Governance of Non-Profit Organisation In India

- Governance of Non-profit Organisations in India by Noshir H. Dadrawala (CEO - Centre for Advancement of Philanthropy)
- Chapter I - The Spirit of Philanthropy

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About the Author

Noshir H. Dadrawala is Chief Executive of the Centre for Advancement of Philanthropy (CAP), through which he has been offering compliance-related advisory to non-profits and corporate social initiatives. His career spans over forty years in the non-profit sector, working with a diverse range of organisations, from large established national and global organisations, to corporate and family grant-makers, to non-profit start-ups. Drawing upon more than four decades of hands-on experience and practical insights, Noshir's main role at CAP involves simplifying the confusing and complex maze of ever-changing regulatory laws. Noshir's expertise within the sector is widely recognised, as is his deep understanding of compliance-related issues with various regulatory authorities. He has authored several resource books and publications and is now also an active blogger. Noshir serves on the boards of many non-profits and is a trustee of the Forbes Foundation.

Dedication to Late Darius M. Forbes (1926-2023)

When Darius M. Forbes passed away in the early hours of Friday, 11th August 2023, it felt like the end of an era to me. He was one of my mentors and instrumental in helping me carve out a successful and fulfilling career in the philanthropic sector. Darius Forbes was among stalwarts like H.T. Parekh (Founder of HDFC Ltd.), Rusi M. Lala (Director of Sir Dorabji Tata Trust) and R. R. Chari (Commissioner of Income tax) who had founded the Centre for Advancement of Philanthropy (CAP) with which I have been involved now for close to four decades.

Darius founded Forbes Marshall which specialises in products and services for steam efficiency, process optimisation, and control and monitoring for industry. From a modest, Mumbai based trading company, today it is a multi-faceted, corporate group, manufacturing advanced engineering products and providing comprehensive services for industries in India and globally. Besides serving customers and making pioneering contributions to Indian industry, Forbes Marshall has always been committed to the well-being of the community beyond their factory-gate. Their community service programmes are guided by a desire to be an economic, intellectual, and social asset to the nation and the community in which the company operates. Corporate Social Responsibility (CSR) has become mandatory under the Indian Companies Act only since the year 2014. However, Darius Forbes not only talked about CSR but practiced it, long before corporate India had even heard of this term.

Mr. Forbes believed that Industry should function in close partnership with society and give back to society what it takes from it for its development and growth. While Industry provides employment opportunities and thus brings socio-economic progress, it also displaces people and the onus is on Industry to provide proper infra-structural facilities. Over seventy five years ago when the company purchased about ten acres of land from various farmers in Pune for their factory, Mr. Forbes realised that the farmers would be cash rich for only a short period of time. What would become of them after the money was over? And, so, the company decided to create employment opportunities for them through vocational training, especially for their children.

Since the factory was situated outside the city limits, the first need that was recognised for the members who commuted long distances was proper transport. The next requirement was electricity, water supply and sewage facilities, not just for the factory but the entire village of Kasarwadi. Gradually, the village with a then population of eight hundred, began to transform into a township. Mr. Forbes considered all this as his company's social obligation. The company was giving back to society what it gained from society. To him it was a process of harmonious living with the local community.

An accident, which Mr. Forbes witnessed while driving on a rainy day to the factory, moved him to create a medical facility in the company's spacious complex at Kasarwadi. The Shehernaz Medicare Centre (named after Mr. Forbes' departed sister-in-law) has grown from a one-physician clinic to a fully equipped hospital with full-time doctors, a modern operation theatre, X-ray machines, dental care facilities and a laboratory for clinical analysis. This hospital was set up in 1966, at a time when there was no medical facility available for miles along the Bombay - Pune highway. He strongly

believed that by caring for all stakeholders and especially the local community, a company earns respect, confidence, goodwill, and loyalty of the local community.

Over the years, community development programmes have been implemented and enhanced to improve the quality of life of people living in the neighbouring area and well beyond. Mr. Forbes was a man far ahead of his times. He was an astute industrialist. But above all else he was a very thoughtful human being who genuinely cared about those who worked with him. I have been very fortunate to not only have known him but to have been mentored by him. His greatest gift to me was the gift of sound professional values. He taught me that success and happiness is a by-product of work that you do with a sense of purpose!

Preface

Darius M. Forbes was born on 2nd October, 1926, in Bombay and grew up in Madras. He spent much of his life building strong businesses and institutions, and later, teaching others how to do the same. He believed in the power of individuals to achieve great things, regardless of their background or upbringing. He lived a life of service above self; done quietly and without much fuss, just because it was the right thing to do.

Darius was immensely proud of Forbes Marshall not just as a business, but more so because of each member. For him, the business and social work were not separate buckets but blended naturally together in his daily life. Hence, Forbes Marshall has always believed in the philosophy of contributing and giving back to the community in which it operates. When our first factory was originally set up in Pune in 1958, Darius felt it was insufficient to merely purchase land from the farmers who were the original owners of the land; it was necessary to actively and positively contribute to the community.

Over the last 75 years, we have strived to build resilience in our communities through initiatives focused on improved healthcare, education, women's empowerment and livelihood programmes. We ensure the sustainability of our social interventions through an emphasis on innovation, collaboration, advocacy and research; we encourage pilots and new ideas within programmes, engaging with multi-stakeholders, fellowships for individuals and knowledge creation for change. While the range and scope of our programmes have changed over the years, our dedication to enabling positive change in society in communities around us, remains constant.

One of Forbes Marshall's focus areas is capacity building and enabling resilience in the social sector. We support organisations to build basic capacities in areas such as programme design, leveraging technology and AI, communication, finances, organisational development etc. Among the challenges that non-profits face is access to knowledge and navigating the maze of rules and laws they face.

Noshir H. Dadrawala, Chief Executive, Centre for Advancement of Philanthropy, has been associated with Darius and Forbes Marshall for many years. He has advised us from time to time, conducted several programmes for non-profits and our members and helped us set up the Forbes Foundation.

This 2nd October is Darius' 98th birth anniversary. To commemorate his life of purpose and achievement, we encouraged Noshir to write a book that would be a useful and practical resource for the social sector, especially for non-profits. This book stems from the collaboration between CAP and Forbes Marshall. The book will be available in an e-version for ease of access, and we hope it will be a guide for non-profits, NGOs and the corporate sector.

- The Forbes Family

Author's Note

To commemorate the memory of Late Darius M. Forbes in a meaningful manner, his family requested me to work on a resource book which would be of value, relevance and guidance to the philanthropic sector. I was not only thrilled to take up this task but felt most honoured and privileged. An all-encompassing resource book of this nature was long overdue and much required. Keeping in mind lay readers, special effort has been made to keep the style simple and devoid of legal jargon.

Laws governing non-profit organisations (NPOs) in India are complex and multi-layered. At times there is also a dichotomy between state and central laws. NPOs have reporting obligations with multiple regulatory authorities. [1]Trusts and societies in Western India are regulated by the Office of the Charity Commissioner. Non-profit companies are regulated by the Registrar of Companies. Income Tax authorities regulate all three types of entities on their tax exemption status. The Ministry of Home Affairs regulates the flow of funds from foreign sources under Foreign

Contribution Regulation Act 2010. Apart from these three key regulatory authorities, certain NPOs must also register under the Shops and Establishments Act, regulated by the local municipal authority. Some NPOs having supply of goods (made by beneficiaries) or services are also required to register under GST. NPOs are not exempt under labour laws either. What is applicable and to whom and when is what this book has attempted to address.

One of the key issues in non-profit governance in India is the lack of uniformity and standardisation. Since 'charity' is a state and not a central subject in India, some states have excessive regulations while others have virtually none. For example, in the states of Maharashtra and Gujarat, the Charity Commissioner requires regular 'change reports' to be filed, regulates investment of funds as well as prior permission for buying and selling immovable property. On the other hand, the National Capital Delhi and several other states do not have a Charity Commissioner. It is no surprise that some non-profits attempt to seek registration in New Delhi or other territories where one may legally bypass at least one regulatory authority.

Every registered NPO must also file annual returns with the relevant regulatory authority, e.g., the Charity Commissioner, Registrar of Societies, or Registrar of Companies. Annual returns must also be filed with the Income Tax authorities and, if the NPO is registered under the FCRA, with the Ministry of Home Affairs.

To navigate through this complex and often confusing maze of laws and compliance, every stakeholder within the philanthropic sector should have at least some working knowledge to optimally govern the NPO. The object with which this book has been curated is just that - to help governing board members and staff to have a better understanding of governance related issues and ensure compliance. In our view, compliance is the key to credibility of every NPO. We hope readers will find this work interesting and informative. We will try to keep this work updated periodically.

Once again, I am grateful to the Forbes family for inspiring me to work on this book and supporting its publication for the benefit of the non-profit sector in India.

-Noshir H. Dadrawala

> *"If government provides the head of society and business the hands, then independent voluntary action provides its heart. But hearts cannot be taken for granted. Strengthening the big heart of societies means making one's own contribution of time, talent, treasure and proclaiming aloud the underlying values of philanthropy."*
>
> - J.D. Livingston Booth

Chapter I - The Spirit of Philanthropy

People often use the terms 'philanthropy' and 'charity' interchangeably and think the two are synonymous. Social scientists, however, consider this to be incorrect and rightly so. Charity (which mostly involves alms-giving) generally addresses the symptoms, while philanthropy (Greek *philanthropos* meaning love of human beings) tends to strike at the root of various issues facing society. They say, if you give fish to a poor person, you have done charity. You teach this person to fish and that's philanthropy. You give clothing to a poor man and you have done charity. You teach this person the skills to stitch clothing and that's philanthropy.

A generally-accepted comprehensive definition of philanthropy does not exist, and many leading scholars in the field doubt that one can be developed. Some scholars feel some vagueness is inevitable and even desirable. Contemporary philanthropy has come to be recognised as being broadly concerned with improving the quality of life for all members of society by promoting their welfare, happiness and culture. It usually focuses on interests and concerns of all income classes, such as protecting the environment, preventing diseases, improving education and recreational facilities, enhancing the arts, preserving historic landmarks, etc. Charity on the other hand, has come to mean serving mainly, if not only, the poor.

According to Paul Ylvisaker, "Philanthropy takes a more impersonal and dispassionate approach to bettering the human condition by institutionalising 'giving,' focusing beyond the immediate condition of people on root causes of human problems and systemic reform, recognising a responsibility to the public interest and helping to effect societal change."

Dr. Robert L. Payton, former president of the Exxon Foundation and ex-U.S. ambassador to the Cameroons, defines philanthropy to include, "voluntary giving, voluntary service and voluntary association, primarily for the benefit of others." Dr. Payton calls philanthropy, the "prudent sister" of charity.

Ancient and Varied Traditions

Ideas of philanthropy have varied with the customs of people, with changing needs and with the development of the human mind and desire to make life happier for others. One of the oldest records of 'giving' is in 'The Book of the Dead', the chief monument of religious literature of Egypt, which goes back to about 4,000 B.C. It says, "I have given bread to the hungry man and water to him that was athirst and apparel to the naked man and a ferry boat to him that had no boat. I have made propitiatory offerings and given cakes to the Gods."

The Greek and the early Roman concept of philanthropy was radically different; it consisted in doing kindly acts 'towards people', not towards the poor. It was not alms-giving, it had little or no connection with poverty, and it was seldom motivated by pity. One of its earliest expressions is in Homer's lines: "and generally was he loved, for courteously he welcomed to his house besides the way all comers". The Greek ethic of general kindliness was "do not overlook an un-hired body; kindle a fire; give a share of water; tell the way; advise truthfully."

In India, feeding the cow, the dog and the Brahmin was practically a routine in the daily life of a Hindu householder. There is a chapter devoted to charity in the Rig Veda, and charity is divided into three classes - Satvik, Rajasi and Tamasi; centuries later, in 1180 A.D., Rabbi Moses Ben Marmon said that there were eight degrees in giving charity, one higher than the other. Lowest on the scale was charity given meagerly and by a person as if forced; somewhat higher was charity contributed adequately but only after it was asked for; even better was aid given in such a manner that neither the giver nor the person assisted knew the identity of the other, and the highest of all was assistance that enabled a person to achieve self-support by helping him to find work or to open a business.

Under the Islamic faith, charity forms one of the basic obligations. Zakat is a compulsory poor-tax which a Muslim must pay not only on the surplus of the year, but also on the value of his total movable assets. The other forms of charities known is Islam are the khairat and sadga. In the early

centuries, zakat was highly organised through the institutions of *baitulmal* or the treasury. Every Muslim was required to send his zakat to the *baitulmal* with such instructions as he desired for the disbursement of the fund.

The concept of philanthropy and universal love for man is sprinkled all over the 'New Testament' and it is little wonder that even in a country like America generally branded as 'materialistic' the practice of setting aside private funds for public use has thrived and continues to grow from strength to strength. In fact, apart from being the largest in the world, the American foundations are today known to bestow wealth to the entire world. Apparently, Americans take the theological reference, "for God loves a cheerful giver", (II Corinthians 9:6-7) quite seriously. Corinthians 13:1-13 goes a step further: "If I should speak with the tongues of men and of angels, but do not have charity, I have become as sounding brass or a tinkling cymbal. And if I have prophecy and know all mysteries and all knowledge, and if I have all faith so as to remove mountains, yet do not have charity, I am nothing."

Among the Jews, *Zedakah* implies the fullest obligation that people owe to one another. *Zedakah* calls for more than mere alms-giving, because in its exercise, there must be kindness, tenderness, not to shame the poor or put him to disgrace. Sacred unto the Lord is the human dignity and personality of the recipient of charity, and they must not be hurt or lowered. Moreover, of greater merit than giving to the poor is to help him to become self-supporting.

If the name 'Parsi' is synonymous with 'charity', it is, once again, thanks to the emphasis of this ethos in their religious scriptures. The Zoroastrian religion is not a religion in the sense in which the term is commonly understood. It is rather a scientific and rational explanation of existence, of reality as a whole, of man's place in it, his duties while in this life, and the high destiny which he can achieve by establishing his conduct in accordance with the Eternal and Immutable Law of Nature which Zarathushtra called the Law of Asha.

Five things, according to the Pahlavi Dinkard, were considered worthy of merit: a) truthfulness b) charity c) skill d) endeavour and e) giving encouragement to others in good deeds. In the Handarz literature, Aturpat Mahraspand, the high priest at the court of the Sasanian king, Shapur II, speaks of three kinds of charity:

1. To give without being asked or requested to give
2. To give immediately on being asked or requested to give
3. To give at the promised time, if one has promised

Aturpat adds that charity is good when one expects nothing from the receiver in return and entertains no such expectation. Good charity, according to him, is never done for publicity, show or personal gain. Thousands of years have passed since Prophet Zarathushtra walked this planet, but his small yet dedicated band of followers remember to the last breath, his timeless message, "Happiness comes to him who seeks happiness for others." (Yasna 43.1).

Altruism among other life forms

Altruism is recognised in some way or the other by individuals of all cultures, and it is generally regarded as a trait favourable to the coherence and continuity of social groups and society in general. Brian O'Connel, in 'America's Voluntary Spirit', makes a fascinating observation, "....altruistic behaviour is an invention of nature herself..... the earliest philanthropic activity occurred many millions of years before Homo sapiens appeared, and that nature must value such behaviour since she has seen fit to continue it over vast periods of time."

To support his theory, he writes, "An article in a scientific journal on 'The Evolution of Altruism' reported that some seventy million years ago, as is known from fossil records of miocene times, there existed organised societies of termites and ants. Within such insect societies - bees, wasps, ants, and others - there were then, and still are, groups whose activities can in some broad sense be labeled as altruistic, with members of these groups performing specialised functions for the good of the larger society, often at individual sacrifice.

"More recently, a biologist, studying the chain of life in the sea, found 'support for a community theory of evolution according to which short-term advantages to individual species are sacrificed for long-term benefits for an entire living community.'

"Many people would be surprised to learn the extent to which animals help their own kind. Even the popular view of wild animals of Africa as ferocious beasts, 'red in tooth and claw', is at least partially mistaken. Throughout the animal world, there is much behaviour which is peaceful, cooperative and even altruistic."

Richard J. Butler and David C. Wilson, in 'Managing Voluntary and Non-Profit Organisations', have said, "Altruism is a fundamental part of human rationality and altruistic behaviour is the foundation stone of very many charities in Britain and elsewhere in the world. Without unselfish regard for others, there would be no place for charitable organisations in our society. A society that is based

solely on self-centered considerations cannot function. There must be some concern for others' needs if there is to be any continuing collaboration of the type that makes for social coherence and continuity."

Chapter II - Beyond Alms-Giving

Katy Butler, in 'Robin Hood was Right', notes, "There are only three things to be done with surplus money: spend it, invest it or give it away. Each person must decide what combination of the three makes the most sense, personally and morally."

Andrew Carnegie, a one-time penniless bobbin boy, gave away $350 million to various philanthropic causes. Perhaps his most enduring contribution to civilisation was the setting up of some 3,000 libraries in the United States of America and abroad.

Carnegie in 'The Gospel of Wealth', summed up the duty of 'the man of wealth' as follows: "To set an example of modest, unostentatious living, shunning display or extravagance; to provide moderately for the legitimate wants of those dependent upon him; and, after doing so, to consider all surplus revenues which come to him simply as trust funds, which he is called upon to administer, and strictly bound as a matter of duty to administer in the manner which, in his judgement, is best calculated to produce the most beneficial results for the community - the man of wealth thus becoming a mere trustee and agent for his poor brethren, bringing to their service his superior wisdom, experience, and ability to administer, doing for them better than they would or could do for themselves."

Carnegie had identified seven "best uses to which a millionaire can devote the surplus of which he should regard himself as only the trustee":

1. The founding of a university
2. Free libraries
3. Founding or extension of hospitals, medical colleges, laboratories and other institutions connected with the alleviation of human suffering and especially with the prevention, rather than the cure, of human suffering
4. Public parks
5. Providing halls suitable for meetings of all kinds and for concerts of elevating music

6. Public swimming baths
7. One's own church and churches in poor neighbourhoods

Carnegie also had a word of caution for what he called 'indiscriminate charity'. He believed, "It were better for mankind that the millions of the rich were thrown into the sea than so spent as to encourage the slothful, the drunken, the unworthy. Of every thousand dollars spent in so-called charity today, it is probable that nine hundred and fifty dollars is unwisely spent - so spent, indeed, as to produce the very evils which it hopes to mitigate or cure."

Carnegie then provides an analogy of a well-known writer of philosophic books who had given a quarter of a dollar to a man who approached him, although he had every reason to suspect that it would be spent improperly. Carnegie felt, "The quarter dollar given that night will probably work more injury than all the money will do good which its thoughtless donor will ever be able to give in true charity. He only gratified his own feelings, saved himself from annoyance - and this was probably one of the most selfish and very worst actions of his life."

In bestowing charity, the main consideration should be to help those who will help themselves; to provide part of the means by which those who desire to improve may do so; to give those who desire to rise the means by which they may rise; to assist only to the extent that is required, rarely or never to do all. Carnegie firmly believed, "Neither the individual nor the race is improved by almsgiving....for in alms giving, more injury is probably done by rewarding vice than by relieving virtue."

Modern and forward-looking as Carnegie's philosophy on 'giving' may seem, it has its roots in the Greek tradition of broad gifts for the populace as a whole. The Athenian citizen, Herodes Atticus, provided water supply to the city of Troas, a theatre to Corinth, a stadium to Delphi, aqueducts for Canusium in Italy and baths for Thermopylae. Many, if not most, of the other benefactions of that period were similar to those of Atticus. Indeed, they were all acts of philanthropy (for the public at large) and not charity (for individual needy people).

Bertrand Russell had observed a complete absence of benevolence in the Greek philosopher Aristotle. The sufferings of mankind, in so far as Aristotle was aware of them, did not move him emotionally. In fact, he held them, intellectually, to be an evil.

Not by wealth alone

Philanthropy, however, is not about giving of one's wealth alone. It includes giving of one's time, experience, expertise and labour. John D. Rockefeller, another leading philanthropist and contemporary of Carnegie, believed, "The most generous people in the world are the very poor, who assume each other's burdens in the crises which come so often to the hard-pressed. The mother in the tenement falls ill and the neighbour in the next room assumes her burdens. The father loses his work, and neighbours supply food to his children from their scanty store. How often one hears of cases where the orphans are taken over and brought up by the poor friend whose benefaction means great additional hardship! This sort of genuine service makes the most princely gift from superabundance look insignificant indeed..... It is only the spirit of giving that counts, and the very poor give without any self-consciousness."

R.M. Lala, in a paper titled "Not by Funds Alone", contributed for the International Conference on Corporate Philanthropy (1991), provided an interesting anecdote. "As a trust officer," he wrote, "I received a handwritten appeal from a young man in Pune who said he was the son of a farmer who had an annual income of Rs 5,000/-. He was studying agriculture at the University. He applied too late to get a government scholarship and was in grave difficulties. I requested a young man from the Symbiosis College of Management, Pune, to visit and find out whether the case was genuine and whether he deserved our scholarship."

Lala then quotes from the letter of the management student, Bharat Avalani, "Presently he is having a very difficult time and it is very difficult for him to also pay his mess bill which comes to around Rs 250/- per month. He says sometimes he has only one meal a day. Also I must mention that he is quite thin and looks a little undernourished.....I personally feel that he is very deserving and sincere.... I shared this with some of my close friends and we had the thought that we should also do something to ease his burden. We also realise now how fortunate and privileged we are. So far I've managed to collect Rs 300/- from friends who have contributed willingly and voluntarily after hearing about Rajesh. Another friend who has a family business of his own, offered to pay his mess bill next month."

Concludes Lala, "The philanthropy of the students reached Rajesh before I could, as Director of the Sir Dorab Tata Trust, sign the scholarship letter." Adds Lala, "And the conclusion I have come to is that men are more important than funds - men dedicated to serving their fellowmen in a country of India's size, diversity and problems, the way to uplift the nation is to light the spark in a million hearts and let them find their momentum. Funds are needed to assist them. But if you start with creating large organisations and expect them to do the job, you are beginning at the wrong end.

We need men who will plan the strategy, have the dedication and also give of themselves."

Head over heart

The patron saint of American philanthropy is not Dorothea Dix or any other saintly person but rather Benjamin Franklin, the man with a business sense and an eye on his community. For Franklin, doing good was not a private act between a bountiful giver and a grateful receiver, it was a prudent social act. A wise act of philanthropy would, sooner or later, benefit the giver, along with all other members of the community.

While living in Philadelphia, Franklin developed philanthropic enterprises which included projects for establishing a city police, for the paving and the better cleaning and lighting of city streets, for a circulating library, for the American Philosophical Society for Useful Knowledge, for an Academy for the Education of Youth (origin of the University of Pennsylvania), for a debating society and for a volunteer fire department. Few, if any, of Franklin's enterprises were primarily for the immediate relief of distress or misfortune. If an activity was required and was not yet performed by the Government, he thought it perfectly reasonable that individuals club together to do the job, not only to fill the gap, but also to prod or shame the Government into doing their part.

Julius Rosenwald considered the concept of 'benevolent giver and grateful receiver' and the axiom that the 'poor are always with you', as 'sob-stuff' philanthropy. Rosenwald was not hard-hearted, but merely tough-minded. He said, "I do not like the 'sob-stuff' philanthropy. What I want to do is to try to cure the things that seem to be wrong. I do not underestimate the value of helping the underdog. That, however, is not my chief concern but rather the operation of cause and effect. I try to do the thing that will aid groups and masses rather than individuals."

Ideas on philanthropy have varied with the customs of people, with changing needs and with the development of the human mind and man's desire to make life happier for others. India, today, has come a long way from the concept of feeding the cow, the dog and the Brahmin. While Mahatma Gandhi believed, "All wealth is a social trust and every individual a trustee entitled to its proper utilisation for the common good", Jamsetji N. Tata (1839-1904) felt, "What advances a nation or a community is not so much to prop up its weakest and most helpless members but to lift up the best and the most gifted so as to make them of the greatest service to the country." States R.M. Lala, in 'The Heartbeat of a Trust', "Jamsetji was a man sensitive to the suffering of his people but realised that 'patchwork philanthropy' as he called it - giving some food here and clothes there - would not go far."

India being a land of many cultures and ethnic groups, there is a natural and healthy diversity in the philosophy and approach to philanthropy. Some strike at the root, while others address only the external manifestations. Mother Teresa felt, "Poverty is man-made and not by God." She believed, "Those who are consecrated (to the work of God), poverty is a joy and a freedom. If you talk of cruelty, you are judging others and meanwhile someone who needs help may die in the next two hours. If you judge people, you have no time to love them." Mother Teresa was not concerned about how poverty or suffering can or should be removed. She only knew that poverty and suffering exist and, therefore, it is our duty to be of service.

In this diversity of approach, however, there is but one common factor - philanthropy or the love for human beings.

Chapter III - Institutionalised Philanthropy

The earliest form of institutionalised philanthropy dates to 150 B.C. Roman law broadened the legal heir concept by declaring philanthropic organisations to be both 'sentient reasonable beings' and 'immutable undying persons.' The reign of the 'five good emperors' (beginning 96 A.D.) gave a further fillip to these concepts. Nerva accorded the cities the right to accept and administer bequest of funds, Trajan extended this privilege to towns and Hadrian to villages, and Marcus Aurelius permitted even private groups to receive bequests.

In India, the first institutionalised efforts in social development and welfare were initiated by Christian missionaries in the early nineteenth century. Apparently, the objective was to propagate Christianity, but their contribution to the establishment of schools, colleges, dispensaries and orphanages cannot be underrated. Later in the same century, the English established a number of organisations for the promotion of professions, arts, culture and research, notable among these being the Bombay branch of the Royal Asiatic Society and the Bombay Natural History Society.

The advent of Mahatma Gandhi on the Indian socio-political scene gave a fresh impetus to the voluntary movement in the country. He believed that voluntary action was the only path to India's development. His vision of development included all facets of life- social, economic, cultural, political and spiritual. His conceptual framework of rural development was constructing self-supporting, self-governing and self-reliant village communities where everyone's needs were

satisfied, and everyone lived in harmony, co-operation and peace. To achieve this goal, Gandhiji introduced a constructive programme to achieve egalitarianism in Indian society by introducing basic education and sanitation, and by eradicating untouchability.

Origin of trusts

In England, trusts came into existence as a creation of the Court of Chancery. They were an outcome of the feudal 'uses' invented by medieval lawyers in England, in order to overcome the hardship of the Common Law rules preventing the land from being 'devised' (i.e., left by will) and the hardships of the feudal burdens imposed by the feudal lords of the manor on freehold tenants under the feudal system of the Middle Ages (500 A.D. to 1500 A.D.).

Trusts, in the sense in which that term is used and known in English law, was not known to Hindu law. However, in the wider sense of the term, it was quite analogous. There are instances in the Hindu law of the *Karta* of the Joint Hindu Family managing on behalf of a minor or absent members, or cases of setting apart of property which is intended to be held and used by the manager for the time being, for the purpose of providing for the worship of an idol or of carrying out any other religious or charitable obligation of the original donor.

The earliest legislation on trusts had three different legislative measures called Regulations:

1. Regulation No. XIX of 1810 of the Bengal Code passed exclusively in order to provide for the due appropriation of the rents and produce of lands granted for the support of mosques, Hindu temples, colleges and other public purposes such as repairs of bridges and public buildings.
2. Regulation No. VII of 1817 of the Madras Code for the due appropriation of the rents and produce of land granted for the support of mosques, Hindu temples, colleges or other public purposes.
3. Regulation No. XVII of 1827 which applied to the Bombay Presidency and gave to the Collector, visitorial power enabling him to enforce an honest and proper administration of religious and charitable endowments. These three regulations were confined merely to Bengal, Madras and Bombay Presidencies and did not extend to the whole of India.

Public charitable trusts in the province of Bombay had been governed by various legislations for well over a century. The Religious Endowment Act was passed by the Government, way back in 1863. This was followed, decades later, by the Charitable and Religious Trusts Act in 1920 and the

Bombay Public Trusts Registration Act in 1935.

The Societies Registration Act, 1860, was passed by the Central Government on the lines of the Literary and Scientific Institutions Act, 1854.

In Bombay Presidency, since 1936, every communal trust was being governed by its own independent Act. To cite an example - the various Parsi trusts were governed by the Parsi Public Trusts Registration Act, 1936.

On January 15, 1948, the Government of independent India appointed a committee, under the chairmanship of Justice Tendolker, to investigate into the question of management of trusts and endowments, in the province of Bombay. Taking into consideration this committee's report, and after eliciting public opinion, a comprehensive Bill was passed. The Bombay Public Trusts Act, 1950, then became law. The Act repealed all other Acts and provisions applicable to the state of Bombay and the Charity Commissioner took over the guardianship of trusts from the Advocate General in Bombay.

Definition of trust

The entity called Trust is not defined anywhere in the Bombay (now Maharashtra) Public Trusts Act, 1950.

Section 3 of the Indian Trusts Act, 1882 (which governs private trusts) however defines a trust as "an obligation annexed to the ownership of poverty, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him for the benefit of another".

Scope of the term charity

In its widest sense, the word charity denotes 'all the good affections that men ought to bear towards each other'. In its most restricted and common sense, it denotes relief for the poor.

It is a clearly established principle of the law of charity that a trust is not charitable unless it is directed to public benefit (unreported decision of the Bombay High Court in Appeal No. 5 of 1975). Negatively, a trust is not a charitable trust if it confers only private benefits. In the case of trusts for educational purposes, the conditions of public benefit must be satisfied. A trust by a father for the education of his son is not a charity. The public element is not supplied by the fact that from that son's education, all may benefit. But the establishment of a college or a university is, beyond

doubt, a charity.

Whether any particular object of a bounty falls within the definition of charity must, to a large extent, depend upon the standard of customary law and common opinion amongst the community to which the parties interested belong (Trustees of Tribunal Press vs. Commissioner of Income Tax, 66 IA. 241 - A.I.R. 1939 P.C. 280 182 I.C. 882 - 41 BOM. L.R. 1150.)

Communal trusts

The Constitution of India has established a secular state and has attempted to do away with distinction of caste, color and creed. However, it is open to any citizen of India to create a valid trust for the benefit of a particular section of the community, e.g., it has been held in the Aga Khan Diamond Jubilee Trust case, by the Bombay High Court, that a trust for the uplift of the Khoja community is a public trust under the Bombay Public Trusts Act, 1950. (Unreported decision of Bom. H.C. Appeal No. 50 of 1952 - Original side.) Section 13 clause (a) of sub-section 1 of the Income Tax Act pertains to religious trusts, and clause (b) pertains to charitable trusts. In the case of a trust or institution for charitable purpose, created or established after 1-4-1962, its income would not be exempt under section 11 or 12, if the trust or institution is created or established for the benefit of any particular religious community or caste. Hence, although it is permissible to create a valid trust for the benefit of a particular section of the community, that trust would not enjoy tax exemption under section 11 or 12 of the Income Tax Act.

Chapter IV - Voluntary/ Non-profit Sector

The voluntary sector in India is noted for its vibrancy, innovation, and research-based advocacy. It has played an important role in supporting government as a partner in nation-building. Historically, Indian voluntary development organisations played three significant roles:

1. In filling gaps in the government's welfare systems, such as delivering basic services like health care, education, water, and sanitation to the most remote locations in the country
2. In research-based advocacy, such as analysing the efficacy and reach of various government projects to provide guidance to the government for policy change; and
3. In working on a rights-based approach and entitlements. Voluntary groups work for marginalised communities in providing them access to basic services, and their modus

operandi is primarily to educate and empower the community about their entitlements and review government plans and policy for their efficacy.

The voluntary sector in India today does not simply fill gaps in the government's service delivery system; it contributes significantly to the country's GDP. The voluntary sector is a major provider of livelihoods to millions, and has grown exponentially over the past two decades.

Different acronyms are used by voluntary organisations, the most common being NGO or Non-Governmental Organisation, signifying that it is an organisation doing what government is supposed to be doing but without being the government. Other acronyms include:

1. NPO Non-Profit Organisation (essentially meaning profits or surplus, if any, are not distributed among members)
2. CSO Civil Society Organisation (usually policy research and/or advocacy-based organisation)
3. SPO- Social Purpose Organisation
4. SDO - Service Delivery Organisation
5. CBO-Community Based Organisation
6. PVO- Private Voluntary Organisation
7. INGO-International NGO
8. BINGO - Big International NGO
9. QANGO- Quasi Autonomous NGO
10. GONGO - Government-organised NGO
11. MANGO - Market Advocacy NGO
12. PANGO - Party NGO (set up by Political Parties as NGOs)

Types of non-profit organisations

In India, there are generally five types of non-profit organisations (though only the first three can be considered as established for 'charitable purpose':

1. Public charitable trust
2. Charitable society
3. Company (licensed as non-profit)
4. Co-operative and

5. Trade union

The characteristics common to the first three types are:

1. They exist independently of the state (i.e. they are autonomous in their management/governance though they may be financially supported by government)
2. They are self-governed by a 'board of trustees' or 'managing committee' or 'governing council' which comprises individuals who generally serve in a fiduciary capacity
3. They produce benefits for others, generally outside the membership of the organisation
4. They are 'non-profit', in as much as they are prohibited from distributing a monetary residual to their own members

> The term 'not-for-profit' or 'non-profit' does not mean that profits cannot be generated by the organisation. Rather the term implies that the organisation is 'not profit distributing' in nature.

Trust

A public charitable trust has, for the purpose of its objects, the members of an uncertain and fluctuating body. In ascertaining whether a purpose is public or private, one must see if the class to be benefited, or from which the beneficiaries are to be selected, constitute a substantial body of the public. Hence, trusts which lack the public element, such as trusts for the benefit of workmen or employees of a company, however numerous, have been held not to be 'public charitable'. A trust is defined as an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by him for the benefit of another. A trustee of a public charitable trust must not, in any way, make use of the trust property or of his position as trustee for his own interest or private advantage, nor may he enter engagements in which he has or can have a personal interest which conflicts or possibly may conflict with the interest of those whom he is bound to protect. A trustee may remain a trustee for life unless there is a scheme for election in the trust deed of the trust. Often trustees appoint among themselves a chairperson (who generally presides at board meetings) and or an executive/managing trustee. It is an accepted principle that a trustee of a religious or charitable trust should take proper care of the trust property just as a man of ordinary prudence does, in respect of his personal property.

Society

Unlike trusts, societies have a more democratic set-up. There is usually a scheme for election of members of the governing council/managing committee. The founders of the society can continue to remain members of the governing council/managing committee, subject to their being elected to it from time to time. In rare cases, one or two founder members may be permitted to remain permanent/life members on the governing council/managing committee. The managing committee may also elect among themselves office bearers such as president, vice-president, secretary and treasurer with specific duties. Members of the general body enjoy voting rights and the right to demand the submission of accounts and the annual report of the society. A society can be wound up if the objectives for which it had been established have been fully achieved.

Company (licensed under Section 8)

Although The Indian Companies Act is primarily intended to regulate profit-making entities, a section of the Act (Section 8 of the Indian Companies Act 2013) allows the possibility of obtaining non-profit status for certain companies having as their objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object and intends to apply its profits, if any, or other income in promoting its objects and intends to prohibit the payment of any dividend to its members. A not-for-profit company enjoys several advantages over a public charitable trust or society. The key advantage is 'limited liability'. Incidentally, the Income Tax Act gives equal treatment to trusts, societies and not-for-profit companies as far as various tax exemptions and tax deduction for donors are concerned.

Cooperative

A co-operative may be defined as an institution which aims at the economic and social betterment of its members, and an enterprise, which is based on mutual aid conforming to co-operative principles. All states and union territories have their own laws governing co-operatives, and institutions registered as co-operatives are expected to abide by these laws, which can vary from state to state.

Trade union

Trade unions are governed by the Trade Union Act, which defines a trade union as a temporary or permanent institution formed for regulating the relations between workers and employers, among workers, or among employers. The Act also allows for a federation of two or more unions. In contrast to all other forms of non-profit organisations, trade unions are allowed to use their general fund to remunerate their members and staff, to fund legal procedures, educational activities, and

the general welfare of its members. Trade unions are also allowed to have separate funds for promoting civil and political interests of their members.

> There is no single body of law for all these classes of non-profits; instead, as specified above, there are specific laws and regulators for each major type. Also, different legal provisions exist at the national and state level.

Chapter V - Trust, Society or Company?

An organisation established for charitable purpose in India has the choice to register either as a public charitable trust under the Public Trusts Act applicable in the state where it chooses to register or as a charitable society under the Societies Registration Act 1860 or as a company licensed under Section 8 of the Indian Companies Act 2013.

One of the key issues in non-profit governance in India is lack of uniformity and standardisation. Since 'charity' is a state and not a central subject in India, some states have excessive regulations while others have virtually none. For example, in India, in the states of Maharashtra and Gujarat the charity commissioner requires regular 'change reports' to be filed, as also prior permission for buying and selling of immovable property. On the other hand, the national capital of the country does not have a charity commissioner. Nor do most other states. It is no surprise therefore that, in India, many new nonprofits attempt to seek registration in New Delhi.

Another factor is the diversity in legal choices. One may literally choose a type that requires the least compliance. While societies and nonprofit companies require a modicum of accountability including Annual General Meetings and Annual Reports for members, trusts are exempt from this requirement. Also, while societies and non-profit companies require periodic rotation on boards by a process of nomination and election, trust boards are usually static. Trusteeship is usually for life and new trustees are appointed by surviving trustees.

In India, it is not uncommon to find boards that are remunerated for their service. The law generally allows 'reasonable remuneration' provided there is also an enabling provision for it in the Trust Deed or the Rules or Articles of Association, as the case may be.

The relationship between boards and the Chief Executive is also an issue that merits deeper attention and understanding. Sometimes it is the CEO that drives the organisation while the Board remains passive and at other times it is the reverse. Both situations are undesirable. There should be healthy respect, communication, interaction, and a system of 'check and balance.'

Public charitable trust

States like Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh have a Public Trusts Act in force as also the office of the Charity Commissioner. For example, The Maharashtra Public Trusts Act 1950 is applicable throughout the state of Maharashtra and the office of the Charity Commissioner regulates all public charitable trusts registered in the state of Maharashtra. However, several other states and union territories in India do not have a Public Trusts Act or any regulating authority like the Charity Commissioner. In such territories one may simply register the trust deed under the Indian Registration Act with the sub-registrar's office.

In states or union territories where there is no charity commissioner, a public charitable trust would remain unregulated, at least at the state regulatory level and trustees would be saddled with lesser regulatory compliance at least at the state level. The Indian Trusts Act 1882 is applicable to private and not public charitable trusts. However, the broad principles of this Act would serve as guiding principles for governance and in the absence of a state appointed charity commissioner, whenever required, courts would have jurisdiction and the power to administer or regulate such trusts.

In states like Maharashtra or Gujarat where there is a charity commissioner, at least three founders are required to form a trust. In other states, two would suffice. In addition to being majority age, a trustee must be competent to contract, which requires that he or she be 'of sound mind' and 'not disqualified from contracting by any law to which he/she is subject'.

Generally, two or more trustees may manage a trust. The charter or trust deed generally specifies the minimum and maximum number of trustees the trust may have. Unless specified in the trust deed, the trustees may remain trustees for life. Trusts do not have members and as such, there is no necessity for annual general meetings or annual reports for members or periodic elections. Trustees may lay down office by putting in a resignation letter before the board. The surviving trustees may appoint new trustees by invitation.

The governance of a trust or who controls the trust (i.e., members of one family or a company) does not determine the public nature of a trust. What is essential, is whether the trust is for the

benefit of the public. All the properties (movable and immovable) of the trust legally vest in the trustees and all trustees are jointly and severally responsible. The board of trustees generally meets as often as required. Ideally, the board may meet four times a year (i.e., every quarter). However, this may vary. Often, procedures for calling and conducting meetings are laid down in the trust deed. Seven to fifteen days prior notice is generally adequate. The chairman presides over all meetings of the board and usually enjoys a casting or additional vote in case of a tie.

A trustee must not, in any way, make use of the trust property or of his position as a trustee for his own interest or private advantage. Nor may he enter engagements in which he has or can have a personal interest which conflicts or possibly may conflict with the interest of those whom he is bound to protect. A trustee cannot delegate any of his duties, functions and powers to a co-trustee or any other person though, as a rule, executive acts may be delegated. However, where a trustee is required to exercise discretion, he must exercise the discretion personally and cannot delegate it. In principle, a trustee cannot buy the property of the trust himself and he cannot sell any of his properties to the trust either - the mischief in both the cases being the likelihood of a conflict between his interest and his duties as a trustee. Trustees, as a rule, should govern the trust without expecting any remuneration - voluntary service being the foundation underlying all trusteeship.

Charitable society

The Registrar of Societies appointed by the state regulates societies established for charitable purpose under the Societies Registration 1860. This central law has been adapted by various states. In states where there is a charity commissioner and a Public Trusts Act in force, societies are also registered as public charitable trusts. Thus, in states like Maharashtra and Gujarat, societies have dual registration as society as well as public charitable trust and must comply with regulatory requirements of both laws.

As per Societies Registration Act 1860, Societies can be formed by seven or more persons subscribing to the Memorandum of Association of the Society and registering it with the office of the Registrar of Societies. As per Section 20 of the Societies Registration Act 1860 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.'

While under the aforesaid Section 20, societies may be registered for several purposes, what is important is the fact that charitable societies can be registered under this Act. At least seven members are required to form a society. These seven by default become members of the first governing board of the Society. There are generally no specific qualifications for the founders of a society. A society is required to have a general body of members with the power to vote at general body meetings, elect members of the managing committee or remove them if their performance is unsatisfactory, call for special meetings and demand examination of accounts and other records.

Members of the managing committee may hold office for such period as may be specified under the bylaws of the society. They may also stand for re-election. Members of the managing committee may meet as often as required, and they must call a general body meeting once a year. Procedures regarding meetings are generally specified in the society's bylaws.

Members of the managing committee generally serve in a fiduciary capacity and usually appoint among themselves a president, secretary, and treasurer. Managing committees are usually headed by a president who chairs all meetings, a vice-president, a single secretary, or joint secretaries who keep all records, call meetings, set agendas, keep minutes and a single or joint treasurers who handles overseas accounts and financial matters.

Membership of a society may be open to either individuals or institutions or both. A society may also offer various categories of membership (e.g., Patron, Institutional, Associate, Life, and Ordinary) with different fees/ subscription structures and rights and privileges. Applications for membership may be made in writing in a prescribed form and the managing committee usually reserves the right to reject any application for membership without assigning any reason. The managing committee may also close membership (i.e., stop accepting new applications) from time to time.

The general body of members delegates the management of the day-to-day affairs of the society to the managing committee. Issues arising at meetings of the society are usually decided by a majority of votes of the members present and in the case of equality of votes, the chairman of the meeting usually has a second or casting vote. Societies usually lay down the minimum number of members necessary for a quorum at either the managing committee or general body meetings. It is usually the duty of the secretary to keep a record (minutes) of the various meetings.

The business at Annual General Meetings is usually to receive and adopt the audited statements of account, the report of the managing committee, appointing the auditor and fixing his/her remuneration, elect members of the managing committee and discuss the general work, policy, and future programmes of the society. Notice for all meetings must be sent well in advance specifying the date, time, venue, and business. A meeting may be adjourned if there is no quorum. Bylaws of a society may be amended from time to time by the members of the general body.

Company licensed as a non-profit

The Registrar of Companies regulates companies licensed under section 8 of the Indian Companies Act 2013. This is a central law and applies uniformly throughout the Republic of India. Section 8 is a provision under the Indian Companies Act 2013 (it used to be Section 25 under the earlier Indian Companies Act 1956) which states:

Section 8 formulation 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.

Thus, the Registrar of Companies may register what is commonly known as a 'Section 8 company' if the company intends to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object and not distribute profits, if any, to the company's members or shareholders. The essence of what is a 'non-profit' or a 'not-for-profit' entity comes through very clearly under this provision of the Indian Companies Act

2013. Non-profit does not mean loss making as some erroneously seem to think. Non-profit means 'non-profit distributing'. Profits made, if any, are ploughed back within the company to further the company's objectives. Though not specifically stated under the Public Trusts Act or the Societies Registration Act 1860, the same principle of 'not-for-profit distribution' applies to both public charitable trusts and charitable societies.

One may incorporate the company licensed under Section 8 as either a private or a public company and with share capital or limited by guarantee. Thus, a company licensed under Section 8 of the Indian Companies Act may be limited by guarantee or limited by shares. Two or more members (who by default may become directors of the governing board) are required to register a private Section 8 company.

A company limited by guarantee is a distinct legal entity from its owners and is responsible for its own debts. The personal finances of the company's guarantors are protected. They would be responsible only for paying company debts up to the amount of their guarantees. 'Limited by shares' means that the liability of the shareholders to creditors of the company is limited to the capital originally invested, i.e., the nominal value of the shares.

There are several reasons why Section 8 companies have become a popular choice for registration. However, the key attraction appears to be 'limited liability' available to all companies including companies licensed under Section 8. Limited liability is a form of legal protection for shareholders and members that prevents individuals from being held personally responsible for their company's debts or financial losses.

The choice

All three choices of registration are good and valid, and each choice of registration has its own merit on a case-to-case basis. What is important to note is the fact that both the Income Tax Act 1961 and the Foreign Contribution Regulation Act 2010 do not discriminate between any of the three choices. The same provisions of Income Tax and FCRA apply to all three.

Trusts registered in states other than Maharashtra, Gujarat, Madhya Pradesh, and Rajasthan can legally bypass at least one regulating authority (i.e. charity commissioner) because most other states, including the National Capital, Delhi, do not have a Public Trusts Act (state legislation) nor an office of the Charity Commissioner. Societies which are registered under the Societies Registration Act 1860 in Maharashtra and Gujarat State are by default required to also register as

Trusts under the Trusts Act.

Companies seeking registration under the Indian Companies Act are required to go through a name approval process. This process ensures that there is no other company registered in India under a similar name. However, there is no such process or procedure laid down at the state level for trusts or societies. As a result, there are instances of several trusts and societies registered under the same or similar name.

For all three legal forms of NPOs, there are no restrictions on an organisation's incidental business, commercial, or economic activities, provided that the NPO is established for and primarily carries out activities for the relief of poverty, education, medical relief, preservation of the environment (including watersheds, forests, and wildlife), monuments or places or objects of artistic or historic interest. The NPO must maintain separate books of account for business, commercial, or economic activities, and any profits received must be applied fully towards charitable objects. However, an organisation that has as its purpose the advancement of 'any other object of general public utility' may not generate business income more than twenty per cent of its total income from donations, grants, and other non-business receipts. If the above conditions are not satisfied, the NPO would lose its income tax exemption and its income would be liable to taxation at the maximum marginal rate of tax.

The following table will help understand the key differences and some similarities between trust, society and a company licensed under Section 8 of the Indian Companies Act 2013.

		Trust	**Society**	**Section 8 Company**
1	**Registration Act**	Depends on the state. Example in Maharashtra state - Maharashtra Public Trusts Act 1950. In states where there is no state public trusts Act in force, the trust deed is registered under the Indian Registration Act	The Societies Registration Act 1860 as may be amended by the state	Indian Companies Act 2013
2	**Regulating authority**	The Charity Commissioner in certain states like Maharashtra and Gujarat	The Registrar of Societies. In states like Maharashtra and Gujarat, the charity commissioner	Registrar of Companies

		Trust	Society	Section 8 Company
3	**Name approval process**	Generally, not required	Generally, not required	Required
4	**Governing Board**	Board of Trustees	Governing Council/Managing Committee	Board of Directors
5	**Minimum board strength**	In states like Maharashtra, at least three. In other states, two	Generally, seven	Two if incorporated as private company and three if incorporated as public company
6	**Minimum number of members**	No members required. Only trustees	Seven	Two if incorporated as private company and seven if incorporated as public company
7	**Income tax**	Eligible for tax exemption u/s 12AB or u/s 10(23C); and donations eligible for tax deduction under section 80G	Eligible for tax exemption u/s 12AB or u/s 10(23C); and donations eligible for tax deduction under section 80G	Eligible for tax exemption u/s 12AB or u/s 10(23C); and donations eligible for tax deduction under section 80G
8	**FCRA**	Eligible for registration or prior permission	Eligible for registration or prior permission	Eligible for registration or prior permission
9	**Business income**	Allowed up to 20% of total income during the financial year if under "any other object of general public utility"	Allowed up to 20% of total income during the financial year if under "any other object of general public utility"	Allowed up to 20% of total income during the financial year if under "any other object of general public utility"
10	**Applicability of GST**	Applicable if supply of service exceeds Rs 20,00,000 or supply of goods exceeds Rs 40,00,000 during the fiscal year	Applicable if supply of service exceeds Rs 20,00,000 or supply of goods exceeds Rs 40,00,000 during the fiscal year	Applicable if supply of service exceeds Rs 20,00,000 or supply of goods exceeds Rs 40,00,000 during the fiscal year
11	**Applicability of labour/HR laws**	Applicable	Applicable	Applicable

		Trust	Society	Section 8 Company
12	**Board liability**	Trustees personally liable	Members liable	Limited liability
13	**Power**	Board of Trustees	Members of the General Body	Shareholders or members as the case maybe
14	**Board rotation**	Trustee may remain trustee for life unless term of office is specified in the trust deed	Periodic elections as may be specified under Rules of the Society	Every director who retires in accordance with the articles is eligible for re-appointment as a director. The directors of the Board are elected or appointed by the Members/shareholders at the AGM
15	**Need for AGM**	Not required	Required	Required
16	**Members**	Not required	Required	Shareholders or members as the case may be, required
17	**Remuneration to Board members**	Allowed if there is enabling clause in the trust deed and such remuneration is 'reasonable'.	Allowed if there is enabling clause in the Rules and such remuneration is 'reasonable'.	Allowed if there is enabling clause in the Articles of Association and such remuneration is 'reasonable'.

Chapter VI - Good Governance

The scope of good governance is wide and varied. It includes compliance with the regulatory regime, as also optimally managing resources be it financial, human, or intellectual. It should be a system by which organisations should be directed and managed. It influences how the objectives of the organisation are set and achieved, how risk is monitored and assessed, and how performance is optimised. It is a system of principles, policies, procedures and clearly defined responsibilities and accountabilities. It includes interaction between various stakeholders in shaping the organisation's performance and deals with determining ways to take effective strategic decisions

and develop added value for all stakeholders.

Why is good governance necessary?

Donors, who now increasingly see themselves as 'social investors', consider good governance as important as financial and programmatic performance when evaluating NGOs or social enterprises for social or impact investment. Donors and investors who are provided with high levels of disclosure and transparency are likely to invest more openly and enthusiastically in such initiatives.

Good governance ensures transparency, which ensures strong and balanced development. It also addresses operational risks and, hence, sustainability for the organisation. It is intended to increase the accountability of the organisation and avoid disasters before they occur. It requires the governing board to assume 'social responsibility' and protect the rights of the beneficiaries, employees, donors, and all those having a stake in the NGO's activities. Improved governance structures and processes ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term institutional and programmatic sustainability.

Good governance enables an NGO to compete more efficiently and prevent fraud and malpractices within the organisation. Improved management accountability and operational transparency, in turn, fulfill investors' expectations and confidence in management and effectiveness, and, in return, enhance the value of the NGO. Effective governance also ensures efficient risk mitigation systems are in place. A transparent and accountable system makes the Board of an NGO aware of the risks involved in a particular strategy, thereby placing various control systems in place to facilitate the monitoring of the related issues.

Finally, donor or social investor relations is also an essential part of good governance. Donors and social or impact investors directly or indirectly entrust management of the NGO or social enterprise to create enhanced value for their social investment. The NGO is hence obliged to make timely disclosures on a regular basis to all its stakeholders.

How to ensure good governance?

NGO or NPO governance refers to and encompasses all laws, regulations, codes, and practices, that define how the institution is administrated and inspected. It also determines rights and responsibilities of different partners, attracts human and financial capital, makes institutions work efficiently, and provides economic and programmatic value to stakeholders in the long run, while respecting the values of the community it belongs.

For effective NGO governance, the management approach should be in accordance with the following principles:

1. The organisations should be headed by an effective governing board, and roles, responsibilities and accountabilities within the organisation should be clearly identified.
2. The governing board should comprise independent minded trustees/directors. It should include an appropriate combination of independent trustees/directors to prevent one individual, or a small group of individuals, from dominating the board's decision making.
3. The governing board should be of a size and level of diversity commensurate with the sophistication and scale of the organisation.
4. Appropriate board committees may be formed to assist the board in the effective performance of its duties.
5. There should be a formal, rigorous and transparent process for the appointment, election, induction and re-election of trustees/ directors. The search for board candidates should be conducted, and appointments made on merit, against objective criteria (to include skills, knowledge, experience, and independence and with due regard for the benefits of diversity on the board, including gender).
6. The governing board should ensure that a formal, rigorous and transparent procedure is in place for planning the succession of all key office bearers.
7. Trustees/directors should be aware of their legal duties. Directors should observe and foster high ethical standards and a strong ethical culture in their organisation.
8. Each trustee/director must be able to allocate sufficient time to discharge his or her duties effectively.
9. Conflicts of interest should be disclosed and managed.
10. The governing board is responsible for the governance of the organisation's information, resources (both human and financial) information technology and information security.
11. The governing board, committees and individual directors should be supplied with information in a timely manner and in an appropriate form and quality by the management team (usually lead by the CEO) to perform to required standards.
12. The governing board, committees and individual trustees/directors should have their performance evaluated and be held accountable to appropriate stakeholders.
13. The governing board should be transparent, fair and consistent in determining the remuneration policy for trustees/directors and senior executives.

14. The governing board should be responsible for risk governance and should ensure that the organisation develops and executes a comprehensive and robust system of risk management.
15. The governing board should ensure the maintenance of a sound internal control system.
16. The governing board should present a fair, balanced and understandable assessment of the organisation's financial, environmental, social and governance position, performance, and outlook in its annual report and on its website.
17. Organisations should consider having an effective and independent internal audit function that has the respect, confidence, and cooperation of both the governing board and the management.
18. The governing board should establish formal and transparent arrangements to appoint and maintain an appropriate relationship with the organisation's auditors.
19. The governing board should be responsible for ensuring that an appropriate dialogue takes place among the organisation and other key stakeholders. The board should respect the interests of its stakeholders within the context of its fundamental purpose.

Proponents of good governance say there is a direct correlation between good governance practices and long-term stakeholder value.

Some key benefits

1. High performance and deeply engaged board and management
2. Accountable management and strong internal controls
3. Increased stakeholder engagement
4. Better managed risk, and
5. Effectively monitored and measured performance

Suggestions

1. Establish values and governance structures for your organisation
2. Ensure that all legal and regulatory requirements are met and complied with fully and in a timely fashion
3. Establish long-term strategic objectives for the organisation
4. Establish clear lines of responsibility and a strong system of accountability and performance measurement

5. Hire the chief executive officer, determine the compensation package, and periodically evaluate the officer's performance
6. Ensure that management supplies the board with sufficient information for it to be fully informed and prepared to make appropriate decisions and to be able to adequately monitor and oversee the organisation's functioning
7. Meet regularly to perform its duties and with clarity of purpose

Chapter VII - Governing Boards and Why we Need Them?

In India, boards include:

1. Trustees in the case of a Charitable or Religious Trust
2. Managing committee or governing council in the case of a Society, and
3. Board of directors in the case of a nonprofit company

Boards are necessary from a legal and governance point of view.

Legal

1. The funds, properties, and assets of the organisation vests in the board
2. The onus of advancing the 'aims and objects' of the organisation is on the board
3. Boards must not derive personal benefit from the organisation and their role is fiduciary
4. Boards are jointly and severally responsible, hence duties and responsibilities should be shared as a team
5. Boards are required to approve and sign the audited accounts
6. Policy matters are approved by the board through process of periodic meetings and resolutions

Other responsibilities

1. Provide leadership/vision
2. Give the organisation a sense of direction

3. Set standards of efficiency, accountability, and transparency
4. Hold the organisation together
5. Mobilise resources
6. Build and nurture an ethical and value-based organisation
7. Discourage exaggerated or misleading claims
8. Provide the necessary 'check and balance'

Good boards

1. Have reasonable understanding and interest in the work of the organisation
2. Have commitment to the organisation's aims and objects
3. Have reasonable intelligence and competence
4. Members are individually and collectively respected in the community and by all stakeholders
5. Have capacity for growth
6. Are sensitive to change and new issues affecting the community
7. Have abiility to work in concert with others
8. Stand up to one's convictions
9. Treat staff as partners
10. Respect the right of other board members and staff to differ/disagree
11. Dissent if necessary, but accept with grace the majority decision or step down
12. Effectively mobilise and properly channelise resources

What to consider before joining an NPO governing board

Often friends, colleagues, or relatives already serving on a board or associated with a non-profit, request us to join the governing board. You may be given some vague idea about the work of the organisation and make it seem like a very manageable commitment (e.g. you just need to attend two or three meetings in a year and that is all).

You could save yourself and the non-profit from an inappropriate mismatch by taking a few simple analytical steps before committing to join the governing board.

How do you decide whether you will be the right fit or not? Is this something you really want to do and, most importantly, is the organisation credible enough for your commitment of time, talent, and treasure?

Ask why the organisation exists, and is it still true to its mission. Most non-profits are set up from a deep sense of passion for changing the world. The passion is rooted in the vision and mission of the organisation. Examine why the organisation exists. That passion with the organisation should not be for the programmes, but for the intended outcomes. Programmes evolve over time based on a wide variety of factors, but vision, mission, and core values must remain constant. Being passionate about the cause and mission is usually at the core of the organisation through whatever change may come. It forms the bedrock of commitment.

Learn more about the organisation's direction. A primary responsibility of the board is to provide strategic direction for the organisation. A related responsibility is achieving the strategic organisational goals through the staff the board hires, and works together with, to implement this plan. It is also important to understand how the board governs. In many organisations the board may have developed a Board Policy Manual a set of basic value statements or policies to guide board and staff decision making, a central repository for all board value-driven mandates. Ask yourself how effectively the board governs and how you will contribute to that role of governance without getting drawn into management, which is not really your role as a board member.

Governing Boards and Why we Need Them?

Here are some further key questions to ask yourself

Every board member is expected to contribute his or her 3Ts - Time, Talent, and Treasure, to the organisation. Hence it is important that every aspect is carefully considered before joining a board.

Do you have enough time to serve on a board?
The meetings may vary from monthly to twice or thrice a year. The more engaged the board, the more productive they could be.

Are you a good team player?
Boards need to collaborate and ensure cooperative action. Find out who it is you will be working with and what their priorities are.

Do you enjoy getting into the nitty-gritty of policy?
Boards should be macro-picture oriented, and not involve themselves in day-to-day matters. If you are a task-oriented person, maybe a volunteer role is more suited for you.

Do you feel comfortable fundraising and mobilising resources?

Almost all organisations struggle with fundraising; most staff do not have the bandwidth to mobilise resources, and few have the art. There will be no escape, so be sure you feel at ease with fundraising.

What are the roles and responsibilities of board members, and are you equipped for them?

Understand your specific role: what you are expected to do as an individual, and collectively as a board. Some boards follow an annual board assessment based on an objective standard of performance, so know how your performance will be evaluated.

If you have figured out the how and why and have decided to join, what are the compliance requirements you should look at before you leap?

1. **Documentation:** Ask for, and carefully read, the organisation's charter (trust deed, MoA and AA), bylaws or policy documents (if any), last three years audited accounts, returns of the last three years filed with key regulatory authorities (Charity Commissioner, Income Tax, FCRA), annual budget, a strategic plan if there is one, and other organisational materials, including the website.
2. **Fiduciary Role:** The role of a governing board member is fiduciary, which essentially means relating to the onerous responsibility to take care of someone else's (public) money in a manner consistent with law, the charter of the organisation and to the satisfaction of all stakeholders.
3. **Liability:** If the organisation is a trust or a society, the board member's liability would be personal. However, even if it is a Section 8 company limited by guarantee, the board member should ensure that needless liabilities are not created, and generally gauge the compatibility of the governing board's risk taking appetite with your own. How well the governing board is equipped and ready to manage risks, liabilities and reputation is critical, especially if working on sensitive issues (e.g. with children, orphans).
4. **Conflict of Interest:** Does the organisation have a clear policy on conflict of interest, and historically how well has the board executed or managed it? A conflict of interest arises when a person in a position of authority over an organisation, such as an officer, director, trustee, or key employee, may benefit (e.g., financially) from a decision he or she could

make in such capacity, including indirect benefits such as to family members or organisations with which the person is closely associated. While most conflict-of-interest policies only address financial conflicts of interest, ideally it is both necessary and appropriate to require disclosure of affiliations that can give rise to conflict of interest. Therefore, the organisation's policy should define conflicts of interest to include affiliations as well as economic interests. The purpose of such disclosure is to provide the board with a meaningful opportunity to determine whether a conflict of interest exists. Complete, accurate disclosure gives the board the information they would need to fulfil their fiduciary obligations, and to make decisions that are in the organisation's best interests. To reiterate, one must always stay wary of liability both for the organisation and for oneself personally. As stated earlier, the liability of a Section 8 company is generally not transferred onto the directors. However, directors can be held personally liable for their acts under the Companies Act 2013 if there is a breach of fiduciary duty or instances of fraud, breach of trust, fraudulent misrepresentations, etc. A director must comply with certain fiduciary duties, and any lapse could make the director personally liable in an action for tort (i.e. a wrongful act or an infringement of a right, other than under contract, leading to legal liability).

5. **Term of Office:** When there is no rotation, board members tend to become complacent. Members who serve for a fixed term tend to make the most of the time they serve on boards. One third of the board stepping down and two thirds remaining for providing continuity is generally a good practice. Also, one or two founder members or individuals who have the core expertise required, may remain as permanent members of the governing board or permanent invitees (with or without right to vote on matters of policy) or simply in an emeritus position to provide mentorship. Unless specifically provided in the charter, generally in a trust the trustees serve for life, unless they voluntarily resign. In a Society or Company there is usually a system of electing or rotating board members. Here again, if the General Body of members is the same or very small, there is little or no scope for rotation. The concept of rotation should be built into the charter of every organisation. In case of existing organisations, changes could be made in the Articles of Association by due process. For trusts, the appointment letter should clearly state the term of office, and the newly appointed board member should accept the same in writing under his/her signature.

Chapter VIII - Tax Exemption and Tax Deductions

The Income Tax Act 1961 (amended by subsequent Finance Acts) governs tax exemption of nonprofit entities throughout India. The Act provides that organisations may qualify for tax exempt status if the following conditions are met:

1. The organisation is established for religious or charitable purposes
2. The organisation spends at least eighty-five per cent of its income in any financial year (April 1 to March 31). If it is unable to do so on account of late receipt of the income during the fiscal year, it may exercise the option to spend it in the following year by filing online Form No. 9A. Unspent income may also be accumulated for specific projects or a capital purpose for a period up to five years by filing online form No. 10
3. The funds of the organisation must be deposited as specified in Section 11(5) of the Income Tax Act
4. No part of the income or property of the organisation may be used or applied directly or indirectly for the benefit of the founder, trustee, relatives of the founder or trustee, or a person who has contributed more than Rs 50,000 to the organisation in a financial year
5. Audit report in form 10B or 10BB as the case maybe, and return of income in ITR-7 must be filed annually
6. The organisation's income must be applied or accumulated in India. However, income may be applied outside India with the prior permission of the Central Board of Direct Taxes (CBDT) to promote international causes in which India has an interest (such as disaster relief, or a cultural exchange), without being subject to income tax
7. The organisation must keep a basic record (name, address, telephone number and PAN) of all donors
8. According to Section 115BBC, introduced under the Finance Act (2006), all anonymous donations to charitable organisations are taxable. Finance Act No. 2 (2009), however, carves out the following exception: anonymous donations equaling up to five per cent of the total income of the organisation or a sum of Rs 100,000 (whichever is higher) will not be taxed. Religious organisations, including, temples, churches, and mosques, are exempt from the provisions of this section
9. The organisation must maintain proper books of account

NPOs must also meet the Income Tax Act's scope of charitable purpose which includes poverty relief, education and yoga, medical relief, preservation of environment, preservation of monuments, places, or objects of artistic or historic interest, and the advancement of any other object of general public utility. An amendment to these provisions in 2015 placed new limits on the final category (i.e. the advancement of any other object of general public utility), primarily limiting the permissible scope of income generating activity an NPO may carry out without losing its tax-exempt status. The amendment provides that, if an organisation conducts even limited business activity, it will not be eligible for tax exemption unless:

1. The business activity is undertaken in the course of advancing an object of general public utility; and
2. The aggregate receipts from the business activity during the previous fiscal year do not exceed twenty percent of the organisation's total receipts for that year

Annual compliance

1. Audit Report in Form 10B or 10BB (as the case may be) must be filed every year by 30th September
2. File 10B if total income of the organisation is over Rs 5 Crore, or if the organisation receives foreign contribution, or if the organisation applies its income outside India. File Form 10BB if none of the above is applicable
3. File the Return of Income in Form ITR - 7 every year by 31st October
4. File statement of donations received in Form 10BD every year by 31st May and send Form 10BE to all donors

Inter-charity donations

Inter-charity donations (i.e. donation or grant from one tax exempt charitable organisation to another) is permissible, but with some restrictions:

1. The objects of the donor NPO and recipient NPO must be similar
2. The NPO cannot donate to another NPO out of its accumulated income (i.e. the income set aside for a period of five years by filing Form No. 10). Such accumulated income must be spent by the NPO on its own, and for the purpose for which such income was sought to be accumulated

3. The NPO, even from its non-accumulated or current year's income, should not give towards the corpus of another NPO. As per Finance Act 2017, 'any amount credited or paid out of income of one charitable institution to any other charitable institution being voluntary contribution with specific direction that it shall form part of the corpus of the institution, shall not be treated as application of income to its objects.'
4. As per Finance Act 2023 if one tax exempt NPO donates to another tax exempt NPO, only eighty-five per cent of such donation given will be considered as application of income for the donor NPO

Impact of Finance Act 2023 on grant-making

On 31st March, 2023, the Ministry of Law and Justice, Government of India notified the Finance Act 2023. Inter-charity donations (i.e. one tax exempt charitable trust or institution donating to another tax-exempt charitable trust or institution) continues to be allowed even from 1st April 2023, but with various restrictions.

Restrictions on inter-charity donations have been in existence for two decades. Under an amendment brought in by Finance Act 2002, one charitable organisation could donate to another charitable organisation but not from its 'accumulated income'. What does this mean? One of the key conditions for tax exemption given to charitable organisations is applying or spending at least eighty-five per cent of the total income every financial year. The balance fifteen percent can be taken as unrestricted reserves. However, if the organisation is unable to spend this minimum amount (eight five per cent of the total income) it has the option to accumulate the same for up to five years by exercising option u/s 11(2) of Income tax Act and filing online Form No. 10. However, this accumulated amount must be spent by the organisation on its own activities and cannot be donated to another charitable organisation.

Later, the Finance Act 2017 disallowed charitable organisations from giving donation to another charitable organisation, whether from its accumulated or current year's income towards the corpus of another charitable organisation. Now under the amendment brought in by the Finance Act 2023, in addition to the earlier restrictions, if one tax exempt charitable organisation donates to another tax-exempt charitable organisation, only eighty-five per cent of such donations given will be considered as application of income for the donor charitable organisation. In other words, if trust A donates a sum of Rs 100,000/- to Trust B, in the books of account of Trust A while Rs 100,000 will reflect as given or spent, only Rs 85,000/- will qualify as 'application of income for charitable purpose'. This is a potential setback for purely grant-making organisations, unless of course they

spend one hundred per cent of their total income every year and not avail the benefit of stashing away fifteen per cent towards reserve after applying eighty-five per cent of the income.

Minimal impact on implementing trusts and institutions

Tax exempt charitable trusts and institutions that carry out all activities on their own have nothing to worry. They can continue to apply at least eighty- five per cent of their total income (on overheads, programs, and activities) and stash aside fifteen per cent every year as unrestricted reserves.

Example:

Let us assume that ABC Trust/Society/Section 8 Company has total income of Rs 1 Crore. It spends Rs 10 lakhs on administration and overheads. It spends Rs 75 lakhs on programmes and activities on its own as per its objects. Since it has spent Rs 85 lakhs (i.e. at least eighty-five of its total income of Rs 1 crore it can carry Rs 15 lakhs (fifteen per cent of the total income) as unrestricted reserve to its balance sheet. Thus, this amendment under Finance Act 2023 will have minimal effect on implementing agencies that carry out charitable activities on their own. The only indirect effect may be that some grant-making foundations may decide to become implementing foundations and therefore funding received through grants from grant-making foundations could suffer.

Effect on grant-making foundations

Borrowing from the earlier example, let's assume that ABC Foundation which could be either a Trust, Society or Section 8 Company has a total income of Rs 1 crore. It spends Rs 10 lakhs on administration and overheads. It spends Rs 75 lakhs by giving grants to other charitable trusts, societies, and section 8 companies.

Now, under the recent amendment only eighty-five per cent of the Rs 75 lakhs (i.e. Rs 63.75 lakhs) given by way of grant to other organisations will be considered as application of income for ABC Foundation. Thus, Rs 10 lakhs plus Rs 63.75 lakhs totals Rs 73.75 lakhs, making it Rs 12.75 lakhs less than the mandatory eighty-five percent that needs to be spent.

What is the solution?

The Rs 15 lakhs that the foundation could have set aside as reserves must also be used. It has two options for the Rs 15 lakhs:

1. Use on its own and still manage to take Rs 2.25 lakhs to its reserve fund
2. Grant Rs 15 lakhs to other organisations and, once again, since only 85% of the Rs 15 lakhs, i.e. Rs 12.75 lakhs will be considered as application of income, it will still cover the shortfall in applying minimum 85% of its income during the fiscal year, but leaving nothing for reserves

Change in object clause

Application to the Commissioner of Income Tax (CIT) must be made within 30 days if there is any change in the object clause which does not conform to the conditions of registration.

Cash payments

As per Finance Act 2018 the following amount shall not be considered as application of income for the purpose of tax exemption u/s 11 or 10(23C) (iv), (v), (vi) & (via):

1. If any payment above Rs 10,000 is made in a day other than by way of Account Payee Cheque or Account Payee Bank Draft or use of Electronic Clearing System (ECS) through a bank account or
2. If any application of income is claimed and provided for as liability, and subsequently the liability over Rs 10,000 is paid other than by paying by way of Account Payee Cheque or Account Payee Bank Draft or use of ECS through a bank account

In other words, avoid cash payments exceeding Rs 10,000.

Exit tax

As per Finance Act, 2016 'accreted income' of a trust or institution registered under Section 12AA would be taxed under prescribed circumstances. For the purposes of the Act, 'accreted income' is the difference between the fair market value of the assets and the liabilities of the trust or institution. Accordingly, trusts and institutions will be subject to the tax on accreted income under the following circumstances:

1. If the trust or institution gets converted into any form which is not eligible for exemption under Section 12AA (e.g., the non-profit is converted into a for-profit firm)
2. If the trust or institution is merged with any entity ineligible under Section 12AA (e.g., the non-profit merges with a for-profit company)
3. If the trust or institution, in the case of dissolution, fails to transfer its assets to exempt entities under Section 12AA and Section 10(23C) (iv), (v), (vi), and (via) (e.g., the residuary funds are given to a for- profit entity after dissolution)

The tax on accreted income is to be paid in addition to the income tax on the total income of the trust or institution.

The Finance (No. 2) Act, 2019 amended Section 12AA of the Income Tax Act, 1961 to allow the Principal Commissioner or Commissioner of Income Tax to deregister a charitable trust or institution under certain circumstances; once deregistered, the organisation would be taxed at the maximum marginal rate of thirty percent on the trust's income from the assessment year and on accreted income.

Tax deduction for donors

The Income Tax Act permits donors to deduct contributions made to trusts, societies and Section 8 companies. Section 80G of the Act lists some of these institutions, many of which are government-related. Donors are entitled to a one hundred per cent deduction for donations to some of these government funds. The following are examples of governmental charities listed in Section 80G, contributions to which entitle the donor to a one hundred per cent deduction: the Prime Minister's National Relief Fund, the Prime Minister's Armenia Earthquake Relief Fund, the Africa (Public Contributions - India) Fund; and the National Foundation for Communal Harmony.

As to those entities not specifically enumerated in Section 80G above, donors may deduct fifty per cent of their contributions to such organisations, provided the following conditions are met:

1. The institution or fund was created for charitable purposes in India
2. The institution or fund has registered as tax exempt under Income Tax Act
3. The institution's governing documents do not permit the use of income or assets for any purpose other than a charitable purpose
4. The institution or fund is not designed to be for the benefit of any religious community or caste, and

5. The institution or fund maintains regular accounts of its receipts and expenditures

In addition, total deductions claimed may not exceed ten percent of the donor's total gross income. Further, to qualify for a tax deduction, any donation more than Rs 2,000 cannot be made in cash. Vide Finance Act 2017, Section 80G(5D) was amended such that no deduction will be allowed for donation in cash over the sum of Rs 2,000.

As per Section 269ST of Income tax Act 1961: No person shall receive a sum of Rs 2 lakhs or more, otherwise than by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account:

1. In aggregate from a person in a day
2. In respect of a single transaction, or
3. In respect of transactions relating to one event or occasion from a person

Thus, cash donations over Rs 2,000 and up to Rs 2 lakhs from a single donor in a day would not be illegal. However, tax deduction would be allowed for the donor only up to a sum of Rs 2,000.

Companies may also claim the standard fifty per cent deduction for charitable donations made to qualifying NPOs, for instance through their corporate social responsibility (CSR) programmes.

Exceptions

Donations to institutions or funds 'for the benefit of any particular religious community or caste' are not tax deductible. A non-profit organisation created exclusively for the benefit of a particular religious community or caste may, however, create a separate fund for the benefit of 'scheduled castes, backward classes, scheduled tribes or women and children'. Donations to these funds may qualify for a deduction under Section 80G, even though the organisation may be for the exclusive benefit of a particular religious community or caste. The organisation must maintain a separate account of the monies received and disbursed through such a fund.

In-kind donations (e.g. computers, medicines, relief material, etc.) are not tax deductible under Section 80G.

A donor may also donate any sum of money as a corpus donation to the NPO. However, it is essential that the donor specifies in writing that either a part of the donation or the entire donation be treated as a donation towards the corpus of the NPO.

Chapter IX - Investment of Funds

The forms and modes of investment for a tax exempt NPO (including a public charitable trust, society, or Section 8 company) is governed by Section 11(5) of the Income tax Act 1961 which includes:

1. Investment in Government Savings Certificates and any other securities or certificates issued by the Central Government under the Small Savings Scheme
2. Deposit in any account with the Post Office Savings Bank Account
3. Deposits in any account with any scheduled bank or a co-operative society engaged in carrying on the banking business (including a co-operative land mortgage bank or a co-operative land development bank)
4. Investment in units of the Unit Trust of India
5. Investment in any security for money created and issued by the Central Government or a State Government
6. Investment in debentures of any company or corporation, the principal whereof and the interest whereon are guaranteed by the Central or State Government
7. Investment or deposit in any public sector company
8. Deposit with or investment in any bonds issued by a Central Government approved financial corporation engaged in providing long-term finance for industrial development in India
9. Deposits with or investments in any bonds issued by any Central Government approved public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses
10. Deposits in bonds issued by a public company engaged in long term finance for development of urban infrastructure
11. Investment in immovable property
12. Deposits with the Industrial Development Bank of India (IDBI)
13. Any other form or mode of investment or deposit as may be prescribed

Rule 17C of the Income Tax Rules, 1962 has so far prescribed the following:

1. Investment in the units issued under the Scheme of the Mutual Fund referred to in clause (23D) of Section 10 of the Income Tax Act, 1961
2. Transfer of deposits to the Public Account of India
3. Deposits made with an authority constituted in India for the purposes of housing accommodation, planning & development of cities, towns, and villages
4. Investment by way of acquiring equity shares of a depository as defined in clause (e) of sub-section (1) of Section 2 of the Depositories Act, 1996

Hence, income tax permits investments in mutual fund schemes referred in Section 10, clause 23D of the Income Tax Act. Investments referred to in Section 10, clause 23D of the Income Tax Act includes:

1. A Mutual Fund registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made thereunder
2. Such other Mutual Funds set up by a public sector bank or a public financial institution or authorised by the Reserve Bank of India and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Accordingly, Part (1) authorises investment in ALL mutual funds registered under SEBI. Conclusion: Under Income Tax Act 1961, tax exempt NGOs/NPOS (whether registered as public charitable trust, society, or Section 8 company are permitted to invest in ALL mutual funds. Investment in land and building (immovable property) is also a permissible form of investment.

However, under FCRA 2010, foreign contributions received cannot be invested in any 'speculative investment' including any mutual fund. Also, organisations registered in states like Maharashtra and Gujarat are allowed to invest their funds only in certain mutual funds approved by the charity commissioner.

Mode of investment for trusts and societies in Maharashtra

Section 35 of the Maharashtra Public Trusts Act 1950 prescribes the modes of investment for public charitable trusts and societies registered with the office of the charity commissioner.

Section 35(1) Where the trust property consists of money and cannot be applied immediately or at any early date to the purposes of the public trust the trustee shall be bound [notwithstanding any direction contained in the instrument of the trust to deposit the money in any Scheduled Bank as

defined in the Reserve Bank of India Act, 1934, in the Postal Savings Bank or in a Co-operative Bank approved by the State Government for the purpose or to invest it in public securities]: Provided that such money may be invested in the first mortgage of immovable property situate in [any part of India] if the property is not leasehold for a term of years and the value of the property exceeds by one-half the mortgage money: Provided further that the Charity Commissioner may, by general or special order, permit the trustee of any public trust or classes of such trusts to invest the money in any other manner: Provided also that, if any public trust has made the application to the Charity Commissioner for seeking the order granting the permission for investing the money in any other manner under the second proviso, the Charity Commissioner shall decide such application within three months from the date of receipt of such application, and where it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.

Nothing in sub-section (2) shall affect any investment or deposit already made before the coming into force of the Bombay Public Trusts (Amendment) Act, 1954, in accordance with a direction contained in the instrument of the trust: Provided that any interest or dividend received or accruing from such investment or deposit on or after the coming into force of the said Act or any sum [so invested or deposited] on the maturity of the said investment or deposit shall be applied or invested in the manner prescribed in sub-section (1).

Note: Keep in mind State and Central Regulatory laws before making investment choices.

Chapter X - Building Corpus, Endowment, Reserve

In India, the term corpus fund of an NPO/NGO means its capital fund as reflected in its balance sheet. In Western countries, instead of corpus, the term endowment is more commonly used. Laws regulating charitable institutions, including Income Tax Act, only refer to the term corpus. Colloquially, both terms are used interchangeably in India. However, technically a corpus donation is given as an unrestricted capital gift whereas an endowment donation comes with specified terms and conditions stipulated by the donor. Thus, income from the endowment fund can be used only for the purposes specified by the donor (e.g. annual scholarships to students only for studies in engineering) whereas income from the corpus funds could be used for any legitimate purpose (e.g.

administrative overheads, general maintenance, etc.).

Being a capital receipt, corpus donation is not treated as income. In the NPO/NGO's audited statements of accounts, it is not reflected in the income and expenditure statement, instead it is booked as capital in the balance sheet. However, the interest/dividend generated from the corpus fund is computed as income of the NPO/NGO along with other sources of income.

Requirement for corpus donation

In India, under state laws (where applicable, e.g., Maharashtra Public Trusts Act 1950) and the Income tax Act 1961, donation or grant can be treated as a corpus donation if it is accompanied by a specific written direction of the donor stating that either the whole or part of the donation can be taken to the corpus. In the absence of any written direction of the donor, no contribution however large or small can be transferred to the corpus fund by the trustees. There is no upper or lower limit given under law for contributing towards corpus of an organisation and neither is there any ceiling laid down under law with regard to the ultimate size of the corpus fund that a trust or institution can build and maintain.

Creating other capital (reserve) funds

Apart from donations that come with the specific written direction of the donor to the corpus, the NPO/NGO can also endeavor in every financial year to budget it's income and expenditure in such a manner that every financial year, as allowed under the Income tax Act, it may apply or utilise a minimum eighty five per cent of its total income on the objects of the trust, including establishment/administrative expenses and set aside the balance fifteen per cent to add as unrestricted 'reserve fund'. Every financial year at least fifteen per cent of the NPO/NGO's income can be legally set aside and transferred to the balance sheet as capital fund. In other words, even the Income Tax Act indirectly encourages building of unrestricted reserve funds.

Can corpus be utilised?

Whether the corpus fund can be utilised or not, and when, and under what circumstances is subjective. The corpus fund must be, as far as possible, left untouched and only the interest/dividend earned should be utilised for either establishment/administrative expenses or programme related expenses, or as directed by the donor or for the purpose that the corpus fund may have been created (e.g. major repairs, new office etc.). Corpus fund received by an NPO/NGO may be 'restricted,' 'semi- restricted' or 'unrestricted. Unrestricted corpus fund may be utilised by

an NPO/NGO under dire financial circumstances or for other capital expenditure.

Let us examine the different types of corpus or endowments

1. **Unrestricted Corpus:** This is capital that can be spent (as and when deemed necessary), saved (for as long as necessary), or invested (in modes of investment approved by the regulatory authorities) at the absolute discretion of the trust or institution.
2. **Term-bound Corpus:** It may be stated and agreed at the time of receiving the donation or a grant that it must be held as corpus for a period pre-determined by the donor (e.g. a minimum period of five to ten years and after which it may be expended at the discretion of the trust or institution) or till a certain event in time (e.g. the trust or institution achieving a certain goal or milestone.
3. **Ear-marked/Specific-purpose Corpus:** This could be a donation or grant given with the intent of having that fund serve a specific purpose. The principal is typically retained while the earnings are expended or distributed per specifications of the donor (e.g. interest and dividend earned shall be utilised to provide scholarships only to girls for higher studies or for all children with learning disabilities in public schools).
4. **Perpetual Endowment/Corpus:** This could be a donation or grant given with the intent and clearly stated specification that it must be held in perpetuity or till such time as the trust or institution or the purpose for which it is given, is extinguished. These funds must be held in perpetuity, while the earnings from the invested assets are expended per the donor's specifications.

Using the corpus

The law does not specify under what circumstances the corpus can be used. However, usually charitable trusts and institutions dig into the corpus when there is a liquidity or cash crunch.

The corpus fund (unless earmarked by the donor/s in perpetuity or only for specific purpose) could be used to pay staff salaries (as we saw NGOs do during the pandemic when fund flow dipped) or to fund a new programme or project. In short, any bonafide purpose of the trust or institution.

Regulatory restrictions

Finance Act 2021 introduced Explanation 4(i) to section 11(1) of the Income Tax Act placing restrictions on application out of corpus donations. This Explanation specifies that corpus donation shall not be considered as application for charitable or religious purposes in the year of application

or utilisation. However, such amount shall be allowed as application for charitable purpose in the year in which it is deposited back to the corpus to the extent of such deposit or investment. As per further amendment under Finance Act 2023, this must be done within a period of five years.

Let us assume that ABC Foundation has income of 100 during financial year 2024-25, but it spends 150 by using funds from its corpus fund. This would be treated as 150 spent. However, the organisation cannot claim the additional 50 utilised as application of income for charitable purpose during the financial year 2024-25. The application of income of this 50 can be claimed only in the year in which such amount used from corpus is put back into the corpus and reinvested in the modes specified under section 11(5) of the Act. This must be done within a period of five years. Hence, assuming ABC Foundation again has income of 100 during the subsequent financial year 2025-26, it utilises 35 and puts 50 back into the corpus (and invests the 50 in approved modes), it would mean it has met the requirement to apply at least 85% of its income during the financial year 2025-26 [i.e. 35 utilised plus 50 that is put back into corpus (which is now treated as application of income) and therefore 85% applied].

Is having a large corpus healthy?

Essentially, an endowment or corpus makes a charity much more sustainable and allows the trustees more flexibility on where to direct their efforts and resources. The interest of the endowment/corpus, if it is large enough, can fund the ongoing operating costs of the organisation. This also enables the organisation to take long-term planning decisions because they would be confident of recurring income, while giving their other donors greater reassurance that the organisation is in a strong and sustainable position. Having enough corpus ensures that a trust or institution can fully cover its programmatic obligations or liabilities. It is a sign financial strength and ensures sustainability even during years of financial or other crises. Corpus is essentially a 'rainy-day fund' and though not mandatory, is desirable to have. During the pandemic and the consequent lockdown, organisations with corpus were able to function seamlessly while many without corpus had to cut back on their programmes and activities, and payment of salaries to staff. An NPO/NGO having a healthy corpus is akin to a company having a healthy working capital.

Global comparison

The long-term, sustained impact produced by an endowment or corpus is highly attractive. Philanthropists across the world are increasingly understanding the power of endowments and the legacy they can create; this has largely been driven by higher education institutions that have led

the way with endowed chairs, scholarships, and faculties. Universities across the world are also known for creating huge endowments. Oxford and Cambridge had endowments around the £5 billion mark in 2016, while other Russell Groupers followed closely behind: The University of Edinburgh had £300 million and King's College London, London School of Economics and the University of Glasgow skirted the £200 million mark.

According to U.S. News and World Report, the top five universities by endowment size at the end of the fiscal year 2018 were:

1. Harvard University - $39,233,736,000
2. Yale University - $29,444,936,000
3. Stanford University - $26,464,912,000
4. Princeton University - $25,438,300,000
5. Massachusetts Institute of Technology (MIT) - $16,400,027,000

In the USA, Bill and Melinda Gates Foundation is one of the wealthiest private foundations with an endowment (corpus) of $75.2 billion USD as of 31st December, 2023.

Conclusion

Corpus is capital - a judiciously invested pool of money that provides a reliable source of income for the organisation to advance and sustain its charitable work. In our opinion, having a healthy corpus is indicative of planned long-term stability, fiscal responsibility, and financial viability. Having a healthy corpus means the trust or institution is looking at the long term and building the necessary assets for future sustainability. It indicates that the trustees are dedicated to the long-term support of the trust's mission. Corpus can provide annual support for the organisation's operating budget and ongoing activities, or offer options to meet new challenges by providing greater financial flexibility and self-sustaining income streams. Indeed, corpus can augment uncertain income sources, broaden the overall revenue mix, ensure long term sustainability, and even provide leverage for bank loans, should the need arise.

Chapter XI - Foreign Contribution Regulation Act

The Foreign Contribution Regulation Act was originally enacted in 1976 but subsequently repealed with the enactment of a more stringent **Foreign Contribution Regulation (Amendment) Act 2010**. In the year 2015 the rules were majorly amended and all registration, renewal, and reporting forms were made online. Thereafter, several new compliances were mandated, with the Ministry of Home Affairs (MHA) issuing official circulars and notifications from time to time.

In September 2020, MHA surprised the voluntary sector with major changes to the Act and subsequently to the rules in November 2020.

Foreign Contribution Regulation (Amendment) Act 2020

Foreign Contribution Regulation (Amendment) Act 2020 has come into force or effect from 29th September, 2020. Let us examine some of the key changes:

No sub-granting

No institution registered under FCRA in India or having prior permission under FCRA in India can make a grant or sub-grant to any other intuition from foreign contributions received in its designated FCRA bank account, even if the second recipient or sub-grantee in India has registration or prior permission under FCRA.

Prior to this amendment, an association registered under FCRA could make a grant from its designated FCRA bank account to another institution provided that institution (second recipient) too had a valid FCRA registration and the FCRA funds were credited to its designated FCRA account.

With effect from 29th September 2020, this is now strictly disallowed.

This amendment is a major blow to NGOs working collaboratively on projects and programmes as also to branches of overseas donors and intermediaries which have been funding medium to smalls implementing agencies.

Cap on administrative expenditure

Earlier, institutions were allowed to spend up to fifty per cent of foreign funds received during the fiscal year on administrative expenditure. The Amendment Act has now reduced it to twenty per cent. But, first let us understand what is 'administrative expenditure', as per FCRA.

Rule 5 of Foreign Contribution Regulation Rules 2011 defines administrative expenses to include the following:

1. Salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council
2. All expenses towards hiring of personnel for management of the activities and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel
3. All expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or the association is functioning, stationery and printing charges, transport and travel charges by the members of the executive committee or governing council and expenditure on office equipment
4. Cost of accounting for and administering funds
5. Expenses towards running and maintenance of vehicles
6. Cost of writing and filing reports
7. Legal and professional charges, and
8. Rent of premises, repairs to premises and expenses on other utilities

Thus, as per Rule 5(ii) 'administrative expenditure' includes: 'all expenses towards hiring of personnel for management of the activities and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel'.

However, Rule 5 also makes two exceptions:

1. Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses
2. "Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organisations shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school, etc."

Thus, all 'management related expenditure' is 'administrative expenditure' whereas expenses directly towards programmes, projects and welfare-oriented activities would not be considered as 'administrative expenditure'.

The term 'such as' is indicative and suggests that remuneration paid to project staff directly implementing the programme would not be an 'administrative expenditure.'

Suspension in case of contravention

As per the Amendment of 2020, if the Ministry of Home Affairs "on the basis of any information or report, and after holding a summary inquiry, has reason to believe that a person (person includes an association) who has been granted prior permission has contravened any of the provisions of this Act, it may, pending any further inquiry, direct that such person (or association) shall not utilise the unutilised foreign contribution or receive the remaining portion of foreign contribution which has not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government."

In other words, MHA is now empowered, 'after holding a summary inquiry', to suspend the organisation's FCRA registration or prior permission and freeze the FCRA bank account in case of contravention of any provision of FCRA.

Aadhaar of board members and copy of passport/OCI card

Organisations applying for registration, prior permission or renewal of FCRA registration shall be required to "provide as identification document, the Aadhaar number of all its office bearers or Directors or other key functionaries, by whatever name called, issued under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, or a copy of the Passport or Overseas Citizen of India Card, in case of a foreigner."

Thus, furnishing Aadhaar number of all 'key members' or governing board members and the chief functionary is now mandatory. In case the 'key member' is a citizen of a foreign country but holding Person of Indian Origin (PIO) or Overseas Citizen of India (OCI) card, the same needs to be furnished.

Suspension of registration

Earlier the FCRA registration of an organisation which violated the provisions of FCRA could be suspended for "such period not exceeding one hundred and eighty days as may be specified". The Amendment Act has changed this to "one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified" (in aggregate three hundred and sixty days).

This amendment now empowers MHA to suspend FCRA registration of an organisation which has violated any provision of FCRA for virtually a year.

Voluntary surrendering of FCRA registration

Earlier there was no provision for an organisation to voluntarily surrender it's FCRA registration. Now under the Amendment Act, MHA may permit any organisation to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, MHA is satisfied that such organisation has not contravened any of the provisions of FCRA, and the management of foreign contribution and asset, if any, created out of such contribution has been vested in the competent authority as provided in Section 15(1).

While this amendment may prove to be a boon for organisations no longer interested in receipt of foreign funds, it could be a bane for organisations which may have created assets (e.g., corpus, endowments, capital, reserves, schools, hospitals, vocational training centers) out of foreign funds.

On surrendering FCRA registration, assets created out of foreign contributions shall be vested in the competent government authority.

Inquiry before renewal of FCRA

Generally, renewal of FCRA registration used to be relatively easy for organisations who were compliant with requirements under FCRA such as filing annual returns in online Form FC-4, etc. However, MHA before renewing the certificate, now makes such inquiry, as it deems fit, to satisfy itself that such organisation has fulfilled all conditions specified under Section 12(4) of FCRA 2010.

In terms of Sec. 12 (4) of FCRA, 2010, the following shall be the conditions for the grant of registration, prior permission and renewal:

1. The 'person' making an application for registration or grant of prior permission:
    - Is not fictitious or benami
    - 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
    - Has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country
    - Has not been found guilty of diversion or mis-utilisation of its funds

- Is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends
- Is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes
- Has not contravened any of the provisions of this Act
- Has not been prohibited from accepting foreign contribution
- 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 is pending against him
- 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

2. The acceptance of foreign contribution by the association/person is not likely to affect prejudicially:
   - The sovereignty and integrity of India
   - The security, strategic, scientific or economic interest of the State
   - The public interest
   - Freedom or fairness of election to any Legislature
   - Friendly relation with any foreign State
   - Harmony between religious, racial, social, linguistic, regional groups, castes or communities
3. The acceptance of foreign contribution:
   - Shall not lead to incitement of an offence
   - Shall not endanger the life or physical safety of any person

FCRA bank account with State Bank of India

Earlier organisations were allowed to open their designated FCRA bank account with any Core Banking Compliant Bank integrated with the Public Financial Management Systems (PFMS). The Amendment Act requires that the organisations granted registration or prior permission under FCRA shall receive foreign contribution only in one 'Designated FCRA Bank Account' i.e., State Bank of India, New Delhi Main Branch provided that such organisation may also open another FCRA account in any other scheduled bank of their choice for the purpose of keeping or utilising the foreign contribution which has been received from the FCRA account in The State Bank of India, New Delhi Main Branch.

Thus, from the requirement of having designated FCRA bank account with any Core Banking Compliant Bank integrated with the Public Financial Management Systems (PFMS) it has now been narrowed down to The State Bank of India, New Delhi Main Branch.

The FCRA bank account with The State Bank of India, New Delhi Main Branch (SBI NDMB) must be opened before applying for registration or prior permission of FCRA, and once opened it must be treated as the main designated FCRA bank account or FCRA gateway account.

The application for opening the designated FCRA bank account with SBI NDMB can be submitted at a branch of the SBI in your region.

Public servant cannot accept foreign contribution

Under FCRA, several persons are banned from receiving foreign contribution for any specific cultural, educational, economic, religious or social programme. These include a candidate for election, correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper, judge, government servant or employee of any corporation, member of any legislature, political party or office bearer thereof. To this list, the Amendment Act has added: 'Public servants' as defined under Section 21 of the Indian Penal Code.

A 'public servant' can fall under any one of these three categories: a) in the service or b) pay of the Government or c) remunerated by fees or commission for the performance of any public duty by the Government. In a strict sense the law only prohibits such 'persons', including now a 'public servant', from individually receiving foreign contribution for a specific cultural, economic, educational, religious or social programmes.

Foreign Contribution Regulation (Amendment) Rules 2020

On November 10, 2020 the Ministry of Home Affairs (MHA) Notified the Foreign Contribution Regulation (Amendment) Rules 2020.

Organisation of a political nature

Rule 3 which provides guidelines for declaring any organisation (which is not a political party) to be of a political nature has been amended such that organisations receiving foreign contributions shall be considered to be of a political nature, "if they participate in active politics or party politics, as the case may be". This amendment is in sync with the ruling of the Supreme Court of India.

However, organisations involved in active lobbying and advocacy work should still carry out their activities with restraint and caution.

Eligibility criteria for registration

Earlier the eligibility criteria for registering under FCRA was existence for three years and spending a minimum sum of Rs 10 lakhs on core activities for the benefit of society during the last three financial years. The sum of Rs 10 lakhs has been raised to Rs 15 lakhs.

Eligibility criteria for prior permission

If prior permission is sought for a sum of over Rs 1 crore, MHA may permit receipt of such foreign contribution in such instalments, as it may deem fit: Provided that the second and subsequent instalment shall be released only after submission of proof of utilisation of at least seventy-five per cent of the foreign contribution received in the previous instalment and after field inquiry of the utilisation of foreign contribution.

Renewal requirement

The application for renewal of FCRA registration should be made in Form FC-3C accompanied with an affidavit executed by each office bearer, key functionary and key member in Proforma 'AA' six months before the date of expiry of the certificate of registration. The amendment rules make it clear that on the expiry of the validity of the FCRA certificate the organisation can neither receive further contributions nor utilise balance funds in the FCRA bank account until the registration is renewed.

Further, if application for renewal is not received by MHA before the expiry date, the FCRA registration shall be deemed to have ceased and the amount of foreign contribution lying unutilised in the FCRA account and utilisation account of the organisations whose certificate of registration is deemed to have ceased and assets, if any, created out of the foreign contribution, shall vest with the prescribed government authority under the Act until the certificate is renewed or fresh registration is granted.

Hence, NGOs should apply for renewal at least six months before the date of expiry of the FCRA registration. Delay in applying would mean delay in getting the certificate renewed in time.

Designated FCRA bank account

Furnishing details of the FCRA bank account with State Bank of India, New Delhi Main Branch shall be mandatory when applying to MHA for registration, prior permission or renewal of FCRA registration.

Fees

The fees for grant of prior permission and renewal of registration shall be Rs 5,000 and for new registration a sum of Rs 10,000.

Online forms

The online forms have also undergone several changes.

1. A new online Form FC-7 has been introduced for voluntary surrender of FCRA registration
2. In the online form for registration, prior permission and renewal, if the nature of the association is religious it must state whether state whether (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others
3. Office-bearers and other key functionaries must disclose details of PAN and Aadhaar along with nationality and relationship with other member(s) of the executive council/governing body/ office bearers
4. It must also be disclosed whether any current office bearer or director or other key functionary of the association has, in the discharge of his/her official functions or private conduct, has any prosecution for any offence pending against him

Declarations in the annual return

In the Annual Return in Form FC-4 the Chief Functionary must declare whether during the period under report:

1. Any foreign contribution was transferred to any FCRA registered association
2. Any foreign contribution was transferred to any non FCRA registered association
3. Any functionary of the Association has been prosecuted or convicted under the law of the land
4. Any asset created out of foreign contribution is registered in names other than the name of Association
5. Any domestic contribution has been credited in any FCRA account

6. The Association has received any foreign contribution in an account other than the designated FCRA receipt account
7. The Association has utilised foreign contribution for any purpose other than the defined purposes in the FCRA certificate of registration or prior permission
8. The Association has invested any foreign contribution in any speculative activity as defined in rule 4 of the Foreign Contribution (Regulation) Rules, 2011
9. The Association or any of its functionary/office bearer has violated any of the conditions as enumerated under sub-section (4) of section 12 of the Act
10. The Association has made expenditure on Administrative expenses exceeding 20 per cent of the foreign contribution received?
11. Any fixed asset acquired out of foreign contribution has been sold out
12. Sale proceed of above fixed asset has been diverted/ has not been deposited in FCRA account
13. Any FD proceeds has been credited in any account other than the FCRA account
14. Any organisation/entity not belonging to the Association is being managed/financially supported by the Association
15. The Association has utilised any foreign contribution outside India

If the answer to any of the above is 'yes', brief details must be provided.

Change in governing board

Earlier, one had to provide intimation to MHA in online Form FC-6E only if there was change in more than fifty per cent of the key members. Now intimation must be provided within fifteen days even if one new key member is appointed, elected, resigns or dies, within forty five days and the change shall be effective only after MHA approves the same.

Among various requirements arising from the amendments to the Act and the Rules, in the year 2020, three key compliances relate to:

1. Obtaining a DARPAN ID from NITI Aayog portal for the association
2. Opening the Main FCRA Account in State Bank of India, New Delhi Main Branch; and
3. Adhaar details of all office bearers

Charter issued by MHA

MHA has issued a charter for organisations which are registered under or have prior permission under FCRA. The Charter states:

1. Registration and prior permission is granted for a definite cultural, economic, educational, religious, or social programme under sections 11 and 12 of the FCRA, 2010. An association is granted registration for five years. The prior permission is granted for a specific purpose/ project for a specific amount from a specific source.
2. Every certificate of registration shall have to be renewed before the date of expiry of its validity. The application for renewal is to be made online in Form FC-3C along with the prescribed fee to be paid through online payment gateway, six months before the date of expiry of the certificate of registration. In case no application for renewal of registration is received, or such application is not finally submitted accompanied by the requisite fee through the prescribed mode, the validity of the certificate of registration shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration. Such deemed to have ceased associations are not permitted to either receive or utilise foreign contribution anymore.
3. An association granted prior permission or registration under the FCRA, 2010 should initially receive the foreign contribution only in the FCRA account at State Bank of India, New Delhi Main Branch. This account number would be the same as has been intimated by the organisation in their application for prior permission/registration or intimated through FC-6C. Deposit of any local fund/domestic contribution in this bank account is not allowed. One or more accounts in any PFMS enabled scheduled bank may be opened for utilising the foreign contribution.
4. Foreign contribution cannot be mixed with local/domestic funds being handled by the organisation.
5. An association granted prior permission or registration is required to carry out the activities, for which foreign contribution is received, in India only and the amount should not be utilised for purposes other than for which it is received.
6. The foreign contribution received by the association shall not be transferred to any other association for any other purpose.
7. Any fixed asset acquired out of the foreign contribution and any article received in kind from the foreign source should be in the name of the association and not in the name of any individual in the association.

8. Not more than twenty per cent of the foreign contribution shall be defrayed to meet administrative expenses of the association. What constitutes 'administrative expenses' has been defined in Rule 5 of the Foreign Contribution (Regulation) Rules, 2011 (FCRR, 2011).
9. Any foreign contribution or any income (interest, rent, enterprise or FD, etc.) arising out of utilisation of foreign contribution shall not be used for 'speculative business'. What constitutes 'speculative business' has been defined in Rule 4 of FCRR, 2011.
10. An association granted prior permission or registration shall maintain a separate set of accounts, assets and records, exclusively for foreign contribution received and utilised. If the foreign contribution relates only to articles/ foreign securities, the intimation shall be submitted online in Form FC-1 and such articles/ securities shall be reflected in online annual report FC-4.
11. Every account giving details of the receipt and purpose-wise utilisation of the foreign contribution, including the interest earned on the foreign contribution amount, should be maintained on a yearly basis, commencing on the 1st day of April each year, and every such yearly account is to be uploaded online only, in the prescribed Form FC-4 and uploaded therewith the income and expenditure statement, balance sheet and statement of receipt and payment, duly certified by a chartered accountant, within nine months of the closure of the year, i.e., before 31st December on www.fcraonline. nic.in. A copy of a statement of account from the FCRA account in State Bank of India, New Delhi Main Branch and utilisation accounts in any scheduled bank duly certified by an officer of such bank should also be uploaded. The cash book and ledger account is to be maintained on double entry basis, where the foreign contribution relates to currency received and utilised.
12. An online annual return in Form FC-4 shall reflect the foreign contribution received in the FCRA account at State Bank of India, New Delhi Main Branch and include the details in respect of other FCRA bank accounts, if any, for utilisation. No physical copy of annual return is accepted.
13. The accounting statements shall have to be preserved by the NGO/ association for a period of six years.
14. Even if no foreign contribution is received during a year, a 'Nil' return is required to be filed online in Form FC-4 within the prescribed time limit. However, certificate from Chartered Accountant or Income & Expenditure statement or R&P account or balance sheet is not required to be uploaded.

15. Intimation for change of name, address, registration, nature of activities or aims and objectives of an association, bank and/or bank account number and opening of bank account for utilisation of foreign contribution should be intimated online only in Form FC-6(A to E) and uploading requisite documents within forty five days of effecting the change.
16. For any change (addition/deletion) of any functionary or member, the associations shall apply online through FC-6E and seek approval from Central Government.
17. All associations granted registration or prior permission under FCRA, 2010 shall be required to adhere to good practice guidelines of Financial Action Task Force (FATF).

Good practice guidelines to the NPOs to ensure compliance with FATF requirements:

1. Wherever necessary, NPO shall inform the MHA (FCRA Wing) about the suspicious activities of the customer, without waiting for annual returns
2. The board of directors/chief functionary of NPO shall issue directions regarding duties of official who shall be required to enforce these guidelines and other rules of FCRA, 2010 read with FCRR, 2011 as amended from time to time
3. The NPO shall put its goals, objectives and activities on its website
4. The NPO shall upload the details of key persons associated with NPOs activities on its website
5. The NPO shall take due diligence of its employees at the time of recruitment
6. The NPO shall maintain the information of beneficiaries of funds and upload on its website and monitor the activities of the beneficiaries. Wherever a beneficiary is a legal person, the details of beneficial owner shall also be uploaded
7. The NPO shall ensure that the financial transactions involving more than Rs 20,000 to be routed through banking channels only
8. The board of directors/trustees of NPO's must ensure utilisation of funds consistent with objectives as approved by MHA
9. The board of directors/trustee of NPO's shall conduct meeting once at least in six months to review the working of these instructions and shall record the minutes of these meetings
10. The NPO shall train its staff on the FCRA and about the application of these guidelines
11. When any transaction is under investigation by any authority, the MHA shall be informed by such NPO

FCRA compliance checklist

Please check and ensure the following:

1. Validity date of the FCRA registration and apply for renewal well in time
2. Ensure designated FCRA bank account with State Bank of India, New Delhi Main Branch is opened before 31st March 2021
3. Old designated FCRA bank account may be retained as another FCRA utilisation account, and must be so declared in online Form FC-6C
4. One or more FCRA utilisation accounts can be maintained but only after prior approval of MHA in Form FC-6D
5. Maintain separate books of account for FCRA
6. Foreign contribution could be received from a 'foreign source' in the form of money (INR or forex), article (computers, relief material, equipment) or security (stock, share, bond, etc.)
7. Ensure that the organisation has NGO Darpan UID
8. Adhaar details of all key members and chief functionary are available
9. No foreign national other than one of Indian origin should be an office bearer or a trustee, including the Chief Functionary of the organisation
10. File annual returns on online Form FC-4 by 31st December every year
11. Even if no foreign contribution is received nil return should be filed
12. FCRA statements of accounts should be uploaded on the organisation's own website
13. File online Form FC-1 if article/s received from foreign source
14. Any income generated from an FCRA asset, be it interest or fees, must be accounted for under FCRA
15. Change of name and/or address within the State of the Association should be intimated within forty five days in Form FC-6A.
16. Any change in nature, aims, objects and registration with local/ relevant authorities in respect of the organisation must be intimated within forty-five days in Form FC-6B
17. Opening additional FCRA utilisation account must be intimated within forty-five days in Form FC-6D
18. Any change in key members or chief functionary must be intimated within forty-five days in Form FC-6E
19. Funds received from a Non-Resident Indian (NRI) must be treated as local and not foreign contribution regardless the currency

20. Funds received from Overseas Citizen of India (OCI) must be treated as foreign contribution even if received in Indian Rupees
21. Funds received from citizen of a foreign country must be treated as foreign contribution even if received in Indian Rupees
22. Donations/grants from companies where more than fifty per cent of shareholding is by foreigners is not to be treated as foreign contribution
23. Donations/grants from foreign companies, subsidiaries of foreign companies and multinational companies not registered under the Indian Companies Act to be treated as foreign contribution
24. Fees or commercial receipts from 'foreign source' not to be treated as 'foreign contribution'
25. Foreign contributions must not be invested in Mutual Funds or in 'speculative investments.

Chapter XII - CSR Compliance and Role of NPOs as CSR Implementing Agencies

Corporate Social Responsibility (CSR) is a compliance under Section 135 of the Indian Companies Act 2013 for every company (whether public, private, or foreign) which is registered under the Indian Companies Act (1956 or 2013) and which has net worth of Rs 500 crore or more, or turnover of Rs 1,000 crore or more or a net profit of Rs 5 crore or more during the immediately preceding financial year.

Such a company is required to appoint a CSR Committee of the board consisting of three or more directors, out of which at least one director should be an independent director. However, where a company is not required to appoint an independent director (e.g. in a Private Company), it may have in its CSR Committee two or more directors.

Role of the CSR Committee:

1. To formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;
2. To recommend the amount of expenditure to be incurred on the CSR activities; and
3. To monitor the CSR Policy of the company from time to time.

Further, as per Rule 5, the CSR Committee shall formulate and recommend to the Board an annual action plan in pursuance of its CSR policy, which shall include the following, namely:

1. The list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act
2. The manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4
3. The modalities of utilisation of funds and implementation schedules for the projects or programmes
4. Monitoring and reporting mechanism for the projects or programmes, and
5. Details of need and impact assessment, if any, for the projects undertaken by the company

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

Role of the board of directors

CSR is a board driven process and hence, after considering the recommendations made by the CSR Committee, the board of such company is required to approve the CSR Policy for the company and disclose contents of such Policy in its report, place it on the company's website, and ensure that the activities as are included in CSR Policy of the company are undertaken by the company.

The board of a company shall satisfy itself that the CSR funds disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer, or the person responsible for financial management shall certify to the effect.

The board of every such company must 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, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its CSR Policy.

The law also requires that the company should give preference to the local area and areas around where it operates, for spending the amount earmarked for CSR activities. However, preference to local area as stated under the Act is only directory and not mandatory in nature and companies

need to balance local area preference with national priorities.

Specified CSR activities

Schedule VII of the Indian Companies Act 2013 lists the 'specified CSR activities. These include:

1. Eradicating hunger, poverty, and malnutrition, promoting health care including preventive health care and sanitation, including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water
2. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and differently abled and livelihood enhancement projects, Har Ghar Tiranga campaign (activities aimed at mass scale production & supply of the National Flag, outreach and amplification efforts, and other related activities)
3. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups
4. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air, and water, including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga
5. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional arts and handicrafts
6. Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows
7. Training to promote rural sports, nationally recognised sports, Paralympics sports and Olympic sports
8. Contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund), or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities, and

women

9. Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)
10. Rural development projects
11. Slum area development ('slum area' shall mean: "any area declared as such by the central government or any state government or any other competent authority under any law for the time being in force")
12. Disaster management, including relief, rehabilitation, and reconstruction activities

How CSR activities can be implemented

CSR activities can be undertaken by the company by itself with the help of its staff or through:

1. A company established under Section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or
2. A company established under Section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
3. Any entity established under an Act of Parliament or a State legislature; or
4. A company established under Section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Thus, the company has the option to carry out CSR activities:

1. On its own, or

2. Through a corporate foundation established by the company either singly or along with any other company (having both 12A and 80G registration with income tax but which does not necessarily require an established track record of at least three years in undertaking similar activities), or
3. A trust, society or Section 8 company established by the Central Government or State Government (which need not necessarily be having both 12A and 80G registration with Income Tax nor the necessity to have an established track record of at least three years in undertaking similar activities), or
4. Any entity established under an Act of Parliament or a State legislature (which need not necessarily be having both 12A and 80G registration with income tax nor the necessity to have an established track record of at least three years in undertaking similar activities), or
5. A trust, society or a Section 8 company registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

What activities would not qualify as CSR?

The following would not be considered as CSR expenditure:

1. Activities undertaken in pursuance of normal course of business of the company
2. Activities undertaken outside India, except for training of Indian sports personnel representing any State or Union Territory at national level or India at international level;
3. Contribution of any amount, directly or indirectly, to any political party under section 182 of the Act;
4. Activities benefitting employees of the company
5. Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services
6. Activities carried out for fulfilment of any other statutory obligations under any law in force in India

Failure to spend CSR funds

If the company fails to spend at least two per cent of its pre-tax profits on specified CSR activities, the board shall, in its report made under section 134(3)(0) specify the reasons for not spending the amount and, unless the unspent amount relates to any 'ongoing project,' transfer such unspent

amount to a Central Government Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

However, any amount remaining unspent, pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its CSR Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the 'Unspent CSR Account', and such amount shall be spent by the company in pursuance of its obligation towards the CSR Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Central Government Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

What this means

Under Companies (CSR Policy) Amendment Rules 2021, 'Ongoing Project' means a multi-year project undertaken by a company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.

'Other than ongoing project' would mean a single-year project undertaken by a company in fulfilment of its CSR obligation having timeline up to the end of the financial year.

In other words, if a company is required to spend 100 during the financial year 2024-25, it must ensure that 100 is fully spent and shown as utilised by 31st March 2025. If only 80 is utilised and the project is 'other than ongoing', the company must transfer the unspent 20 to a Central Government Fund specified in Schedule VII (e.g., Swach Bharat Kosh or Clean Ganga Fund or Prime Minister's National Relief Fund or PMCARES fund) within a period of six months of the expiry of the financial year (i.e., by 30th September 2025).

However, if it is an 'ongoing project' the company must, within a period of thirty days from the end of the financial year (i.e., by 30th April 2025), transfer the unutilised 20 to a special bank account to be opened by the company in that behalf for that financial year (i.e. 2024- 25) in any scheduled bank to be called the 'Unspent CSR Account', and such amount shall be spent by the company in pursuance of its obligation towards the CSR Policy within a period of three financial years from the

date of such transfer, failing which, the company shall transfer the same to a Central Government Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

In case the company is not carrying out the CSR activity on its own but through a CSR implementing agency (which may be the company's own corporate foundation having CSR-1 registration or an NPO having CSR- 1 registration), the company is required to ask the CSR implementing agency to return the unutilised amount and comply with the same procedure laid down in the case of an ongoing project or other than ongoing project.

Penalty for the company

If a company defaults in complying with the above requirement of either ensuring that the two per cent of the CSR amount is fully utilised or in case of an ongoing project, fails to transfer the CSR funds that are not utilised to the 'Unspent CSR Bank Account', the company would be liable to a penalty of twice the amount required to be transferred by the company to the fund specified in Schedule VII or the Unspent CSR Account, as the case may be, or Rs 1 crore, whichever is less, and every officer of the company who is in default would be liable to a penalty of one-tenth of the amount required to be transferred by the company to such fund specified in Schedule VII, or the Unspent CSR Account, as the case may be, or Rs 2 lakhs whichever is less.

Thus, one can see that failure to utilise the CSR funds fully could lead to hefty penalties for the company and its officers.

Excess CSR spends may be set off

Where a company spends an amount more than the required two per cent, such excess amount may be set off against the requirement to spend under section 135(5) up to the immediately succeeding three financial years, subject to the conditions that the excess amount available for set off shall not include the surplus arising out of the CSR activities and the board of the company shall pass a resolution to that effect.

Thus, excess CSR spend in any particular year can be set off against CSR expenditure over the immediate succeeding three financial years and the Board of the company passing a resolution to that effect.

Surplus arising out of the CSR activities

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

This means in case the project is income generating by way of fees etc., such income should be ploughed back into the same project but not form part of the business profit of the company.

Acquisition of capital assets

CSR funds may be spent by a company for creation or acquisition of a capital asset, which shall be held by:

1. A company established under Section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under Rule 4(2); or
2. Beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
3. A public authority

Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility)

Chapter XIII - Applicability of GST

Goods and Services Tax (GST) was rolled out in India on 1st July 2017. It is applicable throughout India and has replaced multiple cascading taxes levied by the Central and State governments. Unlike income tax which is a direct tax levied by the Central Government on income generated by individuals and businesses in a particular financial year, GST is an indirect tax charged by the supplier of goods or services to the consumer and paid to the Government of India. In other words, when one pays income tax on salary or business income, it is a direct tax. However, indirect taxes such as the erstwhile Service Tax and VAT (now both under GST) are taxes that are charged by the vendor of goods or services to the consumer, and paid to the government of India. Thus, under

GST, while the onus of charging the tax is on the supplier of services or goods, the burden of payment is indirectly on the consumer.

Reverse charge

The concept of reverse charge mechanism was already present under service tax. In the GST regime, reverse charge has been made applicable for both, services as well as goods. Reverse charge under GST simply means the liability to pay GST (to the central and state government) is by the recipient of goods/services instead of the supplier, i.e., the chargeability gets reversed. Only certain types of entities are subject to the reverse charge mechanism. For example, services provided by an advocate (including senior advocate) or firm of advocates to a business entity located in taxable territory, would fall under reverse charge mechanism and the recipient of such service is liable to pay the GST.

Are NPOs exempt under GST?

NPOs whether registered as trust, society or Section 8 company are exempt under income tax (subject to their complying with provisions laid down under law) but not specifically exempt under GST. Notification No.12/2017-Central Tax (Rate) dated 28th June 2017 exempts services provided by entity registered under Section 12AA of the Income-tax Act, 1961 by way of charitable activities from whole of GST vide entry No. 1 of the notification, which specifies that "services by an entity registered under Section 12AA of Income-tax Act, 1961 by way of charitable activities" are exempt from whole of the GST.

Thus, as per this notification, GST exemption is provided to institutions having 'charitable activities' BUT, only if the following conditions are satisfied.

1. The entity must be registered under Section 12AA of the Income tax Act; and
2. Such services or activities by the entity are by way of 'charitable activities'

Unfortunately, the scope of 'charitable activities' under GST is not as broad as it is under Section 2(15) of the Income tax Act 1961. Charitable activities as per GST Notification of 28th June 2017 are limited only to:

'Public health' by way of:

1. Care or counselling of:

a. Terminally ill persons or persons with severe physical or mental disability;

b. Persons afflicted with HIV or AIDS;

c. Persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

2. Public awareness of:

a. Preventive health, family planning or prevention of HIV infection;

b. Advancement of religion, spirituality, or yoga;

c. Advancement of educational programmes or skill development relating to:

i. Abandoned, orphaned or homeless children;

ii. Physically or mentally abused and traumatised persons;

iii. Prisoners; or

iv. Persons over the age of 65 years residing in a rural area;

d. Preservation of environment including watershed, forests, and wildlife.

Thus, GST is applicable to all NGOs/NPOs, whether registered as trust, society, or Section 8 company. Only organisations which are registered with Income Tax under section 12AA (now 12AB) and having charitable activities specified above are exempt from registration under GST, regardless the quantum of supply of goods or services. In all other cases, the organisation is required to register itself under GST if its supply of services exceeds Rs 25,00,000 or supply of goods exceeds Rs 40,00,000 during a financial year. Being an indirect tax, the organisation registered under GST must charge GST to the client or buyer of the organisation's goods and services.

Also, all organisations including those having charitable activities as specified under GST, must pay GST on goods or services to which GST applies. For example, if the organisation buys computers or office equipment, it cannot claim exemption from paying GST on the goods or services which it purchases. Thus, goods or services provided to charitable organisations are not out of ambit of GST. All services other than those specifically exempted provided to charitable trusts are subject to GST. Also, the GST Notification makes the GST exemption available to institutions having the specified charitable activities very specific. Accordingly, while the income from the specified (under GST Notification) charitable activities are exempt from GST, income from the activities other than those mentioned in the notification is taxable. There could be many services provided by a charitable and religious trust which are not considered as charitable activities and hence, such services come under the GST net. The indicative list of such services could be renting of premises

by such entities, grant of sponsorship and advertising rights during conduct of events/ functions, etc.

Export of services

Many tend to think that GST is not applicable on export of services. As per Sec 2(6) of IGST Act: 'Export of Services' means the supply of any service when:

1. The supplier of service is located in India
2. The recipient of service is located outside India
3. The place of supply of service is outside India
4. The payment for such service has been received by the supplier of service in convertible foreign exchange; and
5. The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8 of the IGST Act, 2017.

The supply of any service is considered an export of service, only where all the above conditions are met. Unless all the above conditions are satisfied, a supply of service cannot be regarded as exports and would be taxable under GST. Thus, if an agency situated outside India contracts an NPO in India to offer certain services to another NPO based in India, it would not qualify as export of service since the recipient of the service would be located in India.

Are grants liable to GST?

Voluntary donation attracts no GST. When it comes to grants, opinions among professionals are divided. It is important to understand the nature of a grant. Both donations and grants are a 'gift'. However, a donation is voluntary and unrestricted. A grant on the other hand is restricted by terms and conditions (e.g., specific timelines, specific output, and outcomes) set by the donor. Merely having such terms and conditions does not make a grant a 'Service' or a 'Work Contract.' Thus, a grant is a 'gift' and contractual only to the extent of being given for a specific purpose with specific terms and conditions. In the case of a grant certain prerequisites are attached to the grant prior to the NPO receiving the gift, often with specific expenditure requirements/ limitations. However, this does not make a grant into a 'service contract' liable to TDS and GST. In short, a Grant is not a fee for service. Even the 'Technical Guide to Service Tax' issued by CBEC in 2012 makes it clear: "Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service."

An NPO having registration u/s 12AA (now 12AB) is tax exempt and is not a 'vendor of service' as understood in business or commercial terms. It exists for charitable purpose carrying out charitable activities as per objects enshrined in the Trust Deed or Memorandum of Association. A NPO generally sustains its work with the aid of grants and donations and not through commercial work contracts.

Sponsorship

Sponsorship services involve a contractual relationship where one party (the sponsor) provides financial or other forms of support to another party (the sponsored) in exchange for various promotional benefits. This support could be in the form of funds, goods, or services, and the sponsored party, often an event organiser or individual, reciprocates by promoting the sponsor's products or services.

Sponsorship services are typically subject to GST under the reverse charge mechanism. This means that the recipient of the sponsorship service (the sponsored entity) is liable to pay GST, rather than the sponsor. The GST rate on sponsorship services for events in India could vary based on the specific circumstances. Central Board of Indirect Taxes and Customs (CBIC) vide Circular No. 116/35/2019-GST dated: 11th October, 2019 has clarified that there shall be no levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors. Though the circular refers only to individual donors, one could assume that the same principle could perhaps also be applied in the case of a corporate or institutional donor. Thus, sponsorship aimed at advertising the company or its product/s would attract GST under Reverse Charge Mechanism. However, simply acknowledging the donor e.g. "Project/Programme supported by XYZ" would not be advertising or sponsorship.

Chapter XIV - Human Resource Management

Successful NPOs share three characteristics:

1. They know what they are and what they stand for
2. They operate with a passion for effectiveness and simplicity, and

3. They grow by scaling up their ability to learn and innovate

The NPO's Human Resource helps to propel this transformation by facilitating positive change. However, much as focusing on programme goals and objectives is important, it is equally important to focus on recruiting, building capacity, and looking after the wellbeing of employees and volunteers. A happy employee or volunteer experience means better output and outcome. A happy employee or volunteer is key to organisational and programmatic success. As a rule of thumb, happy employees and volunteers also make all stakeholders happy. There is a wise adage: 'Charity begins at home.' There is no point making beneficiaries or donors happy at the cost of making those working for the beneficiaries unhappy. In other words, do not be uncharitable to your employees or volunteers. Look after them and they will look after the organisation, the donor's interest, and the interest of the end beneficiaries with greater responsibility and enthusiasm.

Employee compensation is one of the most important areas that is often overlooked by the board of an NPO. With limited budgets, nonprofit boards need to take a flexible total rewards approach to compensation. This includes both direct compensation like sector competitive salaries and indirect compensation benefits, such as recognition and awards, and the quality of the NPO's culture. This type of compensation strategy can play a major role in boosting the organisation's ability to attract, engage, retain, and develop key talent and team members.

Laws to protect employees

India has a sophisticated and adaptable legal framework for employment that protects both employers' and employees' rights. The basis of just and equitable work practices is created by these laws, which range from the fundamental values safeguarded by The Employment Act of India to the intricate regulations controlling employment periods, personnel classifications, and statutory benefits. Following these legal requirements not only promotes a positive work atmosphere but also reduces the likelihood of legal issues and associated fines. NPOs should protect themselves and their employees' well-being by thoroughly comprehending the intricacies of Indian labour regulations and scrupulously following them. A proactive approach to compliance is crucial, whether it is negotiating the complexities of employee classifications, guaranteeing statutory benefits, or settling disputes through the appropriate channels.

NPOs not exempt under most labour laws

Many NPOs tend to think and even believe that being established for charitable purpose automatically exempts them from the application of various labour laws in India. This is incorrect. Almost every labour law that is applicable to for-profit organisations is also applicable to non-profit organisations regardless whether registered as a public charitable trust, a society, or a Section 8 company. The rights of both employers and employees are safeguarded by various employment laws, which make them crucial. They guarantee that workers uphold their agreements with the organisation and are not exposed to harassment or discrimination at work. When an employee or for that matter even when a volunteer is appointed, it is essential for both parties to sign the appointment letter which is like an employment or volunteer contract with clear terms and conditions in terms of specific job description, work hours, leave, compensation, social security benefits (if applicable) and terms of termination on either side.

Employee or consultant

Many NPOs, to avoid compliance under social security legislations like Employees' Provident Fund and Payment of Gratuity, tend to appoint consultants who they think would not be considered under law or by regulators as employees. The following would be indicative that the person hired is an employee disguised as professional consultant:

1. The consultant is under the direct and exclusive control, supervision, and direction of the NPO
2. The consultant cannot work independently and does not have the liberty to enter any other business or contract with another NPO or organisation if he/she is engaged by the NPO
3. The consultant is engaged to perform duties that are core activities of the NPO and perennial in nature.

A consultant is one who is not in the exclusive service of one fixed client (organisation). A genuine consultant would be a person offering his/ her professional services to multiple organisations. A consultant working continuously for several years without a break with just one organisation could be considered under law as deemed employee. While TDS (Tax Deduction at Source) of regular employees would be deducted under section 192 (salaries) of the Income Tax Act, compensation paid to consultants would be deducted under section 194J (professional services) and not under salaries.

NPOs also hire people on 'fixed term contract' for specific projects on condition that the contract would stand terminated at the end of the project which generally would be for a period of three years. In such a contract, it would be important to specify that the person appointed on the fixed term contract would not enjoy the benefits and privileges due to those appointed as regular staff on salary. The person should sign the contract (project related appointment letter) in acceptance.

Human Resource Policy

Human resource management is a strategic approach to effective and efficient management of people in any organisation. It should be designed to maximise employee and volunteer performance in the service of the organisation's strategic objectives. It is therefore desirable for every NPO to have a clear and written HR Policy which must be reviewed periodically and available to all employees, consultants, and volunteers.

The following would be policy essentials

1. Organisational values and ethics
2. Hiring policy
3. Emoluments
4. Leave and other benefits
5. Handling grievances
6. Performance appraisal
7. Termination
8. Offer letter and appointment letter
9. Probation
10. Employee, consultant or on fixed-term contract
11. Dress code
12. Work related travel and reimbursements
13. Per diem
14. Health and safety at work place
15. Health and safety measures (including insurance)
16. Rewards and recognitions
17. Grievance redress

Hiring foreigners

When appointing foreigners as employees or volunteers the following is crucial:

1. The foreigner must have an Employment Visa
2. The foreigner must draw gross salary of more than US $ 25,000 p.a.
3. The foreigner appointed as volunteer must have employment visa marked 'volunteer' and can be paid honorarium (optional) of Rs 10,000 p.m.
4. Tourist visa cannot be used by volunteer

Leave

It is the right of every employee to enjoy leave and the accepted norm is to allow 'casual leave' (this includes sick leave) of seven to eight days in a year. If the employee does not avail this leave during the year, it automatically lapses. Privilege leave is usually for ten to twelve days and most organisations encourage employees to avail this leave and discourage or even disallow encashment of this leave. Maternity leave is as per Maternity Benefit Act for a period of twenty-six weeks. Public and festive holidays are granted as per national and state rules.

Chapter XV - Human Resource Related Laws and Compliance

Shops and Establishment Act

The Shops and Establishment Act in India is a state and union territory-specific laws that governs employment and labour service conditions in shops and commercial establishments, excluding factories, and requires compliance within their respective jurisdictions. In most states and union territories it is applicable to all 'establishments' employing ten or more workers.

The Maharashtra Shops and Establishment Act (as amended in 2017) has done away with the term 'commercial establishment' and instead only provides for one head i.e., 'establishment' which covers any business, trade, manufacture, establishment of any medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant, a society registered under the Societies Registration Act, 1860, a charitable or other trust, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment; to whom the provisions of the Factories Act, 1948 does not apply, etc. Section 3 of the Maharashtra

Shops and Establishment Act (as amended in 2017) lists thirteen specific categories of establishments and workers exempt from its provisions. NPOs are not included in this list.

However, the following establishments (including establishments registered as trust, society, or Section 8 company) would be exempt under this Act:

1. Establishments used for treatment or care of infirm, destitute or mentally unfit
2. Establishments pertaining to any kind of educational activities (excepting those where coaching or tuition classes are conducted by individual persons or any institutions other than those:
   a. Affiliated to any university established by law, or
   b. Recognised by the Divisional Boards under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965, or
   c. Recognised by the Directorate of Education or the Directorate of Technical Education as a private secondary or technical high school, Industrial Training Institute (I.T.I.), Polytechnic, Engineering Colleges or other technical institutions conducting courses recognised by Government)

Maternity benefit

The Maternity Benefit Act 1961 Act regulates employment of women in certain establishments for a certain period before and after child birth and provides for maternity and other benefits. This law ensures job security, protect women's economic rights, and support their maternal duties. In 2017, the Maternity Benefit Act 1961 was amended to include various aspects, such as an increase in the maternity leave period, the option to work from home and maternity leave for mothers adopting a child.

This law provides for maternity benefit and protection for women employed in any capacity directly or through any agency (i.e., on contract) in factories, mines, plantations and every shop or establishment having ten or more employees. The law is silent on Paternity Leave. Under Section 12 of this Act, any dismissal of a woman during or on account of her maternity leave is unlawful and punishable under Section 21 of the Act.

Women employees may enjoy up to eight weeks leave before delivery, out of the stipulated twenty-six weeks maternity leave. However, for a woman who has two or more surviving children, the maternity benefit will be twelve weeks, which cannot be availed before six weeks from the date

of the expected delivery.

A commissioning mother is entitled to paid maternity leave of twelve weeks from the date the child is handed over to her. A commissioning mother means, 'a biological mother who uses her egg to create an embryo implanted in any other woman.'

A woman who legally adopts a child below the age of three months would also be entitled to maternity benefit for a period of twelve weeks and the period of maternity benefit should be calculated from the date the child is handed over to the adopting mother.

After availing the maternity leave benefit, an employer may allow a woman to work from home, if the nature of work assigned to her is such that she may work from home. The terms, conditions, and duration for the 'work from home' arrangement would be according to a mutual agreement between the employer and the woman. The Union Government has also advised that employers should allow nursing mothers to work from home possibly till the baby is one year old. This means, at least six more months post maternity leave. However, the government has left the decision regarding the duration of leave in such cases to employers and employees. The ministry has also advised that states should write to employers advising them to allow more and more nursing mothers to work from home as per Section 5 of the Maternity Benefit Act, wherever nature of work allows.

Upon having fifty or more employees, every establishment is required to have the facility of crèche within such distance as may be prescribed, either separately or along with common facilities. The employer is required to allow four visits a day to the crèche by the woman, which will also include the interval for rest allowed to her. Every establishment is required to intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under this Act.

Employees' Provident Fund and Miscellaneous Provisions Act 1952

This law is applicable to, every establishment including NPOs employing twenty or more persons. The responsibility to comply with the Employees Provident Fund (EPF) Act lies on the employer (i.e. trustees, governing board members, or directors).

Employees drawing wages (basic plus dearness allowance) of less than or equal to Rs 15,000 per month, or employees who were previously covered under the EPF Act are eligible for benefits under the EPF Act. An employee with a basic salary of over Rs 15,000 and who has never been a member

of EPF can opt out of the scheme. However, if he/she is a member or once he/she becomes a member, he/she cannot opt out of the scheme.

Employer can choose to limit contribution towards EPF to twelve per cent of Rs 15,000 (Rs 1,800) under Section 26A of EPF Act for those employees earning more than Rs 15,000 per month as basic wages. Professional consultants are not covered under the EPF Act, unless they are deemed to be employees of the NPO. Persons employed by or through a contractor (contract workers) also fall under the definition of employee under the EPF Act. EPF Act is a social security legislation and applies to charitable organisations having twenty or more employees.

Employees' State Insurance Scheme (ESIS)

This law is applicable to any non-seasonal factory or company having more than ten employees (in some states, it is twenty employees) who have a maximum salary of Rs 21,000.

The Employees' State Insurance Scheme (ESIS) is a comprehensive Social Security Scheme designed to accomplish the task of socially protecting the 'employees' in the organised sector against the events of sickness, maternity, disablement, and death due to employment injury and to provide medical care to the insured employees and their families.

The scheme provides full medical care to the employee registered under the scheme during the period of his/her incapacity for restoration of his health and working capacity. It provides financial assistance to compensate the loss of his/her wages during the period of his abstention from work due to sickness, maternity, and employment injury. The scheme provides medical care to his/her family members also.

The ESI Act 1948 aims at ensuring that employees drawing wages which are less than or equivalent to Rs 21,000 are provided with certain basic benefits at low and accessible rates. For employees with disabilities, the wage ceiling for eligibility for benefits under the Act is Rs 25,000.

Currently, the employer's contribution is equivalent to 4.75% and the employee's contribution is equivalent to 1.75% of the basic wage. The employees' contribution is made by deducting the specific amount from his basic wage each month and the employer may now make his contribution online through State Bank of India or any other bank authorised by the ESIC.

Employees who draw wages of less than Rs 137 per day are not required to make any contribution to ESIC.

If the wages of an employee (excluding remuneration for overtime work) exceed the wage limit (currently Rs 21,000 p.m.) prescribed by the Central Government after start of contribution period, he continues to be an employee till the end of that contribution period and hence contribution is to be deducted and paid on the total wages earned by him.

Applicability of ESIS to NPOS

Under Section 1(5) of the Act, the following establishments employing ten or more persons attracts ESI coverage:

1. Shops
2. Hotels or restaurants
3. Cinemas including preview theatres
4. Road motor transport establishments
5. Newspaper establishments
6. Private medical and educational institutions employing ten or more persons in certain states/UTs (those run by individuals, trustees, societies or other organisations and medical institutions (including corporate, joint sector, trust, charitable, and private ownership hospitals, nursing homes, diagnostic centres, pathological labs).

Thus, this law would be applicable to charitable trusts and societies which are medical or educational institutions employing ten or more persons.

Once an establishment is covered under the Act, it continues to be covered notwithstanding the fact that the number of persons/ coverable employees employed therein at any time falls below the required limit or there is a change in activity.

An employer, who fails to pay the contribution within the limit prescribed under Regulation 31, shall be liable to pay simple interest at the rate of 12% per annum in respect of each day of the default or delay in payment of contribution.

Minimum wages

The Minimum Wages Act 1948 does not make any specific reference to NPOs or charitable institutions under any of the 'scheduled employments.' However, besides industries and factories,

it is applicable to 'establishments' registered under the Shops and Establishments Act and factories under the Factories Act 1948, irrespective to the strength of employment. In other words, establishments, including NPOs registered under the Shops and Establishments Act must pay minimum wage to its employees. Since labour is a concurrent subject under the Indian Constitution, minimum wage rates are determined both by the Central Government and the Provincial Governments. Minimum wage rates in India are declared at the national, state, sector, and skill/occupational levels. Minimum wage rates may be established for any region, occupation, and sector. Additionally, minimum wage is established for trainees, youth, and piece-rate workers.

Minimum rate of wages may consist of a basic rate of wages and a cost- of-living allowance, or a basic rate of wages, with or without the cost-of-living allowance, and the cash value of concessions in respect of the supply of essential commodities at concession rates (if authorised); or an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions (if any). The term 'minimum wage' includes the basic wage plus special allowance, as prescribed and published by the Labour Department from time to time for a given schedule of employment. The employer is obliged to pay wages on regular and timely basis at least once a month. Wage period may be fixed on hourly, daily, weekly, or monthly basis. If the employment of a worker is terminated by or on behalf of the employer, the outstanding wages should be paid within two days of employment termination. Wage periods cannot be fixed for duration longer than one month.

Bonus

The Payment of Bonus Act applies to every factory wherein ten or more persons are employed with the aid of power or an establishment in which twenty or more persons are employed without the aid of power on any day during an accounting year. The threshold wage limit is Rs 21,000. Under Section 32 (v) of the Payment of Bonus Act 1965: Nothing in this Act shall apply to employees employed by:

1. The Indian Red Cross Society or any other institution of a like nature
2. (including its branches)
3. Universities and other educational institutions
4. Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit

Thus NPOs (which are social welfare institutions) are exempt from payment of bonus. However, as goodwill gesture ex-gratia payment may be made, depending on availability of funds and performance of the NPOs staff.

Gratuity

The Payment of Gratuity Act, 1972 provides for payment of gratuity to employees upon cessation of their services on the completion of five years (calculated at 4 years and 190 days in relation to establishments that work less than 6 days a week and 4 years and 240 days in other cases) of continuous service. The Gratuity Act allows for payment of gratuity, as an expression of the gratitude of any employer for five or more years of continuous service, upon the retirement, superannuation, or resignation of an employee after the completion of the said five-year period. In the event of death of an employee or disablement due to work, because of which the employee is unable to return to work, gratuity must still be paid, irrespective of the number of years of service, and may be paid to the nominee of the employee. Gratuity should be paid for each year of continuous service or part thereof which exceeds six months. The formula to calculate the gratuity of an employee is as follows: Gratuity = Last drawn salary x (15/26) x Number of years of service. Here 26 relates to the projected number of working days in a month, and the gratuity calculation is accounted at the rate of 15 days wages. Gratuity is tax free in the hands of the employee up to a sum of Rs 20 lakhs.

Applicability of Gratuity Act to NPOs

The Act extends to the whole of India and is applicable to any establishment having ten or more employees. Thus, it includes any NPO which is covered by the Shops and Establishments Act.

Also, under Section 1(3)(c) of the Payment of Gratuity Act, 1972, if any establishment wherein ten or more persons are employed, if notified by the Central Government, then to such establishments, the Act applies. The Central Government by a statutory order No. 2218 dated 22.8.1997 u/s 1(3)(c) of the Payment of Gratuity Act had issued the following notification:

"S.O.2218. In exercise of the powers conferred by clause (c) of sub- section (3) of section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies the trusts or societies, registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law with respect of societies for the time being in force in any State, in which ten or more persons are employed or were employed for wages on any day of the preceding 12 months as a class of

establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette."

Thus, the contention that a particular institution is a charitable institution is not relevant for the purpose of determining the coverage under the Act. The Act applies if any institution is covered by the provisions of the Act, notwithstanding the nature of activities or the philanthropic/charitable services rendered by them. It was also held in Management of Good Samaritan Rural Development Project Vs. T. A. Ramaiah and others reported in (2003) 1 LLN 378 that charitable institutions are covered by the provisions of the Act.

Professional tax

Professional tax is a tax on all kinds of professions, trades, and employment and is levied based on the income of such profession, trade, and employment. It is levied on employees, a person carrying on the business, including freelancers, professionals, etc., subject to income exceeding the monetary threshold if any.

Professional tax being levied by the state government is different in different states. Every state has its own laws and regulations to govern the professional tax of that state. All states follow a slab system based on income to levy professional tax. Not all states in the country choose to levy professional tax. Under the Professional Tax in Maharashtra Act, every person engaged actively in any profession in Maharashtra is liable to pay this tax. It may be noted that professional tax is a deductible amount for the purpose of the Income Tax Act 1961 and can be deducted from taxable income of the employee. Employer is a person responsible for deducting and paying professional tax to the state government subject to the monetary threshold, if any, provided by the respective state's legislation.

Chapter XVI - Prevention of Sexual Harassment (POSH) at Workplace

To enable a safe working environment for women, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and the Rules (collectively known as POSH Laws) have been enacted and passed by the Ministry of Women and Child Welfare, in the year 2013. This law is

applicable to every workplace, establishment, company, and organisation, inclusive of MNCs, firms, shops, restaurants, etc.

Applicability

The Prevention of Sexual Harassment (POSH) at Workplace Act is applicable to every workplace, establishment, company, or organisation (including NPO) employing ten or more employees (full time, part time, interns or consultants included) irrespective of its location or nature of industry.

Compliance under POSH

1. Committee: Each organisation with more than ten employees is required to form an Internal Complaints Committee (ICC) headed by a female presiding officer
2. Policy: Formulation of an internal POSH policy for the prevention and redressal of sexual harassment at workplaces
3. Training Programme: Orientation and training programmes are also required to be carried out by the organisation
4. Annual Report: The organisation is also required to file an annual report (with District Collector) with information of the number of sexual harassment complaints received in a year, the number of complaints disposed of in a year, cases pending for more than 90 days, etc.

Reporting under Directors Report

The Ministry of Corporate Affairs, through a Notification dated July 31, 2018, amended the Companies (Accounts) Rules 2014, in accordance with the request made by the Ministry of Women and Child Welfare. By this amendment, it is now mandatory to disclose that the company has implemented the provisions of the Sexual Harassment Act. It is now compulsory for a company to make a statement in the Director's Report that it has complied with the provisions regarding the constitution of the Internal Complaints Committee (ICC). Trusts and societies as also Section 8 companies may also adopt this practice. This amendment comes as a major step towards making the workplaces in the private sector safer for women, thereby casting higher responsibility on the board of directors to ensure compliance under the POSH Laws. Penal provisions that ensue in case of non-disclosure under Section 134 of the Companies Act will now be levied in the matters of non-disclosure of the implementation of the Sexual Harassment Act as well.

Internal Complaints Committee

Every employer is obliged to constitute an Internal Complaints Committee (ICC) through a written order. The ICC should be composed of the following members:

a. Presiding Officer who must be a woman employed at a senior level at workplace. She must be from amongst the employees;

b. Two Members from amongst employees who are committed to the cause of women or who have had experience in social work or have legal knowledge.

c. One Member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment ('External Member').

The law also requires that at least half of the total Members of the ICC should be women.

Sexual Harassment at Workplace Policy

Employers/District Officers are responsible for complying with prohibition, prevention, and redress of workplace sexual harassment. In practice, this means having a policy that:

1. Prohibits unwelcome behaviour that constitutes workplace sexual harassment;
2. Champions prevention of workplace sexual harassment through orientation, awareness, and sensitisation sessions, and
3. Provides a detailed framework for redress.

Dissemination of Information and Awareness Generation

Employers/ District Officers have a legal responsibility to:

1. Effectively communicate a policy that prohibits unwelcome behaviour that constitutes workplace sexual harassment, and provides a detailed framework for prevention, and redress processes
2. Carry out awareness and orientation for all employees
3. Create forums for dialogue i.e., Panchayati Raj Institutions, Gram Sabhas, Women's Groups, Urban Local Bodies or like bodies, as appropriate
4. Ensure capacity and skill building of Complaints Committees
5. Widely publicise names and contact details of Complaints Committee members

Annual Report

As per Prevention of Sexual Harassment Act, 2013, there are two reports to be submitted by the employer:

a. It is the duty of the ICC to submit an annual report, which includes the number of cases filed/disposed of every calendar year to the employer and district office

b. The employer has a statutory obligation to ensure this report is included in the annual report of the organisation filed with the Registrar of Companies.

As per the Act the Internal Committee or the Local Committee shall in each calendar year prepare, in such form and where may be prescribed, an annual report and submit the same to the employer and the District Officer. The District Officer will forward a brief report on the annual reports to the appropriate State Government. Such reports must include the following information:

1. Number of complaints received
2. Number of complaints disposed of
3. Number of cases pending for more than 90 days
4. Number of workshops/awareness programmes carried out
5. Nature of action taken by the employer/District Officer

The Report of ICC will be forwarded to the District Officer through the employer.

Section 22 - Employer to include information in the annual report

As per the Act: "The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of the organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer."

The latest Director's Report submitted under the Companies Act has a section to capture the compliance to the POSH Act, 2013. This report is filed along with the annual returns to the Registrar of Companies.

Penalty provisions

An employer can be subjected to a penalty of up to Rs 50,000 for:

1. Failure to constitute Internal Complaints Committee
2. Failure to act upon recommendations of the Complaints Committee, or
3. Failure to file an annual report to the District Officer where required, or
4. Contravening or attempting to contravene or abetting contravention of the Act or Rules

Where an employer repeats a breach under the Act, they shall be subject to:

1. Twice the punishment or higher punishment if prescribed under any other law for the same offence
2. Cancellation / Withdrawal / Non-renewal of registration / license required for carrying on business or activities

Chapter XVII - Establishing NPOs Outside India

Quite a few Indian NPOs have set up overseas entities to raise funds and provide tax deductions to overseas donors who are taxpayers in their respective countries. Several leading Indian NPOs have set up entities in the USA, the UK, the Netherlands, and Singapore. Let us take the example of setting up such an entity in the USA. If one wishes to set up a non-profit 501(c)(3) in the USA one must first incorporate the entity in a State of their choice (Delaware is generally preferred by many) and obtain tax recognition (much like it is in India). The entity may be incorporated to support either a single or multiple NPOs in India. Once this is done, tax paying US citizens or US companies may contribute to this entity and enjoy tax deductions. Funds from this 501(c)(3) may be wire transferred to the NPO in India only if the NPO in India has FCRA registration or prior permission. In like manner one may set up such an entity in any other country as well and that entity would be governed by the rules of that country.

Setting up an NPO in the USA

In the US, the first step is for a non-profit organisation to incorporate in one of the fifty US states as an entity that is technically independent of the Indian-based non-profit with the intention of collaboration across both entities. This organisation needs to then apply for 501(c)(3) tax-exempt status at the federal level by filing Form 1023. It could take a few months for the IRS to approve

501(c)(3) status. To fundraise nationally across the USA (even through e-mails), the organisation needs to register in all fifty states (not just in the one they are incorporated in), although many organisations put this off for a few years and fines are not commonly imposed for the delay.

Establishing NPOs Outside India

A few of the essential steps for registration includes:

1. Choosing a name and filing articles of incorporation with the corporate filing office of one of the fifty US states
2. Submitting a federal 501(c)(3) tax exemption application to the IRS along with a copy of the filed articles of incorporation. This will lead to the US NPO getting an IRS determination letter and ID number in approximately nine months
3. Applying for state tax exemption, if applicable
4. Drafting by-laws (to be adopted in the first board meeting), appointing directors (most states require at least 3), and holding the first board meeting
5. Obtaining licences and permits, mostly at the local and state level

If an Indian NPO wishes to establish a growing network of supporters, ambassadors, allies, and partners in the US to support their work in India and/or their growth internationally, setting up a 501(c)(3) organisation in the US would be a prudent strategic move to help expand presence and impact globally.

Chapter XVIII - Social Stock Exchange

On 5th July, 2019 the Finance Minister of India Nirmala Sitharaman announced: "It is time to take our capital markets closer to the masses and meet various social welfare objectives related to inclusive growth and financial inclusion. I propose to initiate steps towards creating an electronic fund-raising platform - a social stock exchange (SSE) under the regulatory ambit of Securities and Exchange Board of India (SEBI) for listing social enterprises and voluntary organisations working for the realisation of a social welfare objective so that they can raise capital as equity, debt or as units like a mutual fund."

A Working Committee was formed in September 2019 which gave its report in June 2020 followed by the formation of a Technical Committee in September 2020 which gave its report in May 2021. The Government of India formally notified the Social Stock Exchange in July 2022.

Social enterprise

The concept of a social enterprise was developed in the UK in the late 1970s. Social enterprises stand at the junction of business and the voluntary sector. Social enterprises seek to balance activities that provide financial benefits with social goals, such as housing for low-income families or skill-building and livelihood. Because profit-maximisation is not the primary goal or driver, a social enterprise operates differently than a standard profit driven company.

Although the term 'social enterprise' has no legal meaning or definition, India's Social Stock Exchange should be given credit for recognising social enterprises and giving this term the much-required legitimacy. Any social enterprise (non-profit or for-profit) seeking to register on the Social Stock Exchange in India must first establish that 'social impact' is its primary purpose. This is tested by applying three filters:

1. Area/s of focus: Sixteen broad areas of welfare and development have been identified in sync with Corporate Social Responsibility (CSR) activities specified under Schedule VII of the Indian Companies Act 2013 and Sustainable Development Goals 2030
2. Quantum of Social Work: The enterprise must have at least sixty- seven per cent of its revenue, expenses, or beneficiaries dedicated for the areas of focus
3. Beneficiaries: The enterprise should target underserved or less privileged population segments or regions recording lower performance in development (aspirational districts)

Corporate foundations, political entities, religious organisations, professional bodies, trade associations, infrastructure, and housing companies, except affordable housing, are not eligible to be identified as a social enterprise.

Global success rate

India is not the first to set up a Social Stock Exchange. However, it has the potential to be the only Social Stock Exchange in the world to succeed. Brazil was the first to establish a Social Stock Exchange in the year 2003 for non-profit organisations, followed by South Africa in the year 2006, Portugal in the year 2009 and the UK in the year 2013. However, none of them are active any more. Only the Social Stock Exchanges set up in Singapore and Canada (both in the year 2013),

and Jamaica in the year 2019 are somewhat active and that too because they are established for 'for-profit enterprises.'

India's Social Stock Exchange

India's Social Stock Exchange (SSE) is a separate segment of the existing Stock Exchange, to help social enterprise(s) to raise funds from public through the stock exchange mechanism. SSE acts as a medium between social enterprises and fund providers and SSE can help the latter to select entities which are seen to be creating measurable social impact and reporting such impact. Certain type of social enterprises [i.e., not- for-profit organisations (NPOs)] that meet the registration criteria can register on SSE and undertake to make continuous disclosures on their social impact. Such NPOs may or may not choose to raise funds through SSE, however, they would be required to continue making disclosures including on social impact to the stock exchanges.

Currently the SSE is a segment of the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE). Social enterprises are free to register on either one or both the exchanges. Many have already registered and some have even successfully listed and raised funds.

Fundraising platform

The first reality that NPOs (registered either as a public charitable trust or as a society under the Act of 1860 or as a not-for-profit company licensed under Section 8 of the Indian Companies Act 2013) need to understand is that the SSE is simply a fundraising platform and not a tap under which it can put its fundraising bucket to automatically fill up. Registration on the SSE will enhance credibility and visibility. However, to raise funds the NPO must make a proper pitch.

Zero Coupon Zero Principal Instrument (ZCZP)

A few organisations have already raised funds with 'Zero Coupon Zero Principal Instrument' (ZCZP). Zero coupon means the social investor will not be paid any interest and zero principal means the social investor will not be paid back his principal amount. In other words, a ZCZP is a non-refundable grant to the NPO for its project, programme, or activity. The investment must be in dematerialised form and for which the donor must have a demat account. Even if the NPO decides not to fundraise through the ZCZP instrument, there is a definite benefit in registering on the BSEs or NSEs (or both) SSE. The NPO will be seen by donors as a socially impactful entity and which has passed through due-diligence tests as per Security and Exchange Board of India's (SEBI) norms.

Need to incentivise social investments through SSE

A social investor investing in an NPO through ZCZP is only entitled to the standard fifty per cent tax deduction. The government of India should consider incentivising social investments through SSE by allowing social investors to enjoy one hundred per cent or an even higher tax deduction.

Secondly, as of now, a citizen of a foreign country or a foreign company cannot invest in ZCZP instrument without violating norms of the Foreign Contribution Regulation Act (FCRA) 2010. Under FCRA a 'foreign source' (which includes citizen of a foreign country, including an OCI and certain foreign companies not registered under the Indian Companies Act) cannot fund an NPO unless the NPO is registered under FCRA and the funds are credited only to the NPOs designated FCRA Bank Account with State Bank of India, New Delhi Main Branch.

If the Government of India seriously wants India to achieve what Brazil, South Africa, Portugal, and the UK have failed to achieve, it must work towards incentivising giving through the SSE. The social investor investing through the SSE should not be allowed just a fifty percent but a hundred per cent tax deduction or maybe even a weighted deduction. For example, in Singapore, philanthropic donations to NPOs are eligible for a two hundred and fifty per cent tax deduction.

The Government of India should also make it possible for an NPO not having FCRA registration but registered on the SSE to raise funds from foreign investors through the SSE's ZCZP. If the NPO has been through stringent due diligence and recognised as being socially impactful, year after year, surely the regulators should feel comfortable and confident that the NPO will not misuse the funds raised through ZCZP nor apply the funds for a purpose other than national interest.

About the author

Noshir H. Dadrawala is Chief Executive of Centre for Advancement of Philanthropy (CAP) through which he has been offering compliance related advisory to non-profits and corporate social initiatives. His career spans over forty years in the non-profit sector, working with a diverse range of organisations, from large established national and global organisations, to corporate and family grant makers, to non-profit startups.

Drawing upon more than four decades of hands-on experience and practical insights, Noshir's main role at CAP involves simplifying the confusing and complex maze of old, but ever changing, new

laws. Noshir's expertise within the sector is widely recognised, as is his deep understanding of compliance related issues with various regulatory authorities. His current international affiliation includes serving as member on the advisory board of the International Center for Not-for-profit Law (ICNL). Earlier, he was on the Board of Worldwide Initiatives for Grantmaker Support (WINGS), Resource Alliance, as also Asia Pacific Philanthropy Consortium (APPC). In India, he serves as trustee of the Forbes Foundation, Collective Good Foundation, G. J. Kapoor Foundation, Bharatiya Samaj Seva Kendra, Ashta No Kai Foundation, Make a Wish Foundation, and the Bombay Community Trust. He is also a member of the Audit Committee of Akshay Patra Foundation and an Advisory Committee Member of the Masina Hospital in Mumbai.

Noshir has authored several resource books and is currently an active blogger on compliance related issues for NPOs. He is also a speaker at many local and international conferences and guest faculty at leading business schools and Tata Institute of Social Sciences. CAP Blog posts can be read at: https://capindia.in/blog/

Centre for Advancement of Philanthropy

Centre for Advancement of Philanthropy (CAP) is a non-profit Company registered u/s 25 of the Indian Companies Act 1956 and has been in the service of the philanthropic sector for close to four decades. CAP's core competence has always been in areas of good governance and compliance with laws regulating non-profits in India. It also guides companies and their foundations in matters pertaining to CSR compliance. Where NPOs are concerned, CAP provides advisory services and capacity building in areas of the right choice of registration, income tax exemption and deduction, FCRA etc. CAP is tax exempt u/s 12AB and donations/grants made to CAP qualify for tax deduction u/s 80G of Income tax Act 1961. It is also registered under FCRA.

Forbes Marshall

Forbes Marshall is a leading provider of energy conservation and automation solutions for the process industry. For over 75 years, we have been providing innovative solutions to help businesses improve their process and energy efficiency and be more environmentally responsible. We specialise in products and services for steam efficiency, process optimisation, and control and monitoring. Using our knowledge and expertise, we provide digital offerings that go beyond connectivity and help measure, analyse and sustain key performance indicators for our customers' businesses.

Giving back to the community has always been one of our priorities. We partner with local organisations that focus on education for children, skilling for youth and mobilising women through self help groups that enable them to gain financial independence. We also provide healthcare for families to ensure long term wellness. This approach has helped us build a strong multinational presence and, as we continue to stay ahead of the evolving needs of Industry and Society, we live our purpose of Energising Businesses and Communities Worldwide.

About the book

Laws governing non-profit organisations (NPOs) in India are complex and multi-layered. At times there is also a dichotomy between state and central laws. NPOs have reporting obligations with multiple regulatory authorities. Trusts and societies in Western India are regulated by the Office of the Charity Commissioner. Non-profit companies are regulated by the Registrar of Companies. The tax exemption status of all three types of entities is regulated by Income Tax authorities. The Ministry of Home Affairs regulates the flow of funds from foreign sources under Foreign Contribution Regulation Act 2010. Apart from these three key regulatory authorities, certain NPOs must also register under the Shops and Establishments Act, which is regulated by the local municipal authority. Some NPOs which have a supply of goods (made by beneficiaries) or services are also required to register under GST. NPOs are not exempt under labour laws either. What is applicable and to whom and when, is what this book has attempted to address.

Chapter I - The Spirit of Philanthropy

> Read the information below in 15+ languages by selecting your preferred language using the translation tool in the top left corner of the screen.

> Made publicly available in the spirit of open access by its author, Noshir Dadrawala (CEO, Centre for Advancement of Philanthropy), and collaborators CAP and Forbes Marshall.

People often use the terms 'philanthropy' and 'charity' interchangeably and think the two are synonymous. Social scientists, however, consider this to be incorrect and rightly so. Charity (which mostly involves alms-giving) generally addresses the symptoms, while philanthropy (Greek *philanthropos* meaning love of human beings) tends to strike at the root of various issues facing society. They say, if you give fish to a poor person, you have done charity. You teach this person to fish and that's philanthropy. You give clothing to a poor man and you have done charity. You teach this person the skills to stitch clothing and that's philanthropy.

A generally-accepted comprehensive definition of philanthropy does not exist, and many leading scholars in the field doubt that one can be developed. Some scholars feel some vagueness is inevitable and even desirable. Contemporary philanthropy has come to be recognised as being broadly concerned with improving the quality of life for all members of society by promoting their welfare, happiness and culture. It usually focuses on interests and concerns of all income classes, such as protecting the environment, preventing diseases, improving education and recreational facilities, enhancing the arts, preserving historic landmarks, etc. Charity on the other hand, has come to mean serving mainly, if not only, the poor.

According to Paul Ylvisaker, "Philanthropy takes a more impersonal and dispassionate approach to bettering the human condition by institutionalising 'giving,' focusing beyond the immediate condition of people on root causes of human problems and systemic reform, recognising a responsibility to the public interest and helping to effect societal change."

Dr. Robert L. Payton, former president of the Exxon Foundation and ex-U.S. ambassador to the Cameroons, defines philanthropy to include, "voluntary giving, voluntary service and voluntary association, primarily for the benefit of others." Dr. Payton calls philanthropy, the "prudent sister" of charity.

Ancient and Varied Traditions

Ideas of philanthropy have varied with the customs of people, with changing needs and with the development of the human mind and desire to make life happier for others. One of the oldest records of 'giving' is in 'The Book of the Dead', the chief monument of religious literature of Egypt, which goes back to about 4,000 B.C. It says, "I have given bread to the hungry man and water to him that was athirst and apparel to the naked man and a ferry boat to him that had no boat. I have made propitiatory offerings and given cakes to the Gods."

The Greek and the early Roman concept of philanthropy was radically different; it consisted in doing kindly acts 'towards people', not towards the poor. It was not alms-giving, it had little or no connection with poverty, and it was seldom motivated by pity. One of its earliest expressions is in Homer's lines: "and generally was he loved, for courteously he welcomed to his house besides the way all comers". The Greek ethic of general kindliness was "do not overlook an un-hired body; kindle a fire; give a share of water; tell the way; advise truthfully."

In India, feeding the cow, the dog and the Brahmin was practically a routine in the daily life of a Hindu householder. There is a chapter devoted to charity in the Rig Veda, and charity is divided into three classes - Satvik, Rajasi and Tamasi; centuries later, in 1180 A.D., Rabbi Moses Ben Marmon said that there were eight degrees in giving charity, one higher than the other. Lowest on the scale was charity given meagerly and by a person as if forced; somewhat higher was charity contributed adequately but only after it was asked for; even better was aid given in such a manner that neither the giver nor the person assisted knew the identity of the other, and the highest of all was assistance that enabled a person to achieve self-support by helping him to find work or to open a business.

Under the Islamic faith, charity forms one of the basic obligations. Zakat is a compulsory poor-tax which a Muslim must pay not only on the surplus of the year, but also on the value of his total movable assets. The other forms of charities known is Islam are the khairat and sadga. In the early

centuries, zakat was highly organised through the institutions of *baitulmal* or the treasury. Every Muslim was required to send his zakat to the *baitulmal* with such instructions as he desired for the disbursement of the fund.

The concept of philanthropy and universal love for man is sprinkled all over the 'New Testament' and it is little wonder that even in a country like America generally branded as 'materialistic' the practice of setting aside private funds for public use has thrived and continues to grow from strength to strength. In fact, apart from being the largest in the world, the American foundations are today known to bestow wealth to the entire world. Apparently, Americans take the theological reference, "for God loves a cheerful giver", (II Corinthians 9:6-7) quite seriously. Corinthians 13:1-13 goes a step further: "If I should speak with the tongues of men and of angels, but do not have charity, I have become as sounding brass or a tinkling cymbal. And if I have prophecy and know all mysteries and all knowledge, and if I have all faith so as to remove mountains, yet do not have charity, I am nothing."

Among the Jews, *Zedakah* implies the fullest obligation that people owe to one another. *Zedakah* calls for more than mere alms-giving, because in its exercise, there must be kindness, tenderness, not to shame the poor or put him to disgrace. Sacred unto the Lord is the human dignity and personality of the recipient of charity, and they must not be hurt or lowered. Moreover, of greater merit than giving to the poor is to help him to become self-supporting.

If the name 'Parsi' is synonymous with 'charity', it is, once again, thanks to the emphasis of this ethos in their religious scriptures. The Zoroastrian religion is not a religion in the sense in which the term is commonly understood. It is rather a scientific and rational explanation of existence, of reality as a whole, of man's place in it, his duties while in this life, and the high destiny which he can achieve by establishing his conduct in accordance with the Eternal and Immutable Law of Nature which Zarathushtra called the Law of Asha.

Five things, according to the Pahlavi Dinkard, were considered worthy of merit: a) truthfulness b) charity c) skill d) endeavour and e) giving encouragement to others in good deeds. In the Handarz literature, Aturpat Mahraspand, the high priest at the court of the Sasanian king, Shapur II, speaks of three kinds of charity:

1. To give without being asked or requested to give
2. To give immediately on being asked or requested to give
3. To give at the promised time, if one has promised

Aturpat adds that charity is good when one expects nothing from the receiver in return and entertains no such expectation. Good charity, according to him, is never done for publicity, show or personal gain. Thousands of years have passed since Prophet Zarathushtra walked this planet, but his small yet dedicated band of followers remember to the last breath, his timeless message, "Happiness comes to him who seeks happiness for others." (Yasna 43.1).

Altruism among other life forms

Altruism is recognised in some way or the other by individuals of all cultures, and it is generally regarded as a trait favourable to the coherence and continuity of social groups and society in general. Brian O'Connel, in 'America's Voluntary Spirit', makes a fascinating observation, "....altruistic behaviour is an invention of nature herself..... the earliest philanthropic activity occurred many millions of years before Homo sapiens appeared, and that nature must value such behaviour since she has seen fit to continue it over vast periods of time."

To support his theory, he writes, "An article in a scientific journal on 'The Evolution of Altruism' reported that some seventy million years ago, as is known from fossil records of miocene times, there existed organised societies of termites and ants. Within such insect societies - bees, wasps, ants, and others - there were then, and still are, groups whose activities can in some broad sense be labeled as altruistic, with members of these groups performing specialised functions for the good of the larger society, often at individual sacrifice.

"More recently, a biologist, studying the chain of life in the sea, found 'support for a community theory of evolution according to which short-term advantages to individual species are sacrificed for long-term benefits for an entire living community.'

"Many people would be surprised to learn the extent to which animals help their own kind. Even the popular view of wild animals of Africa as ferocious beasts, 'red in tooth and claw', is at least partially mistaken. Throughout the animal world, there is much behaviour which is peaceful, cooperative and even altruistic."

Richard J. Butler and David C. Wilson, in 'Managing Voluntary and Non-Profit Organisations', have said, "Altruism is a fundamental part of human rationality and altruistic behaviour is the foundation stone of very many charities in Britain and elsewhere in the world. Without unselfish regard for others, there would be no place for charitable organisations in our society. A society that is based

solely on self-centered considerations cannot function. There must be some concern for others' needs if there is to be any continuing collaboration of the type that makes for social coherence and continuity."