies and organisations with developmental mandates, and;
- private sector funding as per the new Companies Act 2013.

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<sup>31</sup>. VANI. *Voice of the Voluntary sector in Jharkhand*. New Delhi.

<sup>32</sup>. Source: Response from one of the respondents during Eastern Regional focus group discussion held on 16 April, 2014

**Government funding** can be accessed by the voluntary sector from various ministries. Every ministry has grant in aid schemes, and after approval from the concerned ministry, grants are given to voluntary organisations for implementation of their projects. The government funds/grants are accessed by voluntary organisations for carrying out development works related to health, education, environment protection, women empowerment, care of orphan/widows, skill training etc. through various central/state ministries. Another way to access government funds is by bidding for a tender. However, many respondents felt that the neo-liberal economics in the globalization age has turned voluntary organisations into contractors, bidding for contract-based service provisions. In a situation where bidding over contracts for services becomes a matter of course, it is difficult to distinguish between the non-profit and for profit sector.<sup>33</sup>

The current legal framework supports access to government grants but not uniformly. The applicant needs to be a registered body as per any of the Acts mentioned in Chapter 3 (Section 1) and have the ability to fulfill the established requirements. The National Policy on Voluntary Sector framed by the government in 2007 was envisaged as the beginning of a process to improve the working relationship between the government and the voluntary sector, without affecting the autonomy and identity of VOs. Though the legal framework supports the government funding to VOs across all the states in India, there are some specific challenges as have emerged from the study:

- **Delay in receiving funds:** Most of the regional discussions centered around delay in receiving funds from the government. The VOs in the states like Uttar Pradesh, West Bengal, Maharashtra, Assam etc. mentioned the delay in receiving funds from the government. In some of the cases stated by the respondents, there have been delays of almost six months to one year from the commencement of the project cycle. The delay is usually due to the process involved in releasing the grants.<sup>34</sup>

*An organisation from ASSAM reported that they didn't receive any grant after the first two installments of a project for running family counselling centers under the State Social Welfare Board. They did many follow-ups but no response was given from the authorities. Delay in delivering other resources in the form of seeds, fertilizers, pesticides, equipment like hand pumps, machines etc. was also reported by those implementing government projects on agriculture.<sup>35</sup> (Amin, 2012, pp. 14-15)*

- **Lack of transparency in the system:** Most of the representatives from the voluntary organisations interviewed stated that the selection of organisations for sanctioning grants is often not based on the quality of the proposals or earlier performances. While bureaucratic interferences make the situation difficult for many organisations, corruption and bribing were mentioned by the respondents, leading to many grants being granted to the most powerful people with the right contacts. The performance of such people is also not monitored properly. It was raised by most of the respondents especially from northern and western regions that the MPs, bureaucrats and politicians have also formed and registered their own voluntary organisations to implement government schemes and programmes.

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<sup>33</sup> Sinha, C. (2007). *Public sector reforms in India: New role of the District Officer*. New Delhi: Sage Publications India pvt ltd.

<sup>34</sup> Response during the regional focus group discussions

<sup>35</sup> Amin, R. (2012). *Status of Voluntary organisations in North East - Citizen's report*. New Delhi: Voluntary Action Network India.

- **Relationship with line departments intimidating for smaller organisations:** Relating to line departments is a difficult task, and VOs face difficulty in approaching them. The behaviour of government officials is more intimidating for smaller voluntary organisations. However, there are also officers that are considered helpful but in some cases if they get transferred then it becomes difficult for VO to have sustained relationships as the work gets held up till next person takes charge.<sup>36</sup>
- **Lesser scope for rights-based work:** Organisations working on rights based approaches and those undertaking advocacy against government policies and programmes have no space for receiving government support. A renowned head of a voluntary organisation (name withheld) from New Delhi during a personal interview shared, *“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.”*

**Policy intent of government for the voluntary sector in the Twelfth Five-Year Plan:** The National Policy on the Voluntary Sector (2007) aimed towards creating an enabling environment for VOs to stimulate their effectiveness and safeguard their autonomy, enabling VOs to legitimately mobilise necessary financial resources from India and abroad, better government-VO relations and encouraging VOs to adopt transparent and accountable system of governance.

Taking off from the recommendations of the National Policy on the Voluntary sector (2007), the Planning Commission adopted a consultative approach for the mid-term appraisal of the 11th Five-Year Plan on 26th October, 2010. Voluntary organisations were involved in reviewing the promises made by 11th plan and assess its consequent impacts. The recommendations were compiled in a document titled **‘Approaching Equity: Civil society inputs for the Approach Paper to the 12th plan’**.<sup>37</sup> Besides this singular Five-Year Plan oriented initiative, the planning commission has consistently engaged with voluntary organisations through the Civil Society Window Program.<sup>38</sup> This was started by inviting civil society representatives to share grassroots realities and alternative views on development with members and officials of the planning commission as well as with representatives of concerned ministries and state governments. Since its inception in 2005, there have been 41 civil society windows that have enabled organisations to present their views and suggestions to policy-makers.<sup>39</sup>

The Steering Committee<sup>40</sup> formed on voluntary action<sup>41</sup> by the Planning Commission on 7th June, 2011 envisaged that at the end of the Twelfth Five-Year Plan (2012-2017), the country should have:

- i. A coordinated system of dialogue between the state and the voluntary sector on the central issues of poverty eradication, protection of the most marginalised and vulnerable communities (including minorities, Nomadic

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<sup>36</sup> VANI. *Study on the challenges of grassroots voluntary organisations*.

<sup>37</sup> Wada Na Todo Abhiyan. (n.d.). *Approaching Equity: Civil Society Inputs for the Approach Paper - 12th Five Year Plan*. Retrieved May 15, 2014, from United Nations Development Programme Website: [http://www.in.undp.org/content/dam/india/docs/approaching\\_equity\\_civil\\_society\\_inputs\\_for\\_the\\_approach\\_paper\\_12th\\_five-year\\_plan.pdf](http://www.in.undp.org/content/dam/india/docs/approaching_equity_civil_society_inputs_for_the_approach_paper_12th_five-year_plan.pdf)

<sup>38</sup> VANI. (2013). *Status of the Voluntary Sector in India: A study report*. New Delhi: Voluntary Action Network India.

<sup>39</sup> VANI. (2013). *Status of the Voluntary Sector in India: A study report*. New Delhi: Voluntary Action Network India.

<sup>40</sup> Steering committee was formed by Planning Commission, Government of India for the formulation of twelfth five year plan (2012-17) for the voluntary sector. Its members consisted of secretaries of various ministries and representatives from voluntary sector.

<sup>41</sup> Planning Commission. (2007). *Report of the steering committee on voluntary sector*. New Delhi: Government of India.

Tribes Transgender groups, differently-abled persons, Primitive Tribal Groups, Internally Displaced Persons) through access to justice, conflict resolution, sustainable development, gender equity, rural transformation, heritage and culture promotion, financial inclusion and capacity-building/ talent management of India's human resource, particularly the youth.

- ii. A stable, growing, eclectic and better managed voluntary sector with greater transparency and accountability; enabled by laws, institutional structures and frameworks that can provide support even in a non-homogenous environment.
- iii. A better skilled and equipped body of voluntary sector professionals which is empowered to work towards a more inclusive, equitable and harmonious social order.
- iv. An empowered voluntary sector that plays the important role of animating and establishing among others a robust and participatory Panchayati Raj System<sup>42</sup> of self-governance and that encourages youth, both men and women to give some of their time to nation building as part of their own self-development.
- v. Institutionalised **legal measures** that are uniformly applicable across states to ensure protection of all voluntary actors against any form of political, social or economic harassment by either the state or market forces.

However, the practical experience of voluntary sector organisations suggests that the government has not lived up to its commitments. It was stated that government has become strict about legal and financial compliances and not about the quality of work.

## Foreign Funding

Foreign funding is considered as a major indicator of development, diplomacy and cooperation. In India, it has been a traditional source of growth for the voluntary sector. It is also a major source for innovation, development models, and flexible support for the sector. Many institutions of national importance are a result of such cross-country aid. However, in the last few years, the foreign funding to VOs has been topic of debates - its relevance, nature and accountability are being debated. Recently, the release of Intelligence Bureau<sup>43</sup> (IB) report in India targeting VOs for receiving foreign fund has harassed the sector as a whole and discredited it despite the sector's numerous contributions to and impacts on India.<sup>44</sup> The report has gone ahead to state that the sector has stalled the economic growth of India by 2-3%.

On the other hand, the global trend is on the reverse wherein government to government aid (budget support) is replacing support to VOs. Apart from the UN and international financial institutions like the World Bank, bilateral agencies and international development agencies are also increasingly a source of this type of foreign funding. The rise of India as a middle income country has made donors shift focus from India towards other lower-income countries (see example of United Kingdom in box). India has formulated a Foreign Contribution Regulation Act (FCRA - 2010) to regulate foreign money flow to the sector. Apart from the FCRA, control is also exercised through the Department of Economic Affairs (DEA) under the Ministry of Finance.

Before assessing the sources of foreign funding and realities on the ground, it is equally important to assess the economic realities of India (provided in box below) and the political intent of government towards altering the spaces for funding in India. From being a recipient of international aid since decades, India has upgraded its profile to join the ranks of donors and is increasingly extending economic and development assistance to countries in South Asia,

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<sup>42</sup> Panchayati Raj is a three tier system of local governance in India with elected bodies at Village, Block and District levels.

<sup>43</sup> Intelligence Bureau is India's internal intelligence agency under the Ministry of Home Affairs.

<sup>44</sup> Ranjan, A. (2014, June 7). Foreign-aided NGOs are actively stalling development, IB tells PMO in a report. Retrieved June 13, 2014, from The Financial Express Website: <http://www.financialexpress.com/news/foreignaided-ngos-are-actively-stalling-development-ib-tells-pmo-in-a-report/1258034>

Africa, Central Asia, Latin America and the Caribbean.<sup>45</sup> But the issue lies with the fact that Indian VOs are not fully informed on these global developments. The relentless efforts of VOs, and their role as development actors in their own right, must be fully recognised by the government and on the other hand VOs need to become fully aware of the changes in India due to the global developments that took place.

### **Shrinking spaces for foreign funding in India – Economic realities<sup>46</sup>**

*With the establishment of Development Partnership Administration (DPA) in the Ministry of External Affairs in January 2012, managing of economic aid and assistance has become more centralized, though it will take more time to put systems in order. Also according to the Global Humanitarian Assistance report called 'India: Country briefing', in the year 2009 India ranked as the eighth largest recipient of external aid at US\$ 2.5 billion from donor reporting to the Organisation for Economic Cooperation and Development (OECD) and Development Assistance Committee (DAC). The report, published in January 2012 also states that the Indian economy has grown threefold in 2010 and is now the 10th largest in the world by nominal GDP. With this and shift in focus of the Ministry of International Aid in the United Kingdom (UK) to encourage bilateral trade between the two countries, the latter announced in November 2012 that all financial aid from the UK to India will cease with immediate effect excluding programmes currently running on the ground. All such programmes are expected to be complete by 2015.*

### **FCRA 2010**

Voluntary organisations access foreign funds through an Act called Foreign Contribution Regulation Act (2010). The government adopted the new FCRA Act in 2010, the rules of which were notified in 2011. The primary purpose of the enactment was to ensure that foreign contributions are utilized for bonafide activities without any compromise to the national security.<sup>47</sup> The Ministry of Home Affairs of the Government of India is assigned the responsibility of implementing FCRA. FCRA 2010 repealed the 30 year old Foreign Contribution (Regulation) Act of 1976. It gives more authority to enforcement agencies to regulate donations from abroad. The Act's preamble prohibits acceptance and utilization of foreign contributions or foreign hospitality for any activities detrimental to national interest. Foreign hospitality in the Act means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment. FCRA 2010 bars several organisations, including those of a political nature from receiving foreign funding. Using the 'law and order' situation in the country and the need to control 'the foreign hand', FCRA 2010 was passed without much space for debate. It indicates the change in the intention of government from reforming and enabling the sector to controlling and commanding it.<sup>48</sup>

Though there were some overly stringent rules under the FCRA but some provisions were modified for the benefit of the sector. For instance under Section 17 (1) of FCRA 2010 the norm for a single bank account was relaxed. The provision to operate multiple bank accounts was allowed for the utilization of funds in multiple locations. This amendment provides a great relief to all the voluntary organisations which were struggling under the arbitrary disallowance of multiple bank accounts under FCRA, 1976.<sup>49</sup> Some of the prominent challenges to FCRA Act and the FCRA rules notified in 2011 include –

<sup>45</sup> Roche, E. (2012, July 01). India goes from aid beneficiary to donor. Retrieved June 18, 2014, from Live Mint Website: <http://www.livemint.com/Politics/BToxm8wd11xe45wSBbkqGO/India-goes-from-aid-beneficiary-to-donor.html>

<sup>46</sup> VANI. (2013). Status of the Voluntary Sector in India: A study report. New Delhi: Voluntary Action Network India.

<sup>47</sup> FCRA wing, Ministry of Home Affairs. (2012, November 13). Receipt and Utilisation of Foreign Contributions by Voluntary Associations. Retrieved June 17, 2014, from Ministry of Home Affairs Website: <http://mha1.nic.in/fcra/annual/ar2010-11.pdf>

<sup>48</sup> VANI. (2013). Enabling environment for voluntary organisations - A global campaign. New Delhi: Voluntary Action Network India (VANI).

<sup>49</sup> Fogla, M. (2011). FCRA Analysis of Foreign Contribution (Regulation) Act 2010 and Rules 2011. Standards and Norms, 7-8.



1. The Rule 3(iii) of FCRA 2010<sup>50</sup> provides that an organisation can be declared of political nature if it has objectives of political nature or comments upon or participates in political activity. It may be noted that the word or is used between political objectives and comments. In other words, even commenting on a political activity may render an organisation to be of political nature. This is very serious and unconstitutional provisions which directly infringes upon the constitutional right to speech and have independent opinion. Therefore, providing such unfettered powers to the FCRA department is totally unwarranted and this rule needs to be reconsidered.
2. Rule 6 of the FCRA, 2010 provides that individuals receiving more than Rs 1 Lakh in one financial year from foreign sources (including relatives) are mandated to inform the Central Government using form FC – 1 within 30 days of such receipt.
3. Renewal of organisations once in every 5 years. The process as laid down in the new act is cumbersome. Till today, the VOs were able to secure permanent registration and approval for the receipt of foreign contribution. Though it was argued by the Union Home Minister that this regulation was necessary in light of some dishonest organisations, it would have been better to debar/ blacklist those particular organisations than putting the whole VO fraternity in trouble. Acting along these lines, VANI demanded online submissions of renewal applications, mandatory annual submissions of annual reports, income tax returns and applications for new registration. Online acknowledgement of applications and tracking has been introduced in response to this appeal by VANI and other civil society actors. No doubt submission of hardcopies will be necessary, but the online facility will enhance accountability.
4. Though the act has made it mandatory that the reasons for rejection of applications to be intimated, sweeping powers have been given to the authorities for rejecting the application. There are strict conditions laid out in the section 23 of FCRA Act that inspecting officer can seize the FCRA account of an organization if it finds that the law or any provision of it has been contravened. This provision is quite broad and open to abuse will affects human rights associations and organisations that are critical of the government policies and programmes. (Refer to the case of INSAF, discussed below)
5. Over the past two years, FCRA registration of 4,138 organisations was cancelled.<sup>51</sup> It was later clarified by the FCRA department that this was an effort to weed out the dormant and inactive FCRA registered organisations on account of non – submission of returns, change of address, not updating contact details with the concerned department or no reasonable activities in the last couple of years. As per the rule, the department should have suspended the registrations. However, only 257 organisations raised their voice against the cancellation which proves that the rest of the cancelled organisations do not exist anymore. The department claims that proper measures are being taken to revoke the cancellation by checking the papers. But most of the VO officials that defied the cancellation said that the government had not sent them notices before cancelling their FCRA registration. Moreover the institutions were also not given the time to respond. In some cases the notices were sent to old addresses.

It was thus felt by majority of the respondents that the funding compliances and scrutiny by government are getting more stringent day by day. The government is tightening its control over grant making to VOs and is increasingly wielding its power over the way the grants are invested in projects. The procedures for seeking clearance and sanction of projects at all levels have become cumbersome and lengthy. Amendments in FCRA have made VOs access to foreign funds difficult. There are very few donor agencies who fund projects that target governance, rights access,

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<sup>50</sup>. Ministry of Home Affairs. (2011, April 29). Notification of FCRA rules. Retrieved May 29, 2014, from Ministry of Home Affairs Website: [http://www.mha.nic.in/sites/upload\\_files/mha/files/FC-rules2011.pdf](http://www.mha.nic.in/sites/upload_files/mha/files/FC-rules2011.pdf)

<sup>51</sup>. VANI. (n.d.). State wise FCRA Cancelled NGOs. Retrieved May 5, 2014, from Voluntary Action Network India Website: <http://vaniindia.org/FCRA.pdf>

government responsibilities and accountability issues etc. This is because of the FCRA 2010 that specifies any organisation found to be engaged in political activity such as undertaking campaigns, bandh, rasta roko, rail roko and jail bhara (strike, road blockade, railways and transportation strike and imprisonment) will be considered as organisations of a political nature.

## **Key Sections of FCRA, 2010 relating to Voluntary organisations**

### **Section 3 – Prohibition to accept foreign contribution.**

1. No foreign contribution shall be accepted by any—candidate for election; correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government; member of any Legislature; political party or office-bearer thereof; organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government; association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 or any other mode of mass communication; correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

### **Section 7 - Prohibition to transfer foreign contribution to other person.**

No person who –

- a. is registered and granted a certificate or has obtained prior permission under this Act; and
- b. receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act.

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government.

### **Section 8 - Restriction to utilize foreign contribution for administrative purpose.**

1. Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,—

- a. shall utilize such contribution for the purposes for which the contribution has been received:

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business: Provided further that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;

- b. shall not defray as far as possible such sum, not exceeding fifty per cent. of such contribution, received in a financial year, to meet administrative expenses:

Provided that administrative expenses exceeding fifty per cent. of such contribution may be defrayed with prior approval of the Central Government.

2. The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

### **Section 12 - Grant of certificate of registration.**

1. An application by a person for grant of certificate or giving prior permission shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

2. On receipt of an application, the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.
3. If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of application under sub-section (1), register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed:

Provided that in case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant:

Provided further that a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

4. The following shall be the conditions for the purposes of sub-section (3), namely:--
  - a. the person making an application for registration or grant of prior permission under sub-section (1),-
    - i. is not fititious or benami;
    - ii. has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
    - iii. has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
    - iv. has not been found guilty of diversion or mis-utilization of its funds;
    - v. is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
    - vi. is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
    - vii. has not contravened any of the provisions of this Act;
    - viii. has not been prohibited from accepting foreign contribution;
  - b. the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilized;
  - c. the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilized;
  - d. in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;
  - e. in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;
  - f. the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially—
    - i. the sovereignty and integrity of India; or
    - ii. the security, strategic, scientific or economic interest of the State; or
    - iii. the public interest; or
    - iv. freedom or fairness of election to any Legislature; or
    - v. friendly relation with any foreign State; or

- vi. harmony between religious, racial, social, linguistic, regional groups, castes or communities;
- g. the acceptance of foreign contribution referred to in sub-section (1),--
  - i. shall not lead to incitement of an offence;
  - ii. shall not endanger the life or physical safety of any person.
- 5. Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor and furnish a copy thereof to the applicant

Provided that the Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this section in cases where is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005.

- 6. The certificate granted under sub-section (3) shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.

#### **Section 16 – Renewal of Certificate.**

- 1. Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.
- 2. The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.
- 3. The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years.

Provided that in case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant.

Provided further that the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.

#### **Section 17. Foreign contribution through scheduled bank.**

- 1. Every person who has been granted a certificate or given prior permission under section 12 shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate:

Provided that such person may open one or more accounts in one or more banks for utilizing the foreign contribution received by him:

Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.

- 2. Every bank or authorized person in foreign exchange shall report to such authority as may be specified—
  - a. prescribed amount of foreign remittance;
  - b. the source and manner in which the foreign remittance was received; and
  - c. other particulars, in such form and manner as may be prescribed.

### **Section 23. Inspection of accounts or records.**

If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been or is being, contravened by—

- a. any political party; or
- b. any person; or
- c. any organisation; or
- d. any association,

it may, by general or special order, authorize such gazetted officer, holding a Group A post under the Central Government or such other officer or authority or organisation, as it may think fit (hereinafter referred to as the inspecting officer), to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such inspecting officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record.

### **Case of INSAF**

*The Government suspended the permission of Indian Social Action Forum (INSAF), a network of more than 700 VOs across India. 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.<sup>52</sup> INSAF on August, 2011 had filed a petition in the Supreme Court challenging the amended FCRA, 2010 rules<sup>53</sup> 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.*

*However in this particular case, the judgment in favour of INSAF has also aroused a hope among the voluntary organisations fighting for a true verdict against victimisation.<sup>54</sup>*

*The irony here is that a foreigner may make an investment in an Indian company. The Indian company is allowed to lobby with members of parliament, bureaucrats and local governments. It can engage "public affairs consultants" and influence policy say, mining policy of the government. Yet if a voluntary organisation were to protest against the government's mining policy, it is prohibited from getting any donations from foreign sources.*

*Adapted from VANI citizen report*

<sup>52</sup> Lakshmi, R. (2013, May 19). Activists bristle as India cracks down on foreign funding of NGOs. Retrieved May 29, 2014, from The Washington Post Website: [http://www.washingtonpost.com/world/asia\\_pacific/activities-bristle-as-india-cracks-down-on-foreign-funding%20-of-ngos/2013/05/19/a647ff80-bcaf-11e2-b537-ab47f0325f7c\\_story.html](http://www.washingtonpost.com/world/asia_pacific/activities-bristle-as-india-cracks-down-on-foreign-funding%20-of-ngos/2013/05/19/a647ff80-bcaf-11e2-b537-ab47f0325f7c_story.html)

<sup>53</sup> Ministry of Home Affairs. (2011, April 29). Notification of FCRA rules. Retrieved May 29, 2014, from Ministry of Home Affairs Website: [http://www.mha.nic.in/sites/upload\\_files/mha/files/FC-rules2011.pdf](http://www.mha.nic.in/sites/upload_files/mha/files/FC-rules2011.pdf)

<sup>54</sup> INSAF. (2013, March 24). INSAF website. Retrieved June 13, 2014, from <http://insafvsfcra.blogspot.in/>

## Private Sector Funding

The rapidly changing environment is gradually changing the funding base for VOs, the nature of their relationships and their activities. The country's economic growth progressed rapidly and by 2008, India was the world's second fastest growing economy and the tenth largest. With this growth came an explosion in the income of many Indians.<sup>55</sup> The number of high net worth individuals (HNIs) grew by 21 percent from 2009 to 2010 the highest on-year growth in the world. India is now home to six of the world's 100 wealthiest individuals. These are exciting times for philanthropy in India as Indians have finally started to recognise the country's economic growth which has led to a tremendous spurt of activity over the last two years.<sup>56</sup> Large pledges have been made by business leaders such as Azim Premji, Shiv Nadar, Birlas etc. To date, the government has served as the major funder of India's social causes, but given the profound needs in India and the limited government resources, there is a need for other financial sources. Much of the funding has started to come from individual givers, private foundations and business houses.

Individual, businesses and foundations have been empathetic towards humanitarian causes and development organisations despite economic downturn and have contributed to the crucial source of funding in the face of declining official aid.<sup>57</sup> If we analyse the data, 24% of the international humanitarian donations from 2006 to 2010 came from private voluntary contributions. So at a time when government resources are limited and there is an increasing demand for aid, contributions from individuals becomes a solution for many organisations. In the Southern region, Wakf Board is a major source of funding for the VOs. Wakf Board is an endowment with contributions from many individuals for community empowerment. It was amended in December 2013 and the assets of the endowment are worth 2 billion dollars.

Some of the important sources of private funding are:

1. Individual givers- These include Indian nationals, non-resident Indians (NRIs), or citizens of other countries with ethnic or emotional links to India. They range from small one-off donors to major philanthropists.

*During the focus group discussion, it was reported that one of the ways to generate resources in Anantpur district of Andhra Pradesh is by the way of collection in a Hundi –wherein the community donate as per their economic status and desire to put in money. After the end of each financial year the hundi is broken in each village and the collected sum of money is used for the purpose of development. This funds village development works.*

2. Corporate social responsibility –The emergence of the New Companies Act 2013 has opened various options for socio-development sector. Profit-making companies have to spend 2% of their profit towards people, planet and profit. A lot of private companies like TATA, BIRLA etc. have invested part of their profit in corporate social responsibility activities by partnering with various voluntary organisations and adopting various communities by providing them with financial assistance.
3. Trusts and foundations-Since most Indian businesses are family businesses, a separate philanthropic organisation may be created, in the form of a foundation or a trust. These are largely funded by the businesses, and often run under the leadership of the business family. These are split between India-based and overseas organisations (although the larger international foundations, such as the Bill and Melinda Gates Foundation and the Michael and Susan Dell Foundation, have offices in India).

<sup>55</sup> ISB. (2012, February). *Catalytic Philanthropy in India*. Retrieved June 15, 2014, from [http://evpa.eu.com/wp-content/uploads/2011/05/Catalytic\\_Philanthropy\\_India2.pdf](http://evpa.eu.com/wp-content/uploads/2011/05/Catalytic_Philanthropy_India2.pdf)

<sup>56</sup> ISB. (2012, February). *Catalytic Philanthropy in India*. Retrieved June 15, 2014, from [http://evpa.eu.com/wp-content/uploads/2011/05/Catalytic\\_Philanthropy\\_India2.pdf](http://evpa.eu.com/wp-content/uploads/2011/05/Catalytic_Philanthropy_India2.pdf)

<sup>57</sup> Stoianova, V. (2012, April). *Private Funding - An emerging trend in humanitarian donorship*. Retrieved July 1, 2014, from *Global Humanitarian Assistance Website*: <http://www.globalhumanitarianassistance.org/wp-content/uploads/2012/04/Private-funding-an-emerging-trend.pdf>

Various industrialists and businesses have long contributed to the society, but it was felt that some corporate businesses were isolated and not involved with various developmental issues such as health, education and overall welfare. The economy of India has witnessed continuous changes; it is going through consistent growth and expansion. With this background, the central government - after due deliberations - decided to repeal the Companies Act, 1956 with the introduction of new legislation in order to reflect the continuous changing dynamics of national and international economic environment. In India the passing of a new Companies Bill in 2012 by the Lok Sabha on 18 December 2012 was seen as a major avenue by voluntary sector organisations to raise fund from private corporations. The law mandates 2% of profit after tax (PAT) of the preceding three years to be spent on corporate social responsibility (CSR) activities. All companies having revenue greater than INR 1000 crore (\$ 200 million) or profits of INR 5 crore (\$ 1 million) are required to spend 2% of the average of the last 3 years profits towards CSR activities. Schedule VII of the Act highlights the development tasks that can be considered as corporate social responsibility activities:

- Eradicating extreme hunger and poverty,
- Promotion of education,
- Promoting gender equality and empowering women,
- Reducing child mortality and improving maternal health,
- Combating HIV/AIDS, malaria and other diseases,
- Ensuring environmental sustainability,
- Employment enhancing vocational skills,
- Social business projects,
- Contribution to PM's National Relief Fund, or any other fund set up by the central or state government for socio-economic development and relief or for the welfare of scheduled castes, scheduled tribes, oppressed classes, minorities, women, etc.
- Such other matter as may be prescribed.

The board of the company must designate a three member CSR committee to ratify decisions on spending of the 2% of the average profits of the past three years. Poverty alleviation, healthcare, education and social businesses have all been included as potential areas of investment. Employee expenses cannot be classifiable as CSR spending. If the amount is not spent in the year, the CSR committee will have to submit a report explaining the non utilization of the mandated amount.

Many corporate representatives share that provision in the Company Act means approximately INR 20,000 crores worth of funds that will annually be spent by the sector.<sup>58</sup> While on one hand this is an opportunity for the voluntary sector to develop linkages with the private sector to channel the money towards social development activities and benefits from its knowledge and experience of people-centric development, it also poses a challenge whether the non-profit organisations are capable of effectively absorbing this much capital. In the voluntary sector, it is also believed that this 2% will be used by companies as a source for developing business alliances and smaller companies who do not have their own CSR might donate their 2% to bigger brands of CSR.

With the emergence of various foundations there has been a fierce competition within civil society. Many feel with the coming of foundations the money is not reaching small or medium VOs. They 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.

There have been various business houses like FICCI, ASSOCHAM, and CII etc. which have been actively involved

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<sup>58</sup>. PricewaterhouseCoopers. (2013, November). *Handbook on Corporate Social Responsibility in India*. Retrieved June 20, 2014, from PricewaterhouseCoopers Website: <http://www.pwc.in/assets/pdfs/publications/2013/handbook-on-corporate-social-responsibility-in-india.pdf>

with various companies in strengthening the relationship between VOs and corporates based on shared values. The various interactions between the two sectors have been with the objective of engagement for better CSR practices as well as also re-orienting them to expand their support to VOs working beyond the service delivery approach.<sup>60</sup>

This is the best time for partnership where both the sectors can set a clear-cut agenda on their future collaboration. It is time they take their relationship forward and have a long-term association. Both the voluntary sector and private sector have their own distinct qualities. Voluntary sector organisations have skills but no resources whereas corporate actors do not have the knowledge and skills in social development but have resources so there is a natural match for enhanced cooperation. If put together the distinct attributes of both the private and voluntary sector can add value to each other and this can be a start to tackle complex social problems.

Despite different sources of funds available to the VOs in India, voluntary organisations are still grappling with financial challenges. This is because of the strict laws which are seen more as controlling and restrictive in nature. VO representatives mostly felt that their role and contributions in development need to be acknowledged and in order to function effectively, VOs need to have access to resources.

### **Section 135 of Companies Act, 2013 on Corporate Social Responsibility**

- (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
- (3) The Corporate Social Responsibility Committee shall,--
  - (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
  - (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
  - (c) monitor the Corporate Social Responsibility Policy of the company from time to time.
- (4) The Board of every company referred to in sub-section (1) shall,--
  - (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
  - (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.
- (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:  
Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:  
Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (c) of sub-section (3) of section 134, specify the reasons for not spending the amount.

<sup>59.</sup> FICCI. (2009, December 4). *Corporate Social Responsibility - Voluntary Guidelines for Business*. Retrieved June 21, 2014, from Ministry of Corporate Affairs Website: [http://www.mca.gov.in/Ministry/latestnews/Corporate\\_Social\\_Responsibility\\_4Dec2009.pdf](http://www.mca.gov.in/Ministry/latestnews/Corporate_Social_Responsibility_4Dec2009.pdf)



## Section IV – Expression

The right to freedom of speech and expression enjoys a special position as far India is concerned. The importance of freedom of expression and speech can be understood by the fact that the preamble of constitution<sup>60</sup> guarantees to all citizens liberty of thought, expression, belief, faith and worship. The Constitution of India guarantees the right of freedom to its citizens, given in Articles 19, 20, 21 and 22. Freedom of speech and expression is indispensable in any democracy. Article 19 of the Indian Constitution provides six basic fundamental freedom to all its citizens –

- To free speech and expression
- To assemble peacefully and without arms
- To form associations or unions
- To move freely throughout the territory of India
- To practice any profession and to carry out any occupation, trade or business

However, clause 2 of the Article 19 enables the legislature to impose certain restriction on free speech if it involves violation of or affects the security of the state, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, sovereignty and the integrity of India.

The right to freedom of expression is also guaranteed to VOs by both Article 19 of the Universal Declaration on Human Rights (UDHR), a United Nations General Assembly resolution and Article 19 (2) of International Covenant on Civil and Political Rights (ICCPR), a formally binding legal treaty ratified by 165 states.

The UDHR was adopted by the General Assembly of the United Nations on 10 December, 1948 and provides human rights standards accepted by all member states. The Article 19 of UDHR states -

*Everyone shall have the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

The ICCPR entered its force in 1976. It elaborates the principles laid out in UDHR. India acceded to the convention on 10 April, 1979. The Article 19 (2) of ICCPR states –

*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

Along with right to expression comes the very important right to know and to access information. This is another facet of promoting freedom of speech in India and is used mostly by social activists and VOs. An Indian citizen is guaranteed freedom to receive information through Right to Information Act, 2005.<sup>61</sup> However, the Right to Information Act-2005, which specially talks about people's right to ask information from government official, prohibits disclosure of certain documents under Section 8 of the Act. The right to know has also not yet invalidated Section 5 of the Official Secrets Act, 1923<sup>62</sup> which prohibits the disclosure of certain official documents that affect the sovereignty and integrity of India, security and friendly relations with foreign states. These exceptions are generally the grounds for reasonable restrictions over freedom of speech and expression under Article 19(1) of Constitution of India.

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<sup>60.</sup> Bakshi, P. (1995). *The Constitution of India*. Delhi: Universal Book Traders

<sup>61.</sup> Ministry of Law and Justice, Government of India. (2011, July). *Right to Information Act, 2005*. Retrieved June 23, 2014, from Department of Justice, Ministry of Law and Justice Website: <http://doj.gov.in/?q=node/141>

<sup>62.</sup> Government of India. (n.d.). *The Official Secrets Act, 1923*. Retrieved June 23, 2014, from Government of India Website: <http://www.archive.india.gov.in/allimpfrms/allacts/3314.pdf>

However, due to the colonial era Indian Penal code 1861 provisions relating to criminal defamation section 499; maintaining good relations between communities section 153A and section 295A, which are liable to misuse, freedom of expression is often restricted. The LGBTI (Lesbian, Gay, Bisexual, Transgender, Intersexed) groups have to operate in a grey area again due to colonial era Indian Penal Code 1861 section 377 provisions.

While the voluntary sector in India is constitutionally free to express itself, a few challenges are also reported by VOs in the conflict/extremist affected areas and in some cases which involve VOs expressing strong criticism of government policies.

**Naxalism and lack of freedom of expression in extremist affected areas:** The relationship between government and voluntary sector in extremist affected areas (naxalism) suffers more due to a doubtful relationship that exists between the two with the former doubting the intention of activities of the latter. In states like Chattisgarh, Jharkhand, North-eastern states etc. most of the VOs feel that the state government takes a very antagonistic stand in this context and largely views them as naxal supporters. VOs from Chattisgarh shared that the police interference in their organisation's operation have increased immensely since the launch of anti-naxal operations in the state. Voluntary Organisation's have to tell the local police station on regular basis about their plan of action and movements of their staff in the project area. For even conducting a village meeting it has been made mandatory in the naxal affected districts to inform the local police station two days in advance, failure of which can lead to action against the organisation.

*In April 2011, the Kanker district administration listed eight VOs with suspected links with naxals and had directed them to submit their papers, annual budget details to local police station for scrutiny. These kinds of development have threatened the VOs operation in the state and its freedom to express or critique local administration as they remain under the fear of scrutiny and abuse.<sup>63</sup>*

*"...The condition of voluntary organisations is not encouraging in states where extreme left-wing movements are at their peak e.g. Chattisgarh, West Bengal, Maharashtra and some parts of Andhra Pradesh. It is because of the unprecedented surveillance of the state over the functioning of voluntary organisations. Development work essentially includes working closely with individuals, communities and diverse groups existing within a particular geographical area. To work towards bringing about such a social transformation it is important that the voluntary organisations enjoy a conducive environment to exist and to operate. It is the lack of an enabling environment that has put a break to our efforts in those areas."*

**— Dr. Jayant Kumar, Head of Programmes, CASA**

## Section V – Peaceful Assembly

The right to protest peacefully is a fundamental right and the Constitution of India provides for the freedom of assembly and association under Article 19(1)(b). The Article guarantees the freedom of assembly and this can be curbed only in the interest of public order or the integrity of the nation. However this right is subject to restrictions under sub clause (2), whereby this freedom can be restricted for reasons of sovereignty and integrity of India, the

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<sup>63</sup> Source: VANI. Citizen report, Chattisgarh

security of the state, friendly relations with foreign states, public order, preserving decency, preserving morality, in relation to contempt of court, defamation and incitement to an offence.

The rights to freedom of expression and of peaceful assembly are recognised in Articles 19 and 21 of the International Covenant on Civil and Political Rights – to which India is a state party. Under international human rights law, any restrictions on the exercise of these rights are permissible only if they are demonstrably necessary for the protection of certain public interests or for protection of the rights and freedoms of others but must not jeopardise the right itself.

However, it is common that police permission is required for rally, public meetings and demonstrations. Many a times, Unlawful Activities Prevention Act has been invoked against civil society members from exercising freedom of association and peaceful assembly. In a popular *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 arrived at and the fast and protest was allowed to go ahead, with an undertaking reportedly signed by Hazare and other organizers.*<sup>64</sup>

Voluntary organisations are also required to seek prior permission from Ministry of Home Affairs before organising international conferences.<sup>65</sup> This provides the government with substantial political control over the work of VOs and their freedom of assembly and association.

Despite constitutional provisions and laws, certain laws are used as a weapon to curb the rights of people and the sector to assemble peacefully. E.g. Section 144 of the Criminal Procedure Code (CrPC) of 1973 empowers a magistrate to prohibit an assembly of more than ten people in an area. The maximum punishment for engaging in rioting is rigorous imprisonment for 3 years and/or fine.

*In a popular incident, the section was misused during the protests in the aftermath of the 2012 Delhi gang rape case. When in December, 2012, a special executive magistrate imposed prohibitory orders around India Gate, a popular location for public protests, under the section for up to six months. In January 2013, the Delhi High Court issued a notice to Delhi Police in this regard as it found the orders contrary to the fundamental rights of citizens.*<sup>66</sup>

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<sup>64.</sup> Amnesty International. (2011, August 18). India: Authorities must respect the rights to freedom of expression and of peaceful assembly. Retrieved June 24, 2014, from Amnesty International Website: <http://www.amnesty.org/en/library/asset/ASA20/042/2011/en/6e0f443f-cd46-4a99-afc9-2732696d1fc9/asa200422011en.html>

<sup>65.</sup> Ministry of Home Affairs. (n.d.). Frequently Asked Questions relating to Conference Visa. Retrieved June 20, 2014, from Ministry of Home Affairs Website: [http://www.mha.nic.in/hindi/sites/upload\\_files/mhahindi/files/pdf/FAQs-on-ConferenceVisa.pdf](http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/FAQs-on-ConferenceVisa.pdf)

<sup>66.</sup> The Times of India. (2012, December 29). PIL against Section 144 at India Gate. Retrieved June 27, 2014, from The Times of India Website: <http://timesofindia.indiatimes.com/city/delhi/PIL-against-Section-144-at-India-Gate/articleshow/17801610.cms>

## Chapter 4

### OPTIONAL DIMENSIONS

In this chapter, three dimensions related to the functioning of the voluntary sector are being studied. These dimensions include – Taxation, Government – Voluntary sector relations and VO cooperation and coalition. These three dimensions are pertinent to study in the context of India as these pose challenges to the sector in India. While taxation laws are stringent with various restrictive clauses for the sector, the relations with government have strained over a period of time. A recent intelligence bureau (IB) report blaming the sector for loss to GDP growth has further led to strained relations with the government. The situation becomes critical in absence of strong coalitions and networks in the sector. Thus it was felt necessary that these three dimensions need to be studied thoroughly in the Indian context.

These three dimensions have been included in the following sections.

#### Section I – Taxation

*“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**

This section provides details on taxation laws in India, with a specific focus on the Income Tax Act, 1961 and the Direct Tax Code Bill. It focuses on the desk review of the legal framework and ground realities as have emerged from field interactions. Since the legal framework is national, the challenges for the voluntary sector are more or less similar across the different regions. Therefore, rather than doing a regional analysis, a thematic analysis based on the two laws has been conducted.

**The Income Tax Act, 1961** is a national Act that governs tax exemptions with respect to all non-profit organisations (registered under the Trust, Society or Company Act). Any voluntary organisation that is engaged in charitable work, defined as ‘relief for the poor, education, medical relief, and the advancement of any objects of general public utility not involving any activity for profit’, can claim tax exemptions and other benefits under the Income Tax Act, 1961 subject to the conditions and restrictions contained therein. An organisation can qualify for exempt status of the IT Act as per Section 11 of the Act if it meets the following conditions:

- Must be organised for religious or charitable reasons.

- Spends 85% of its income in any financial year on the objects of the organisation. The surplus income can be accumulated for specific projects ranging from 1 to 5 years.
- Funds of the organisation must be deposited as specified in section 11(5)<sup>67</sup> of the Income Tax Act.
- No part of the income or property of the organisation can be used or applied directly or indirectly for the benefit of the founders, trustees or their relatives.
- Organisation must file its annual income return regularly.
- Organisation must keep the basic record of all donors. All anonymous donations (exceeding Rs. 1 Lakh) are taxable at maximum marginal rate of 30%.

The procedure for registering a VO is to file an application in Form 10A in duplicate. This application is sent to the Commissioner having jurisdiction in the area where the VO is situated, and it should be filed before the expiry of one year from the date of creation of the VO or the establishment of the institution. It must be noted that the Commissioner of Income Tax has the power to reject an application for registration. However under the provisions of Section 253 of the Income Tax Act an appeal can be made to the Income Tax Appellate Tribunal against an order rejecting the application for registration. There are few areas of main interface between voluntary organisations and the Income Tax Act. First is the process of getting registered as a charitable institution under sections 12A and 12AA (in order to claim benefits under sections 11 and 12). Second is getting 80G exemption certificate status, which offers tax benefits to the donors of the VO amounting to 50% deduction from his/her/its taxable income. And third is claiming deductions under Sections 35, 35 AC and 35 CCA<sup>68</sup>. Section 35 AC of the IT Act helps VOs to mobilise funds from corporate and business sector as the business houses making contribution to such approved projects (as approved by National Committee) are allowed the benefits of deducting such contribution as expenditure.

Even though IT law provides for various benefits to the sector, most VOs consider many provisions and its actual implementation as draconian. As was informed by respondents during personal interviews and focus group discussions, the challenges faced by VOs in complying with the Income tax Act are as follows:

- There is a need for simplifying the administrative procedure. The time taken to register the organisation under Sections 80G and 12AA and an order giving approval or rejecting the application under these sections could be passed within a time limit of ninety days by the prescribed authority. However, currently the process takes much longer - at least 4 months for 12AA and another 4 months thereafter to get 80G.
- Under the existing provisions, surplus income can be accumulated for a maximum period of five years for specific projects. The period of accumulation needs to be enhanced.
- The exemption sought under the provision of Section 35AC<sup>69</sup> must be expedited.
- There should be a single window system to take care of taxation and FCRA.

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<sup>67.</sup> Section 11 (5) of the IT Act refers to the mode of investing and depositing money which includes investment in savings certificate and any other securities or certificates issued by Central Government; deposit in any account with post office savings bank; deposit with a scheduled bank or cooperative society; investment in units of the Unit Trust of India; investment in immovable property etc.

<sup>68.</sup> Patra, S. (2009, December). Charities to be in Tax Net? Implications of the Direct Tax Code Bill. *Civil Society Voices*, pp. 6 - 8.

<sup>69.</sup> Section 35 AC relates to claiming deduction by the public sector company or a local authority or to an association or institution approved by the National Committee (as constituted by the central government) for donating to the VO towards any project or scheme. The money sanctioned can be shown as expenditure.

- It was reported that taxation authorities do not understand the nonprofit 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.

The income tax laws in the country go against the financial sustainability of the voluntary sector organisations. Various tax laws affect the voluntary sector organisations like Service tax, which is applicable if VO provides any service covered under the Service Tax Act e.g. Consultancy services and Value Added Tax, applicable in case of sale of goods and services.

The government is already apprehensive about money laundering in this sector, and this combined with the perceived weak credibility of the sector creates a big challenge. Moreover, new channels of funding do not consider funding administrative functions of the organisation failing to realize that if the legitimate demands of the organisations are not met, malpractices would creep in.<sup>70</sup>

*Human Development Society of India, a VO, has been working since 2002 in Amravati district of Maharashtra. The Amravati district is known for hilly and tribal areas where the cases of malnutrition have been rampant. In this area, the organisation is working on various social concerns.*

*The organisation had applied for renewal of 80G in January 2011.*

*The entire process consumed lot of time in filling the application, and sorting out queries. The organisation is facing difficulty in getting renewal even though there is an Income tax specialist who is working for the VO in renewal process.*

*The employees have been running back and forth for renewal purposes, which delays a list of many other processes being implemented and organised. The entire process is very tiresome, as the man power of the VO is reduced, and raising funds for sustainability is crucial and can't be sidelined.*

*Due to the lengthy process the chances of raising donations using 80G, which provides tax benefits to donors, has been lost. Hence the dearth of funding is worse than usual. The process of local fundraising itself is very difficult, due to this time consuming process gathering donations becomes even more difficult. This affects the overall functioning of the organisation as the funding process is affected.*

— Adapted from VANI citizen report, Maharashtra

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<sup>70</sup> Cherian, M., Datta, A., & Modi, P. (2012). Report of the National Consultation held on 26th April, 2012 on Voluntary Sector in India: Challenges, Opportunities and Voices from the field. Gujarat: Institute of Rural Management Anand.

## Key Sections of the Income tax Act, 1961 relating to Voluntary organisations

### Section 11 -Income from property held for charitable or religious purposes.

- (1) The following income shall not be included in the total income of the previous year of the person in receipt of the income—
  - (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;
  - (b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;
  - (c) income derived from property held under trust—
    - (i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and
    - (ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

- (d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

### Section 12. Income of trusts or institutions from contributions.

- (1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.
- (2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.
- (3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilized for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilized in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax.

### **Section 12A – Conditions as to Registration of Trusts etc.**

The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

- (a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, [Whichever is later and such trust or institution is registered under section 12AA] :

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution, -

- (i) From the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;
  - (ii) From the first day of the financial year in which the application is made, if the Chief Commissioner or Commissioner is not so satisfied;
- (b) Where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds [fifty thousand] rupees in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed 350

### **Section 12 AA -Procedure for registration.**

- (1) The Commissioner, on receipt of an application for registration of a trust or institution shall—
  - (a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and
  - (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—
    - (i) shall pass an order in writing registering the trust or institution;
    - (ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

- (2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of sub-section (1) of section 12A.
- (3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.



**Section 35AC – Expenditure on eligible projects or schemes.**

- (1) Where an assessee incurs any expenditure by way of payment of any sum to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme, the assessee shall, subject to the provisions of this section, be allowed a deduction of the amount of such expenditure incurred during the previous year:

Provided that a company may, for claiming the deduction under this sub-section, incur expenditure either by way of payment of any sum as aforesaid or directly on the eligible project or scheme.

- (2) The deduction under sub-section (1) shall not be allowed unless the assessee furnishes along with his return of income a certificate 554aa - (a) Where the payment is to a public sector company or a local authority or an association or institution referred to in sub-section (1), from such public sector company or local authority or, as the case may be, association or institution; (b) In any other case, from an accountant, as defined in the Explanation below sub-section (2) of section 288, in such form, manner and containing such particulars (including particulars relating to the progress in the work relating to the eligible project or scheme during the previous year) as may be prescribed.
- (3) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.
- (4) Where an association or institution is approved by the National Committee under sub-section (1), and subsequently that Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which approval was granted, it may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, withdraw the approval.
- 5) Where any project or scheme has been notified as an eligible project or scheme under clause (b) of the Explanation and subsequently the National Committee is satisfied that the project or the scheme is not being carried out in accordance with all or any of the conditions subject to which such project or scheme was notified, such notification may be withdrawn in the same manner in which it was issued :

Provided that a reasonable opportunity of showing cause against the proposed withdrawal shall be given by the National Committee to the concerned association, institution, public sector company or the local authority, as the case may be.

- (b) “Eligible project or scheme” means such project or scheme for promoting the social and economic welfare of, or the uplift of, the public as the Central Government may, by notification in the Official Gazette, specify in this behalf on the recommendations of the National Committee.

**Section 35CCA - Expenditure by way of payment to associations and institutions for carrying out rural development programmes.**

- (1) Where an assessee incurs any expenditure by way of payment of any sum—
- (a) to an association or institution, which has as its object the undertaking of any programme of rural development, to be used for carrying out any programme of rural development approved by the prescribed authority ; or
  - (b) to an association or institution, which has as its object the training of persons for implementing programmes of rural development; or
  - (c) to a rural development fund set up and notified by the Central Government in this behalf; or
  - (d) to the National Urban Poverty Eradication Fund set up and notified by the Central Government in this behalf, the assessee shall, subject to the provisions of sub-section (2), be allowed a deduction of the amount of such expenditure incurred during the previous year.

- (2) The deduction under clause (a) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution referred to in the said clause unless the assessee furnishes a certificate from such association or institution to the effect that—
- (a) the programme of rural development had been approved by the prescribed authority before the 1st day of March, 1983; and
  - (b) where such payment is made after the 28th day of February, 1983, such programme involves work by way of construction of any building or other structure (whether for use as a dispensary, school, training or welfare centre, workshop or for any other purpose) or the laying of any road or the construction or boring of a well or tube-well or the installation of any plant or machinery, and such work has commenced before the 1st day of March, 1983.
- (2A) The deduction under clause (b) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution unless the assessee furnishes a certificate from such association or institution to the effect that—
- (a) the prescribed authority had approved the association or institution before the 1st day of March, 1983; and
  - (b) the training of persons for implementing any programme of rural development had been started by the association or institution before the 1st day of March, 1983.

**Section 80 G -Deduction in respect of donations to certain funds, charitable institutions, etc.**

- (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,—
- (i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in sub-clause (i) or in sub-clause (iiia) or in sub-clause (iiiaa) or in sub-clause (iiiab) or in sub-clause (iiie) or in sub-clause (iiif) or in sub-clause (iiig) or in sub-clause (iiiga) or sub-clause (iiih) or sub-clause (iiiha) or sub-clause (iiihb) or sub-clause (iiihc) or sub-clause (iiihd) or sub-clause (iiihe) or sub-clause (iiihf) or sub-clause (iiihg) or sub-clause (iiihh) or sub-clause (iiihj) or in sub-clause (vii) of clause (a) or in clause (c) or in clause (d) thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature plus fifty per cent of the balance of such aggregate; and
  - (ii) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).
- (2) The sums referred to in sub-section (1) shall be the following, namely :—
- (a) any sums paid by the assessee in the previous year as donations to—
    - (i) the National Defence Fund set up by the Central Government; or
    - (ii) the Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964; or
    - (iii) the Prime Minister's Drought Relief Fund; or
    - (iiia) the Prime Minister's National Relief Fund; or
    - (iiiaa) the Prime Minister's Armenia Earthquake Relief Fund; or
    - (iiiab) the Africa (Public Contributions - India) Fund; or
    - (iiib) the National Children's Fund; or
    - (iiic) the Indira Gandhi Memorial Trust, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of February, 1985; or
    - (iiid) the Rajiv Gandhi Foundation, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of June, 1991; or
    - (iiie) the National Foundation for Communal Harmony; or
    - (iiif) a University or any educational institution of national eminence as may be approve by the prescribed authority in this behalf; or

- (iiig) the Maharashtra Chief Minister's Relief Fund during the period beginning on the 1st day of October, 1993 and ending on the 6th day of October, 1993 or to the Chief Minister's Earthquake Relief Fund, Maharashtra; or
- (iiiga) any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat; or
- (iiih) any Zila Saksharta Samiti constituted in any district under the chairmanship of the Collector of that district for the purposes of improvement of primary education in villages and towns in such district and for literacy and post-literacy activities.
- (iiiha) the National Blood Transfusion Council or to any State Blood Transfusion Council which has its sole object the control, supervision, regulation or encouragement in India of the services related to operation and requirements of blood banks.
- (iiihb) any fund set up by a State Government to provide medical relief to the poor; or
- (iiihc) the Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants; or
- (iiihd) the Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996; or
- (iiihe) the National Illness Assistance Fund; or
- (iiihf) the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union territory, as the case may be :

Provided that such Fund is—

- (a) the only Fund of its kind established in the State or the Union territory, as the case may be;
- (b) under the overall control of the Chief Secretary or the Department of Finance of the State or the Union territory, as the case may be;
- (c) administered in such manner as may be specified by the State Government or the Lieutenant Governor, as the case may be; or]
  - (iiihg) the National Sports Fund to be set up by the Central Government; or
  - (iiihh) the National Cultural Fund set up by the Central Government; or
  - (iiihj) the Fund for Technology Development and Application set up by the Central Government; or
  - (iiihk) the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities constituted under sub-section (1) of section 3 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999); or
- (iv) any other fund or any institution to which this section applies; or
- (v) the Government or any local authority, to be utilized for any charitable purpose other than the purpose of promoting family planning; or
- (vi) an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;
- (via) any corporation referred to in clause (26BB) of section 10; or
- (vii) the Government or to any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilized for the purpose of promoting family planning

## Direct Taxes Code Bill, 2010

The Direct Taxes Code Bill, 2010, introduced in Lok Sabha<sup>71</sup> on 30 August, 2010 with the objective of simplifying and rationalizing the direct taxation regime in India. Although the proposed code simplifies taxation for corporate and individual tax payers, it reverses this where the voluntary sector is concerned.<sup>72</sup> The direct tax code seeks to consolidate and amend the law relating to all direct taxes, namely income tax, dividend distribution tax, fringe benefit tax and wealth tax to establish an economically efficient, effective and equitable direct tax system which will facilitate voluntary compliance and help increase the tax-GDP ratio. Another objective is to reduce the scope for disputes and minimize litigation.

During the study, respondents in interview and focus group discussions raised many issues with the Direct Taxes Code –

- The proposed code has replaced the term ‘charitable purpose’ with ‘permitted welfare activities’. Though the definition remains the same, there is a radical shift in approach. The government will focus now not on the purpose but the activities performed by the organisation.
- The current provision of 15% indefinite accumulation of income by non-profits has been withdrawn in this bill. This is a big blow to the financial sustainability and visibility of the sector. The lack of corpus will not protect VO from inflation and other vagaries of the economic environment. To avoid mal-functioning of the sector and strengthen these voluntary sector institutions, it is pertinent that they are allowed to accumulate at least 25% of their income for an indefinite period. The saved amount must, however, be utilized on institution building and programmes but not for any personal welfare or benefit of the staff.
- Carrying forward of unspent balance to the next financial year will not be allowed. The revised bill states that 90% of gross receipts or 85% of income received in a year must be spent during the same year. This is not a viable option as many organisations receive money by the end of financial year. So to spend the entire amount in that financial year will only increase cases of corruption and money laundering. Some organisational representatives shared the concern that many a time donors give the entire amount of multi - year projects in the very beginning, but the same cannot be treated as income in the year of receipt.
- The provision of taxing the entire net worth at the rate of 30% if the voluntary organisations do not have any activities also must be reconsidered. Since this sector depends on external grants and assistance, it is likely that there might not be any activity in some years.
- For the last few years many voluntary organisations are involved in raising funds locally by either producing greeting cards, which are also means to spread social development message, or charging nominal user fees to provide sustainability to the local initiatives. Under the proposed DTC bill all these activities are categorized as business activities and will be taxable.

*Dr. Rajesh Tandon, President, PRIA, New Delhi in his response on the proposed DTC bill shared that problems in taxation arise due to two systematic anomalies in the system –*

- *Absence of a comprehensive modern, current view of non – profitable charity work in the society.*
- *And lack of transparent computerized unitary nationwide system of registration and reporting.*

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<sup>71</sup>. Lok Sabha is the lower house of the parliament in India, composed of representatives of people.

<sup>72</sup>. VANI. (2013). *Enabling environment for voluntary organisations - A global campaign*. New Delhi: Voluntary Action Network India (VANI).

*He further shared that the proposed amendments in the Direct Tax Code are more likely to cause serious harassment of smaller district level grassroots voluntary organisations, which neither understand the complexities of these taxation rules nor have the resources and the motivation to hire expert chartered accountants and lawyers to fight their case. The big voluntary organisations will find their way out but it is the smaller organisations working more closely with people, who will have to fight a lost battle.<sup>73</sup>*

It is clear that the government needs to re-look at some of the proposed provisions of the new direct tax regime vis-a-vis the nonprofit voluntary sector, and also leverage its partnership for development with this sector adequately and provide an enabling environment to help it achieve its potential as an independent sector working towards protection and promotion of rights of people and actively supporting government programmes towards their successful implementation.

## **Section II – Government – Voluntary sector relations**

*“Till today, the state has been looking at the voluntary organisations from the perspective of delivery agents. As long as we were delivering on behalf of the state and were not interfering with the structural issues, then we were in their good books. This is the type of civil society that the state wants. The state does not want voluntary sector to demand accountability and ask questions.”*

**— Dr. Jayant Kumar, Head of Programmes, CASA**

The Government-VOs relationships are most controversial and complex in India but are the most crucial for voluntary actions. The relationships between the government and VOs in India have been continuously evolving and undergoing qualitative changes. The state acts as a regulator, funder and development actor in the voluntary efforts. The government in India controls and regulates the functioning of voluntary organisations through:

- a) Registration under an appropriate Act.
- b) Enforcement of minimum standards through statutes such as e.g. Juvenile Justice Act.
- c) Licensing under appropriate legislation.
- d) Inspection by the inspectorate of grant-giving departments.
- e) The work of the organisation to be as per the conditions of the grant regulation.
- f) Levy of income tax on the profit of the organisation.
- g) Applicability of the labour legislation on the employees of VOs.
- h) Giving clearance for receiving funds from foreign donor agencies etc.
- i) Official policy statements in the planning documents indicating promotion and support of voluntary action as an important aim.
- j) Establishing commissions, committees, studies, working groups etc.
- k) Providing grants-in-aid for the implementation of programmes.

Most of the voluntary sector representatives view the relationship with government as mixed which depends on its changing needs. In the most recent incidence this year (2014), the information bureau (IB) submitted a report to the PMO (Prime Minister’s Office) stating that foreign aided VOs are negatively impacting the economic growth of

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<sup>73</sup> Tandon, D. R. (2009, December). *Anomaly of Taxation pattern for CSO's over the years: A Reflection*. *Civil Society Voices*, pp. 3 - 5.

country by reducing it to 2 – 3% per annum.<sup>74</sup> Most of the activists felt that this targeting of VOs was deliberate so as to further the government's economic development agendas (raising the dam heights leading to displacement of people, establishing nuclear plants etc.) at the cost of social development. This report triggered a couple of questions and VANI being an apex body of voluntary organisations, shares the following concerns –

- Any miscreant organisation found guilty of violating the law, should be dealt with full strictness. Till date the investigation of VOs accused under Kudankulam agitation<sup>75</sup> is not completed. Kudankulam agitation involved protest against Kudankulam nuclear power plant in Tamil Nadu state of India by anti-nuclear activists and local villagers in the year 2012. The FCRA says that the Ministry of Home Affairs (MHA) will complete its investigation in 90 days, but years have passed none of them have been found guilty. This also stops the victims from going to a court of law. This targeting and shaming of the sector as a whole is misleading for the public and affects the smooth functioning of the sector.
- In the last decade the relationship between government and VOs has changed drastically. Rather than being seen as partners in development, VOs are seen as sub-contractors. They are supposed to bid for fixed projects and deliver the projects without asking questions. The sector which was known for its innovations has become tool for delivering the projects. On the other hand the reforms in taxation that have taken place do not facilitate domestic generation of funds. In the absence of transparent and an enabling funding environment within the country, VOs are left with no choice but to access foreign funds for development.
- Strangely, the government is open to foreign investment in the country but has shown opposition to foreign funded VOs working towards the development of poor. How can the former be acceptable while the other is branded as anti-social? Should the government stop all foreign investment and funding and generate domestic resources in the economic interests of the country? Is it the source of funds for VOs or their utilization that is the issue for the government?

With a new government in power in year 2014, it is essential that the issue of regulating and promoting the VOs in a professional way is not aimed at controlling the sector and inhibiting the independent functioning of the sector through stricter laws. The questions raised by this sector must be looked at in a positive light in a democratic set-up and any organisation violating the rule of law must be brought under scrutiny.

This report highlights that the government considers VOs as threats and aims to narrow down the scope of work of the voluntary sector. This is a huge step back from a couple of years ago when in 2007, a landmark step towards regulating the sector was taken in the form of National Policy on Voluntary sector.

The National Policy on Voluntary Sector, approved in May 2007 by the Government of India, suggested strategic collaboration between the government and the voluntary sector and the development of government-voluntary sector ways of working based on mutual trust and respect. The policy envisions transformative and constructive interventions aimed at building an ethical social order, rekindling the notion of self-governance at the level of the individual, family and society, strengthening grassroots democratic establishments, increasing the sensitization of policy makers towards marginalised communities and contributing to the social, economic and political advancement of people. While giving due recognition to the autonomous nature of VOs, the need for institutionalizing processes ensuring respectful engagement between the government and VOs was emphasised. This policy was seen as a transition from engaging VOs in the implementation role of subsidiary agents/contractors to active partners in

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<sup>74</sup>. Sreedathan, G. (2014, June 19). *IB report portends tough times ahead: NGOs*. Retrieved June 20, 2014, from Business Standard Website: [http://www.business-standard.com/article/economy-policy/ib-report-portends-tough-times-ahead-ngos-114061900074\\_1.html](http://www.business-standard.com/article/economy-policy/ib-report-portends-tough-times-ahead-ngos-114061900074_1.html)

<sup>75</sup>. *Agitation against a nuclear power plant in Kudankulam, Tamil Nadu fearing the nuclear disaster*.

designing, planning and monitoring (while allowing them to co-exist as autonomous agents of social transformation)<sup>76</sup>.

The National Policy emphasised the provision of enhanced support to the sector through human resource development, institutional enhancement, greater capacity and resource building of all voluntary actors. The policy stressed that the voluntary sector will in the duration of Twelfth Plan period (2012-2017) transform itself into a better governed, more accountable and transparent, well-funded and sustainable sector with strong institutions that are functional at the union, state, district and panchayat levels.

Though the policy brought a ray of hope for the sector, this incredible policy did not have the same vision during its implementation, as was reported by most of the respondents. The Government imposed stricter regulations that hinder the overall growth and sustainability of the sector. FCRA, 2010 and Direct Tax Code Bill of 2009 are two significant examples of the efforts of the government in trying to control the sector rather than enabling and regulating it.

### **Resistance to advocacy based work/ rights-based approach**

The relationship between the government and the Institutionalised voluntary organisations can be characterized by continuous ups and downs. At times when their interests converge, the relationship remains smooth; but in cases where the interests diverge, the discord comes to the forefront. For example, if any particular voluntary organisation is collaborating with any government agency on a drinking water programme in a village, there will hardly be any clash. But when the organisations raise questions on the policies or actions of the government or against corruption, then the relationship becomes confrontational e.g. the case of INSAF. Albeit there is a lot of maturity on the part of the state, still it has failed to embrace the ‘questioning’ culture and the democratic space that the voluntary sector advocate and aspire for. However, in spite of increasing dependence on the government which considerably reduces the autonomy of the voluntary sector, there still are individual organisations with high levels of transparency, accountability and credibility that probably can maintain considerable level of independence.

### **Relationships governed by individual opinions of government officials about the sector**

Respondents from most of the regions believed that the relationship between the voluntary sector and the government actually varies from region to region and even within the same region there is variance. Some government officials or ministers might be very active and supportive to the cause that civil society is advocating for and on the other hand some other officials/ministers might behave non cooperatively, indifferently or even antagonistically. So, there are individual differences rather than any systemic differences.

### **Section III – VO cooperation and coalition**

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. Many initiatives have been taken by the sector to promote self-regulation and VANI being the apex body of Indian VOs took some important initiatives in this direction. Representing the sector nationally and globally, VANI is one

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<sup>76</sup> Planning Commission. (2007). *Report of the steering committee on voluntary sector*. New Delhi: Government of India.

of the apex body of voluntary organisations working as a catalyst between Indian voluntary sector and other actors like state governments, bilaterals and multilaterals. It has a strong base of 5,000 non-governmental organisations spread out in 25 states of India. VANI also represents the sector at international platforms of International Forum of National VO platforms (IFP) and Affinity Group of National Associations (AGNA).

VANI defined set of norms and standards of good governance practices for its member organisations. That is precisely why no VANI's member has ever been included in the periodic black lists by the government. In 1997, VANI adopted a document titled 'Guiding Principles of Voluntary Development Organisations'. This set of guidelines was an attempt by both government and VOs to make a code of conduct for the voluntary sector. In 2001, an independent process named Credibility Alliance (CA) was initiated to develop a set of norms for the voluntary sector. Its mission is to build the credibility of the sector through creation and promotion of norms of good governance and public disclosure. In doing so, CA has developed an accreditation system and peer group review model.

Another initiative for promoting transparency is through an initiative called GuideStar India, which showcases the work of VOs, and makes their information accessible to donors, policy makers, government, academia, media etc.

Also, since the 1990s, the VOs in India have witnessed several collaborations based on ideological similarities and around thematic issues. Some important themes around which VOs in India have tended to collaborate on include HIV/AIDS, water and sanitation, education, health to name a few. State level networks of VOs also exist for example 'Madhyavan'<sup>77</sup> in Madhya Pradesh, 'SajjtaSangh'<sup>78</sup> in Gujarat; these are all common platforms for the voluntary sector in the respective states to share their experiences with each other and even to discuss and fight concerns unitedly. But in spite of their existence, these networks in India often tend to be irregular and weak in nature. As stated by respondents, these networks easily fall apart due to clash of egos over decision-making and leadership roles.

There is no legal framework restricting VO cooperation and coalition in India but to be recognised as a registered body it needs to follow the same registration acts which are applicable for the registration of VOs (See earlier in this report). The efforts of self-regulation are coming from the sector itself, which is a good sign. But despite these efforts the trends show formation of weak networks. 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.

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<sup>77</sup> Samarthan. (n.d.). About Madhya Van. Retrieved June 2, 2014, from Samarthan Website: <http://www.samarthan.org/madhya-van/>

<sup>78</sup> Sajjata Sangh. (n.d.). About Sajjata Sangh. Retrieved June 2, 2014, from Sajjata Sangh Website: <http://www.sajjatasangh.org/>



## Chapter 5

### CONCLUSION AND RECOMMENDATIONS

The voluntary sector in India is vast and diverse with foundations, religious organisations, social movements and development organisations etc. under the ambit of this sector. This diversity in identity and scope of work has been challenging for the voluntary organisations working towards the development of the poor and the marginalised as they are seen with the same lens like other organisations. It is important to recognise the contribution of voluntary development organisations towards improving the lives of the poor in the country. The innovative experiments done by this sector has been upscaled nationally and internationally yet the sector faces a crisis today in India.

The previous chapters have focused on four significant challenges faced by the sector, as has emerged from the study:

- (i) Registration of organisations, where there is no single window for registering an organisation, there are state specific amendments and changes despite having a national law for registration;
- (ii) Changed funding environment for voluntary sector as the foreign funding continues to shrink due to emergence of India as a middle-income country and stricter rules (e.g. FCRA, 2010). Government funding is complex, less transparent and cumbersome. One of the opportunities in the funding scenario in India is private sector funding which is set to open new avenues for the voluntary sector but as stated by most of the respondents, it has its own challenges with big companies channeling the money through their own foundations;
- (iii) Stricter taxation laws pose a challenge to the financial sustainability of the sector. In the new Direct Tax Code bill many clauses will inhibit (once enacted) the independent activities of the sector. Rather than being regulative, the bill is more controlling in nature and seen as a threat by the sector.
- (iv) Overall the environment for voluntary sector in India is practically not enabling though there have been sporadic efforts by the government to advance the sector, as seen in the 2007 National Policy for the Voluntary Sector. The challenges increase with the voluntary sector entering the arena of rights-based work and advocacy wherein government policies and programmes are challenged. Though freedom of expression and peaceful assembly are guaranteed by the constitution, yet the local forces challenge and violate these constitutional promises time and again.

In light of these realities, it becomes important for the government and the sector itself to revisit the contributions of the voluntary sector in India and move forward towards a more credible, accountable and transparent voluntary sector. This space for effective dialogue between the government and the sector seems to be missing at the moment. It is therefore in the interest of the sector and the government to put in place regulatory laws governing the sector rather than controlling it:

- (i) The legal framework for registration of VOs is based mostly on colonial era legislation not taking into account the constitutional imperatives of a democratic India. There is urgent need for new legislation based on the principles outlined in the national policy for the voluntary sector.
- (ii) Registration procedures should be simplified and a single window registration system must be adopted.

Alternative modes of registrations must also be introduced such as online systems but this should not be the only form of application as many genuine grassroots organisations may not have internet access but contribute immensely to the sector.

- (iii) Similarly the diversity of organisations in the voluntary sector needs to be acknowledged and must be categorized. It is impossible to measure these diverse organisations (religious organisations, social movements, foundations, trusts etc) within the ambit of voluntary sector on the same scale as it confuses the identity of voluntary sector. Do these different organisations like religious organisations and development organisations share common values? This confusion in identity is experienced within as well as perceived from outside.
- (iv) 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.
- (v) Tax charged from the voluntary sector organisations on account of services should rather be allowed to plough back to the charity/development work. Currently there is a limit of Rs 25 lakh to business or commercial activities, as per the Finance Act, 2012, beyond which the income tax exemption is denied. Learning from the international tax policies for the sector which are more liberal than one existing in India. For example in UK the charities are allowed to run business as long as the profit is used back for the charity.
- (vi) FCRA 2010 and DTC, 2009 are the two swords hanging onto the necks of voluntary sector with more clauses controlling the sector rather than regulating it. These clauses must be reviewed and a dialogue with voluntary sector by Government needs to be started to understand the grievances and concerns of the sector. Reform in these laws is a prerequisite for the sustainable existence of this sector e.g. defining what amounts to political activity by VOs which inhibits them from accessing foreign funds, renewal of FCRA registrations,
- (vii) Recognizing voluntary organisations as an independent sector with the right to question and undertake advocacy based works which should not be under the tighter scrutiny. The vigilance tasks undertaken by voluntary sector must be seen as positive which will help in reforming governance mechanisms.
- (viii) For the sector, it is important to showcase their innovative work and highlight their contributions locally and globally. The Glocal approach is not followed by many voluntary organisations as some tend to remain too local in approach and work while other larger organisations enjoy the benefit of leveraging globally with no direct links between these two kinds of approaches to accentuate development of down trodden and marginalised.
- (ix) Like it is very important for the government to put in place appropriate systems which establish transparency and accountability in the government as well as private funding to the voluntary sector; it is also pertinent for the sector to self-regulate its activities and ensure high standards of transparency and accountability which will help gain back the lost credibility of the sector among other stakeholders.

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**Annexure I:**  
**List of Participants of the Regional Meetings**  
**(North, South, East and West)**

Sl.No.	Name	Organisation
<b>North Regional Meeting – 23rd April, 2014</b>		
1	Ms. Annie Namala	Centre for Social Equity and Inclusion
2	Mr. Arjun Philips	Voluntary Action Network India
3	Ms. Divita Shandilya	Voluntary Action Network India
4	Mr. Harsh Jaitli	Voluntary Action Network India
5	Dr. Jyotsna M Singh	Voluntary Action Network India
6	Ms. Meenu Chawla	ICCO Cooperation
7	Ms. Pavneet Kaur	Voluntary Action Network India
8	Mr. Praveen Kumar	VSO India
9	Ms. Ratna Manjari	Voluntary Action Network India
10	Ms. Semeda Steves	Christian Aid
11	Mr. Sham Sher	Voluntary Health Association of Punjab
12	Ms. Tarushikha Yadav	Voluntary Action Network India
13	Mr. Utpal	Credibility Alliance
14	Mr. Vinu S.	Commonwealth Human Rights Initiative (CHRI)
<b>West Regional Meeting – 9th April, 2014</b>		
1	Mr. Ajay S Mehta	Seva Mandir
2	Dr. Amit Kumar	Kumarappa Institute of Gram Swaraj (KIGS)
3	Mr. Alok Vyas	Centre for Community Economics and Development Consultants Society (CECOEDECON)
4	Mr. Arjun Kanti Jha	CUTS
5	Mr. Datta Patil	Youth for Unity and Voluntary Action (YUVA)
6	Mr. Gopi Lal Rao	Church's Auxiliary for Social Action (CASA)
7	Mr. Harsh Jaitli	Voluntary Action Network India (VANI)
8	Mr. Manu Sharma	SVS
9	Mr. Roshan Lal	Gram Vikas Vigyan Samiti (GRAVIS)
10	Dr. Upendra Kr. Singh	Center for Development Communication and Studies (CDECS)

Sl.No.	Name	Organisation
<b>South Regional Meeting – 29th April, 2014</b>		
1	Mr. Amer	Confederation of Voluntary Associations (COVA)
2	Mr. C.S Reddy	APMAS
3	Mr. D. Leslie Martin	Sakshi Human Rights Watch
4	Mr. D. Roshan Kumar	SEEDS India
5	Mr. D R M Iftexharubdin	MESCO Hyderabad
6	Dr. Fakhrudin Mohammad	MESCO Hyderabad
7	Dr. Mazhar Hussain	Confederation of Voluntary Associations (COVA)
8	Mr. Md. Basheer	-
9	Mr. Mohammad Turab	Confederation of Voluntary Associations (COVA)
10	Mr. Moncho Ferrer	Rural Development Trust (RDT)
11	Mr. Naseer Siddiqui	Bandhan State Network
12	Mr. P. Raghu	Action Aid
13	Ms. Ratna Manjari	Voluntary Action Network India
14	Mr. Syed Abdul Qanzum	Confederation of Voluntary Associations (COVA)
<b>East Regional Meeting – 16 April, 2014</b>		
1	Mr. Asim Kumar Mahapatra	Regional Center for Development Cooperation
2	Mr. Jagadananda	Center for Youth and Social Development (CYSD)
3	Mr. Jagdish Pradhan	SVA
4	Dr. Jyotsna M Singh	Voluntary Action Network India
5	Mr. Lakhiram Hansda	Antyodaya Chetna
6	Mr. Nikhil Naskar	Child In Need Institute (CINI)
7	Mr. Prafulla Sahu	Center for Youth and Social Development (CYSD)
8	Mr. Ranjan Rout	NIDI

## Annexure II:

### List of Voluntary Organisations Consulted

Sl.No.	Name	Profile
1	Mr Amitabh Behar	Executive Director, National Foundation for India
2	Dr. Ashok Khosla	President, Development Alternatives
3	Mr. Rakesh Jinsi	Secretary General, SOS Children's Villages of India
4	Mr. Mathew Cherian	Chief Executive, HelpAge India
5	Mr. Ashok Singh	Director, Sahbhagi Shikshan Kendra
6	Dr. Sushant Aggarwal	Director, CASA (Church's Auxiliary for Social Action)
7	Ms. Poonam Mutreja	Executive Director, Population Foundation of India
8	Ms. Nisha Agrawal	CEO, OXFAM INDIA
9	Mr. Sanjay Patra	Executive Director, Financial Management Service Foundation
10	Mr. Subhash Mittal	Secretary, Socio – Research and Reform Foundation
11	Dr. Jayant Kumar	Head of Programmes, Church's Auxiliary for Social Action
12	Ms. Meenakshi Batra	Chief Executive, CAF India
13	Mr.Mahendra Singh Kunwar,	Secretary, Himalayan Action Research Centre
14	Ms. Kavita Ramdass	National Representative, Ford Foundation
15	Ms. Annie Namala	Director, Center for Social Equity and Inclusion (CSEI)
16	Mr. Sandeep Chachara	Country Head, Action Aid
17	Dr.Mazher Hussain	Executive Director, COVA
18	Mr. Nikhil Naskar	CINI
19	Mr. Datta Patil	Executive Director. Youth for Unity and Voluntary Action
20	Mr. Moncho Ferrer	Programme Director, Rural Development Trust (RDT)



### Annexure III:

#### List of Participants in the National Consultation

Sl.No.	Name	Organisation
1	Mr Albo Jason	EFFICOR
2	Mr. Aditya Patnaik	Antyodaya Chetna Mandal
3	Mr. Alok Vyas	Centre for Community Economics and Development Consultants Society (CECOEDECON)
4	Mr. Arjun Philips	Voluntary Action Network India (VANI)
5	Mr. Datta Patil	YUVA Rural Association
6	Ms. Debika Goswami	Institute for Rural Research and Development (IRRAD)
7	Ms. Divita Shandilya	Voluntary Action Network India (VANI)
8	Mr. Harsh Jaitli	Voluntary Action Network India (VANI)
9	Mr. John Dayal	All India Christian Council
10	Dr. Jyotsna Mohan Singh	Voluntary Action Network India (VANI)
11	Ms. A Kalamani	APMAS, Hyderabad
11	Mr. Kuldeep Chand	Arpan Society
12	Mr. Laurent Le Danois	European Union
13	Dr. Mazhar Hussain	Confederation of Voluntary Associations (COVA)
14	Ms. Meenu Chawla	ICCO Cooperation
15	Mr. Newton Issac	World Vision, India
16	Mr. Nikhil Naskar	Child in Need Institute (CINI)
17	Ms. Nishu Kaul	Voluntary Action Network India (VANI)
18	Ms. Parul Sharma	Sphere India

Sl.No.	Name	Organisation
19	Ms. Pavneet Kaur	Voluntary Action Network India (VANI)
20	Ms. Poonam Mutreja	Population Foundation of India (PFI)
21	Mr. Animesh Gomes	Wada Na Todo Abhiyan
22	Ms. Ratna Manjari	Voluntary Action Network India (VANI)
23	Ms. Sheila George	EFFICOR
24	Mr. Subhash Mittal	Socio Research and Reform Foundation (SRRF)
25	Mr. Sudhir Chandra	Central Board of Direct Taxes (CBDT), Government of India
26	Ms. Tarushikha Yadav	Voluntary Action Network India (VANI)
27	Dr. Upendra K Singh	CDECS
28	Ms. Leena Bhawot	Indo Global Social Service Society
29	Mr. Ranjit Kr. Jha	PRAXIS
30	Mr. Arun Talwar	CUTS
31	Ms. Sowmya B.	PRAXIS
32	Mr. Vijyesh Lal	EFI
33	Mr. Joseph Thomas	ICCO India
34	Josu D. Souza	-
35	Michael Govind Raj	ICCO India
36	Sathyashree Goswami	Consultant/Activist
37	Syed Rafey	Voluntary Action Network India (VANI)
38	Shalini Singh	The Week Magazine
39	Mr. Anup Khosla	Consultant
40	Mr. S K Goel	CTAR

## LIST OF VANI PUBLICATIONS

### Economic Policy

1. GATT, WTO and the Developing Countries (Hindi & English)
2. Proposals for National Union Budget for 1993-94: An alternative to the Fund Bank dictated Union Budget (English)

### Panchayati Raj

1. Local Self-Governance: The Role of Voluntary Organisations (English & Hindi)
2. Nagarpalika (74th Amendment) Act, 1992: The Role of Voluntary Organisations (English and Hindi).
3. State Panchayat Acts: A Critical Review (Hindi and English)

### Social Development

1. Summary of Declaration and Programme of Action of UN World Summit for Social Development (Hindi & English)
2. State Reports on Social Development: Assam; Bihar; Gujarat; Haryana; Karnataka; Kerala; Maharashtra; Madhya Pradesh; Orissa; Tamil Nadu; Uttar Pradesh; West Bengal.
3. Community Based Disaster Management: an information Guide (Hindi & English)

### Law and Rules

1. Report of the Task Forces: To review and simplify Acts, Rules, Procedures affecting Voluntary Organisations (Hindi & English)
2. Laws, Rules and Regulations for the Voluntary Sector-Report of the South Asian Conference (English)
3. Action Plan to bring about a collaborative relationship between Voluntary Organisations and Government (Hindi & English)
4. FCR Bill 2006 (Marathi).

### Promoting Voluntarism

1. Youth & Voluntarism (Hindi & English)
2. Into the Media World: An Introduction to Media Relation for Voluntary Activists.
3. Voluntary Development Organisations: The Guiding Principles (English & Hindi)
4. Non-Governmental Organizations: Guidelines for Good Policy and Practice (Hindi and English)
5. Voluntary Organisations Responsible Partners in Nation Building (English)
6. Voluntarism & Politics (English & Hindi)

### General/Issues Concerning the Voluntary Sector

1. India's Living Legends Savants of Voluntary Action (English)
2. Voluntary Organisations Responsible Partners in National Building (English)
3. The Election Process –Voters Know-How (English & Hindi))
4. Voluntarism & Govt: Policy, Programme & Assistance
5. Visioning Voluntary Sector in Emerging India: A Report on National Convention 2006
6. Status of NREGA in Chattisgarh: Key Issues and Hard Options, A Report on State Tribunal 2006 (English & Hindi)
7. Civil Society Security and Aid in India : A report on Roundtable December 2006 (E&H)
8. National Policy on the VS & Eleventh Five year Plan 2007
9. Civil Society Accountability Principles and Practice (India Toolkit) (English)
10. Enabling environment for Voluntary Organisations A Global Campaign (Book)
11. Model Policies for International Good Governance in Voluntary Organizations
12. The Hand Book in Good Governance for the Voluntary Sector
13. Status of the Voluntary Sector in India A Report
14. Status of the Voluntary Sector in India (Primer) English & Hindi))
15. Civil Society Engagement in Aid Effectiveness Discourse
16. Changing Dynamics Between VOs and Private Sector
17. Involving Voluntary Organizations in Governments Plans and Projects
18. India's Global Footprints
19. Revisiting the National Policy on Voluntary Sector and Need for a National Policy on Volunteering
20. India's Development Assistance: Trends, Challenges and Implications for CSOs
21. India's Role in the G20: A Civil Society Approach
22. Challenges of the Grassroot Level Voluntary Organisations A Primer of the Study Report
23. Contribution of CSR on Thematic Issues of Education, Health and Nutrition, and Water and Sanitation A Primer of the Study Report



## 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 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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