

## **Introduction**

Over the last couple of decades, 'civil society' has evolved significantly and it is burgeoning globally. Technology, globalisation and liberalisation have created opportunities and pressures, encouraging the creation of millions of voluntary organizations around the world, giving rise to new models for citizens' expression and generating increasing involvement in the governance processes. An enormous increase in the number of registration of voluntary organisations has been noted, including a significant increase in activity in developing and emerging economies. In comparison to private sector and government, these organisations have less-resource; but, their activities have grown substantially in specific areas.

According to the Yearbook of International Organizations, the number of international non-governmental organizations (NGOs) was reported to have increased from 6,000 in 1990 to more than 50,000 in 2006, and now to over 65,000. At the national and regional level, in China alone, there are over 4,60,000 officially registered non-profit organizations with nearly six million employees. In 2009, it was estimated that India has around 3.3 million NGOs.<sup>1</sup> However, it is estimated that a third of them exist only on paper or just registered but do not perform any activity.

The strengthening of what is sometimes referred to as "third sector" has posed some challenges to its conventional relationship with the other two sectors i.e. government and private sector. The relationship of the voluntary sector with that of the private sector is ambivalent at the moment. There are questions of the willingness of the private sector to engage in social responsibility programmes, in particular in partnership with civil society organizations, in regions where there is a risk this could be perceived as a 'threat to the state' and in some other countries there are overt antagonism between the Voluntary Organisations (VOs) and the private sector on the exploitation of natural resources and implications for the rights of the native populations.<sup>2</sup>

A simultaneous worldwide phenomenon is the ever-tightening restrictions placed on the VOs to limit the space available to operate. The common restrictions are media oversight,

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<sup>1</sup> Philanthropy and Law in South Asia downloaded from [www.asianphilanthropy.org](http://www.asianphilanthropy.org)

<sup>2</sup> The Future Role of Civil Society; World Economic Forum in collaboration with KPMG International; Jan. 2013; Switzerland

oppressive regulatory hurdles, limiting access to national and foreign funding, barriers to use of technology and applying arbitrary or poorly administered registration processes and imperceptibly administered restrictions to limit the activities of the VOs. In addition, there has also been decline in funding available for advocacy, rights-based activities, or “causes that challenge the status quo”. Most of these measures place subtle restrictions that hinder the development of democratic governance, accountability and stability over the long term. There are international regimes also that play a role in this, the most important being the Financial Action Task Force (FATF). The FATF’s Special Recommendation VIII which states that ‘Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism e.g. Non-profit organizations’. The analysis shows how it has been extended by FATF interpretation, guidance and compliance mechanisms, significantly expanding the scope of the obligations on states. These policies are potentially problematic in countries where NPOs are already viewed with suspicion or hostility and where new regulation coincides with already significant restrictions on the political and operational space of NPOs<sup>3</sup>. See details of India case study from the same report as end note<sup>i</sup>.

According to the CIVICUS Civil Society Index (CSI) project of 2008-2011, across CSOs in 33 countries, only 8% believe that the legal and policy environment for civil society is fully enabling for their operations, and a higher amount (47%) find it either quite limiting or highly restrictive compared to those that find it moderately enabling<sup>4</sup>. (

In South Asia, particularly in India, government seek, sometimes aggressively, sometimes routinely, to facilitate giving and the work of the non-profit sector; as this “third sector” does much that the state cannot or will not do. However, over the years, the character of the third sector has transformed from the good intentioned volunteers doing charity and welfare for the poor to professional(s) engaged in fighting for empowerment of the people. So, governments also seek to control and manage this sector, concerned about its rise to national influence and political authority as an increasingly important factor in development and social change, often with political implications.

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<sup>3</sup> Ben Hayes; Counter-terrorism: Policy laundering’ and the FATF: Legalising Surveillance, Regulating Civil Society; Feb 2012; Transnational Institute (Amsterdam)/ Statewatch (London); Pp-27

<sup>4</sup> The Future Role of Civil Society; World Economic Forum in collaboration with KPMG International; Jan. 2013; Switzerland; Pp-7.

## **Background**

The research project was conceptualised to understand the dynamics of growth and development of this burgeoning third sector in India and its relationship to the other sectors, particularly the government. Therefore, the focus of research in Step I was to understand from the leaders in the sector on the following important nuances:

1. National Policy on Voluntary Sector and role of government in facilitation of the social development work of NGOs.
2. Assessment of the real strengths and weaknesses of the NGOs in playing the role of delivering social service, empowering people and making relevant policy changes.
3. Analyse the efforts of NGOs for self-regulation and the challenges thereof i.e. amenability of the NGOs to this effort and the standardisation and recognition of the mutually agreed process.
4. Development of a meaningful policy instrument for NGOs to play a meaningful role in Public Private Partnership. Explore the role it can play in the newly energised concept of corporate social responsibility.

## **The findings of the Step I**

The leaders of the sector have made numerous attempts in the past three decades to bring the urgent concerns of the sector to the notice of the central government and its agencies. Numerous documents have been produced for the purpose, but in the nutshell, it was one step forward and three backwards!

The National Policy on Voluntary Sector that was adopted by the Union Cabinet in the year 2007 was in a way, the culmination of all the efforts of the sector and it has all the provisions that are useful for the sector. But, the challenge was in its wider acceptability and effective implementation by the central and the state governments. Ironically, the same cabinet that adopted this Policy also made changes in the other laws like Foreign Contribution Regulation Act (FCRA) and Income Tax (IT) Act that were contrary to the nature of provisions of this Policy.

Rather than being guided by the spirit of Section 4 and 5 of the Policy that provides for creating enabling environment for the sector and recognises the importance of the sector in development, the changes in the said laws proved to be counterproductive to the meaningful functioning of the voluntary sector organisations and their financial sustainability.

The threat perception of the government about the sector continued and in fact deepened, resulting in stringent control. The fundamental challenges identified that should be addressed to make this sector vibrant:

1. **National Policy on Voluntary Sector:** lack of political will and requisite public/sector pressure to implement the National Policy on Voluntary Sector 2007.
2. **Definition of Voluntary Sector Organisation and its registration:** at the moment the whole process is regulated by archaic laws that were formulated by the British Govt. in 19<sup>th</sup> century. The composition of the sector has since changed so much that there was felt need to separate the voluntary sector organisations that worked for social development from those which were for public benefit. The participants expressed an urgent need to rationalise the laws that govern registration of the VOs.
3. **Financial Sustainability of the Sector:** As per the provisions of Section 4 of National Policy on Voluntary Sector, it is apt that government defines the income of these organisations and set taxation requirements to enable them to become financially sustainable to the extent of decreasing their dependence on grants/donations. The allocation of government for social welfare has increased over the years, but utilisation of funds has remained low due to procedural difficulties and delays in accessing the resources, corruption and political interference to name a few. Most of the Public Sector Units also when working with a voluntary sector organisation see it as giving out a service contract which is in contravention to provisions U/S 12 (A) and 2(15) of the Income Tax Act. The voluntary sector organisations are also supposed to pay service tax on the services availed by them, which is a drain on their meagre resources.

There is a general perception in the NPO community that foreign grants have declined significantly. Though the figures generated by the FCRA Dept, indicate the opposite. It shows that since FY 2004-05 there has been a substantial increase (65%) in receipt of Foreign Contributions. This could be due to better monitoring by the Dept. and also due to excessive or duplicate reporting of foreign contribution by the Dept.

The recent trend of issuing notices and raising demands on various income-generating activities of the NPOs, is undermining the limited efforts that these organisations undertake to make themselves financially more self-reliant. Putting a restriction of Rs 25 lakhs on income of an NPO is a very restrictive clause in

developing any meaningful strategy for financial sustainability of an organisation<sup>5</sup>. Recent announcement with possibility of applicability of Service Tax even on NPO services is a further dampener in this regard.

These developments go against the basic objective of 2007 Voluntary Sector policy as developed by the Planning Commission, which states 'to enable VOs to legitimately mobilize necessary financial resources from India and abroad'.

4. **Accountability and Credibility of the Voluntary Sector Organisations:** There is lack of national statute to hold the voluntary sector accountable. Various government legislations that are currently available are all about legal and financial compliances and not about the quality of work of the sector. Foreign Contribution (Regulation) Act and Income Tax Acts are not implemented in a coordinated way. Different ministries deal with these laws and have different understanding and mechanisms. The compliances are not checked through a single window.

The onus of proving good governance is pushed on to the sector rather than government taking the lead. Therefore, there have been attempts by the sector to self-regulate and set up social accountability standards and accredit organisations. Financial Management Services Foundation (FMSF) developed a set of 11 Social Accountability Standards and Credibility Alliance has also developed Minimum and Desirable Norms for getting accredited, these are recognised by the Planning Commission but not by the statute.

5. **Professionalization of the voluntary sector:** increasing number of professionals are joining in the sector which is essential to improve its efficiency and service standards; but, it is difficult for the voluntary sector organisations to give adequate monetary compensation to them, hence difficult to retain talent. In view of the increased pressure from the donors and government to limit administrative expenses, hiring and retaining high quality human resource is proving to be a major hurdle for the sector.

## Step II of the Research Project

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<sup>5</sup> The amendment in the definition of 'charitable purpose' U/S 2(15) in the year 2008 had sweeping repercussions for business income of such organizations. VOs under the sixth limb were not allowed to engage in any incidental business activity. However, Finance act 2010 and in 2011 relaxed it up to Rs.10 Lakh and Rs.25 Lakhs respectively.

This phase of the project was conceived to focus attention on the following issues and collect the views of the state level and community based organizations and the government functionaries on the following crucial questions:

1. How to address the challenges that the sector faces in the current situation?
2. How does the government policy affect the various types of the voluntary sector organisations? Does the scale, size, area of operations, duration of work and other such variables matter in the way policies and laws affect these organisations.
3. What are the major impediments in the way of voluntary sector organisations becoming self-sufficient? And how it can be best tackled? What are the various international practices that can be emulated in our country to make the third sector a vibrant partner in development?
4. What are the major impediments in the way of accreditation for various organisations and how it can be tackled?

## **Methodology**

Focussed group discussions were held in five cities to cover the VOs working in the adjoining states. The four cities were Delhi, Chennai, Hyderabad and Kolkata. The participant VOs were from 95 VOs from 13 states and 1 Union Territory (North: Haryana, Himachal Pradesh, Rajasthan, UP, Uttarakhand and Delhi; South: Tamil Nadu, Kerala and Karnataka, East: Bihar, Jharkhand, Odisha, Sikkim and West Bengal). This was a convenience sample as these organisations have been associated with the work on age care for many years. The general profile of the participant VOs was as follows: all the VOs were registered; working in 6 districts on an average; 24% VOs were established more than 40 years ago, 16% between 31 to 40 years and 28% between 21 to 30 years years ago; the personal experience of the participants in the sector ranged from 40% up to 10 years, 29% between 11- 20 years and 19% between 21-30 years and 12% for more than 30 years.

To understand the perspective of the other major actor i.e. government, two FGDs were held in Delhi with the representatives' of the relevant central government ministries and departments. The participants included the ex-bureaucrats from Union Ministry of Finance, Ministry of Home and Planning Commission.

## **The Findings of Step II**

### **1. Effect of registration and regulatory laws and policies on VOs**

In South Asia, particularly in India, governments seek, sometimes aggressively, sometimes routinely, to facilitate the work of the non-profit sector, as this “third sector” does much that the state cannot or will not do. But governments also seek to control and manage philanthropy and the non-profit sector, concerned about the sector’s rise to national influence and political authority as an increasingly important factor in development and social change, often with political implications.

The law of philanthropy and the non-profit sector fulfils a considerably more complex and contradictory role than generally perceived. It restricts the space and autonomy of the non-profit sector; and simultaneously provides legitimate means for non-profit flexibility in organization, governance, accountability and programmatic activities. It has adapted to provide an opening for diverse groups to become active, and enabling a wide range of organizations to operate with reasonable autonomy under a wide and sometimes baffling range of legal structures and documents.

The Indian system of non-profit regulation is rooted in complex religious, cultural, economic, social and political factors, including the strong influence of British colonial law. One is the constant tension between old law dating back to the 19<sup>th</sup> century and the adaptation of that law for modern circumstances. This ‘modernisation’ of law has proven difficult more so as various interest groups were added to the mix, including bureaucracies that have grown dependent on a “raj” system of licenses and approvals. This process of change and some adaptation has implications for reform of the legal structures and mechanisms by which the state regulates philanthropy and the non-profit sector.

In India, there is a mix of flexibility and control around organizational structure of VOs. The state’s power here has control, over a broad statement of the purposes and objectives of the VO, and a strong assertion of discretion in interpreting that standard. Therefore, this seemingly enabling legal environment often encounters problems at the implementation level as the officers of the bureaucracy retain control over the interpretation of the provisions of the law. These officers are more often guided by the ‘letter’ and not the ‘spirit’ of the law.”

In addition, we see various kinds of public, charitable and religious trusts, societies, companies, and cooperatives. The formation of non-profit organizations and their registration

under these various options results in every single form of organization being monitored and regulated by has its own vertical structure of government leading to the sort of organizational “regulatory arbitrage”. This “silo” structure, leads to wide-ranging regulation based on restriction rather than facilitation and significant bureaucratic tangles; as, it often provides unwholesome organizations with ways to evade state management; thereby, making accountability more problematic because of the “lack of common standards to measure performance.”

Secondly, the federal structure of the government adds another dimension as societies are under the jurisdiction of the State List of the Indian Constitution and Union government cannot make laws on it. So, there are serious hindrances to the pan Indian registration law.

Thirdly, there are practical issues emanating from the nature of the sector that makes it unattractive to the political elite. There is no potential for revenue or any other sort of benefit; it is only a drain on the budget, so nobody wants to nurse it. The suggested draft of the law is being tossed from Ministry of Law to Ministry of Corporate Affairs (MCA). MCA is not interested to work on it and is treating it as forced responsibility. There are only company lawyers in that Ministry. Indian Institute of Corporate affairs (IICA) has also been involved in it now. The major recommendations of the respective committees were shelved. VAC in the Planning Commission can only act like and adviser, it does not have executing power. VANI wrote to PM to form a Ministry of Voluntary Affairs, but there has been no response. As of now, there is nobody to represent the sector in the cabinet meetings, parliament, so the concerns of the sector do not get articulated at that level. There is no reporting mechanism and or monitoring guidelines. There is no requirement of annual reporting to the societies registered under the 1860 law. There is no professional body to regulate such societies and the controls over such bodies are haphazard.

The government is a major actor, but its attitude towards the VO has changed over the years. Initially the government did not interfere in the working of the voluntary organisations; in fact it would listen to them. The Voluntary sector was welfare oriented and worked with the people. Then the voluntary sector organisations moved to develop pilot projects on various development issues; the government hijacked all the projects and upscale them and became competitors. It established organisations like DRDA that are akin to VOs to run welfare projects and started competing with VOs. Many in the government were of the view that welfare of the marginalised like SC/ST, women, children was the primary function of the government and VOs were unnecessarily meddling in its jurisdiction.



Thereafter, the voluntary organisations moved from 'project' to 'protest' mode for the rights of the marginalised people. So, VOs were treated as antagonistic organisations. Efforts were made to over-scrutinise their funds and activities and nail them as 'anti-national'. At present, the government acts as if the VOs are competitors, and it is suspicious of them and invariably tries to control and at times curb the VOs. Sometimes the government officers are of the view that social welfare is the responsibility of the government so why should VOs meddle in that space?

The government allocation for the social sector may have increased over the years. It may have announced intentions of working in public-private partnership (PPP) mode; but the funds remain grossly underutilised. This is due to cumbersome and complicated procedures, unrealistic allocations and the high-handed attitude of the lower level bureaucracy and also corruption in many cases. The experience of most VOs with the district administration is so frustrating that they decide to work independent of the government agencies. Most of the officers at the ground level are arrogant, unsympathetic to the causes. There are many individuals who operate as agents and facilitate flow of government scheme funds to bogus VOs. Very few officers and functionaries in the district or state administration were sympathetic and reasonable.

In its functioning, the government does not recognise and acknowledge the advantage the VOs have of vis a vis the ground realities, its flexible work culture and ability to innovate in solutions; instead treats the VOs as sub-contractors at best and as articles that they can 'use and throw' at worst! It does not allow the VOs to act as facilitators for various welfare schemes. It does not penalise few 'black sheep' and takes no steps to encourage the 'white sheep'. In other words, the regulatory mechanism is used in a blanket fashion without distinguishing the 'good' from 'bad' VOs.

Many participants were of the view that the attitude and ethos of the people have also changed beyond recognition. The needs of the people have changed over time, their attitude; expectations and ethos have also changed. Now the VOs are no longer responding to the needs of poor, e.g. they may be running programmes for youth from well-to-do families to deal with stress of exams. The programmes for poor are also not the same simple welfare oriented programmes like hygiene, health etc.; but more geared to empowerment. The target groups are more informed, vocal and assertive and the nature of programme cannot be handled by volunteer staff.

The VOs sensed an all-round suspicion against the sector, the government suspects it and so does the common public. The public perception was that these organisations were frauds gobbling up grants from various sources. The negative publicity of the 'few black sheep' and inability of the system to help establish the credentials of the good VOs added to the challenges of the VOs.

## 2. External Funds and Foreign Contribution Regulation Act (FCRA)

Another issue with which the third sector and government are very concerned is the role of powerful external donors in the country. Historically, foreign donors emphasized supporting and building indigenous nongovernmental organizations as service providers and, increasingly, as policy advocates and participants after their disenchantment with the role of the 'third world' governments in furthering the agenda for international development. In turn, governments throughout Asia have sought to restrain the influence of external donors and, where possible, re-channel their contributions to and through state institutions.

Foreign Contribution Regulation Act (FCRA) was designed by Indian government in the 1970s to curb the role of foreign money in Indian elections. In 1984, the law was amended to regulate flow of funds to charitable organisations, based on the government's perception that some of these organisations could be used as conduits to channelize foreign funds to political parties. This resulted in a lot of paper-work and confusion for the VOs. The implication of this change in 1984 has resulted in this common perception that FCRA is primarily for regulating VOs. The concern of the government is very succinctly reflected in the statement of the Former Home Minister quoted below.

*The regulations have been so framed that while legitimate charitable social, educational, medical and activity that serves any public purpose is allowed, **foreign money does not dominate social and political discourse in India.** There is enough money for charity within India. Enough money can be raised within India for charitable causes, the social causes. But, if you want to access foreign money, then one has to come under a system of regulation.*

**- Hon. Minister for Home Affairs, Rajya Sabha, 23-Aug-10**

The recent developments, particularly the international apprehension of financing of terrorist organisations in the country have added another dimension to this issue. There are complex and larger international issues involved in the stricter controls over voluntary sector. India is a member of Financial Action Task Force (FATF) that deals with anti-money laundering and combating financing of terrorism. US Senate Committee in fact remarked on the slow pace of Indian government in this regard.

The VO sector perceived and experienced FCRA as a potent instrument of harassment of 'inconvenient' VOs. As per the participants, the main issues concerning FCRA that were the cause of 'harassment' were:

1. Renewal and Prior Permission Issues
2. Monitoring Process
3. Mandatory Limit of Annual spending
4. Process of Scrutiny of Documents by the government

The participants from the sector complained about the arbitrary and capricious handling of the issues emerging out of foreign funding of development projects. The most quoted examples were corruption in case of individual VO permissions, large scale and indiscriminate scrutiny of the VO in many areas particularly the most backward. The most objectionable part was the use of paramilitary forces at times for the scrutiny in some 'disturbed' areas.

The monitoring process of the FCRA department was said to be weak. It neither had any line agency to investigate nor the capacity to monitor the VOs registered with it. At the moment, about 4 Lakh VOs have registered with the Department and only 20 thousand are filing the Returns. Many VOs applied for change in record; but, the records of the department were not updated frequently and many notices could not be delivered. There is no system of acknowledging receipt of any communication from the VOs.

Now with the provision for periodic renewal of FCRA registration of VOs and within the stipulated time limit of 60 days; the sector is apprehensive about the ability of the Department to successfully handle the load of estimated 20,000 applications in the year 2016.

In addition, its online processes have problems like inability to take corrections once information is uploaded. This has fallout for the small VOs who may, out of lack of proper understanding, fill in incorrect information; but, may not have any chance to correct the mistake online. Secondly, the Department may find discrepancies in the soft and hard versions of the documents and would have to scrutinize all!!! Another problem anticipated by the sector was lack of clear-cut guidelines for qualifying criteria for renewal.

Another issue that was brought to the table was the practical difficulties faced by the VOs due to the mandatory limit of spending 85% of the foreign funds within the same year and also the time limit of 6 years for spending the balance. The provision to treat the unspent

money as income was also unjustified as it was more of 'deferred liability'. The VO also highlighted the negative impact of complete shift from cash to accrual system, as the former does not allow the flexibility to operate. In case of small CBOs, it would also be difficult to employ their own resources every year till the funds were transferred by the grantee. In addition, FCRA reporting would become more complicated if local money was used for the purpose.

The government representative explained the other side. As per procedure, prior-permission is given to VOs by FCRA department to accept foreign contribution on a case-by-case basis. This permission should be obtained before accepting the contribution. On receipt of application, the FCRA department instructs the Intelligence Bureau to furnish a report. The officer usually makes an onsite inspection and may examine the accounts and ask questions from the VO and its neighbours. S/he may also inquire at the local Police Station or visit the field area. S/he will then send a confidential report to FCRA Department at Delhi.

Here the practical issues that were faced by the VOs were corruption, wrong reporting, asking 'irrelevant' details. On the other hand, the FCRA department in New Delhi has its own set of issues to tackle. FCRA does not have any direct line agency to work on the ground. They have to depend on the local agencies for verification. When they instruct the local police to verify credentials, they sometime get negative report (for whatever reason). On representation by the voluntary organisation it asks the same agency for recheck. Second time, it sometimes gets positive report. The conflicting reports causes delay in responding to the request and at times denial of permission to the VO.

The VOs also reported mass scale verification by FCRA in some areas and use of paramilitary/intelligence agencies for the purpose of verification. The FCRA department does not order mass scale verification, but only request it in case of prior permission, registration or in case of complaint against a certain VO by the Enforcement Directorate or Intelligence Bureau. But, sometimes the local administration might go on an overdrive, checks the documents of all agencies operating in a particular area. Or such cases could be due to certain automatic processes in the government machinery which get activated and the other agencies may use the information for their own purpose. There have been some arbitrary ECRA cancellations without prior notice to the voluntary organisation/s.

In the year 2005, 800 voluntary organisations were put in 'prior permission' category as they had not filed FCRA Returns. In 2010, 24,539 organisations were issued a notice for not filing FCRA Returns for the FY 07-08 and 08-09. Many represented saying that they did not receive and foreign funding in the said period, many said that they had sent it to the department, but some letters were not delivered. So another notice was issued, but due to

change in address these were still undelivered. In this category, there were 4,139 organisations and their registration was cancelled. As per the Rules, MHA should have suspended their registration; but some officer concerned cancelled it. As there was problem in the address, even the cancellation letters could not reach the voluntary organisations. So, it was put on the website, strangely only 257 organisations represented their case for restoration. MHA decided that if proof of Return was shown then the status would be restored. The new officers decided that if there should be verification and decided to do on-site inspection for in case of over Rs 1 crore and off-site in case of less than that. With the current staff and capacity this would prove to be a long drawn process and the voluntary organisations would suffer as they would not be able to utilise the foreign funds.

According to the Rules, cancellation should be preceded by suspension and before suspension there is no opportunity given to the organisation to represent. Actually there should be a show cause notice followed by investigation (Section 22 and 23 of the FCRA Act deals with this). Government officer are sent to verify. Supposing the investigating agency report says that the organisation is found to be involved in activities that are not in 'public interest' or 'national interest'. There is no objective definition for establishing this. If on the basis of this report FCRA is suspended and the organisation represents against it, FCRA department will have to depend on the same agency to investigate. So, it defeats the whole purpose of investigation.

In FCRA department, change of officers also sometimes brought in hardened attitude of officers and insensitive approach to the whole issue. The major problem is at the level of implementation and execution, so that should be targeted. Mind-sets of people should change e.g. FCRA department does not give instructions for the local police to check the credential of all the voluntary organisations in the area, it only identifies a few based on its own guidelines. But the local administration decides to go a step further. The Act and the Rules are given. But there are grey areas and for that each department issues Internal Guidelines e.g. in FCRA the law says that there should be 'reasonable activity' and 'reasonable amount should have been spent'. How to decide objectively the reasonableness? So the internal guideline is: activity for three years and annual spending of Rs 10 Lakhs. It is a practice in FCRA department not to give clearance or permission to Trusts/bodies that are opened by the foreign based NGOs. The argument is that if money is given by a foreign source then the activities of the Indian body could be controlled by eth foreign NGO and could be used for anti-national activities. Even association is interpreted as control. This is an example of over cautious approach that government officers adopt at times.

There was resistance to the attempt by FCRA to put information on income/grant from foreign source in public domain; there was resistance from the sector. The organisations were apprehensive that they may be blackmailed for share of the money. But MHA decided to do it and now the FRCA Returns are available in public domain.

Digitisation would help, but it may not be possible for all as many voluntary organisations work in remote areas, connectivity could be a problem. Sometimes, they do not have adequately trained staff to do it. Many such organisations are being misled by the Chartered Accountants and or the bank employees, many a times out of ignorance. Many Bank employees are not even aware of the master circulars of RBI.

### **3. Income Tax and VOs**

Besides, the government's concern about the growth of powerful indigenous non-profits is reflected in regulatory action that seeks to limit domestic non-profits' access not only to foreign capital, but also to commercial opportunities at home.

The legal incentives available to philanthropic organizations and the non-profit sector fall into two general categories: (i) tax exemptions to the income and goods that non-profit organizations receive and (ii) tax advantage to donors, both individual and corporate, to contribute to the non-profit sector through deductibility of charitable contributions. The revenue authorities retain substantial discretion in these decisions is also understandable. And, of course, the continued vitality of an exemption system provides at least two other important sectors of a state's government and administrative bureaucracy — tax collectors— with a hand in the management and control over non-profit organizations. To the degree that rent-seeking takes place in the process of exempting non-profits from the formal payment of taxes, non-profits are contributing directly (rather than indirectly and more fairly) to the maintenance of the state apparatus and its personnel, often at both local and central levels. That structure of support is enhanced by exemption or deduction procedures that are perhaps not entirely transparent,

The local police, IT and also the economic offenses wing harass the ground level VOs. What are the tests for registration and exemption? If these were simple and clear-cut like in the case of companies, it would be easy for all. In case of the companies, the statement talks about investment and profit and dividends to shareholders. In case of VOs the litmus test should be that the earnings should be redeployed to further the cause and not be siphoned off by any individual or office bearer.

The proposed DTC is likely to shift the accounting system to cash. This would create problems for the sector in cases where grants are received in Q4 of any financial year and in cases where the grant is to be spent over a period of time. If VOs are not allowed to adopt accrual system, for these cases, it may create difficulties. Unspent grants are actually liabilities and not income.

There are donor requirements and there are government requirements, which may not match sometimes. The bias against the sector and the lack of clarity in the law creates problems for the sector.

The underlying complexity of the issues concerning VOs and the difficulty in finding neat and clear cut solutions is in the fact that most of the voluntary organisations are small in size and do not want to get caught in the government machinery. They prefer not to register under 12(A) and remain outside the system. They may not get recognition, tax exemption, but also do not face any scrutiny or limitations as prescribed by the law. Article 2(15) of the Income Tax Act is treading on a difficult terrain as activities listed under it appear both in charitable and commercial arena. Secondly, voluntary organisations cannot sustain purely on the basis of grants, so many of them are moving to the utility based models. This makes it difficult for the current law to segregate. In addition, the IT Dept. is worried about revenue leakage, so takes a strict rather than lenient view. At the implementation level, the officer is under scrutiny from the system at least three levels, besides the CAG, so do not want to err on the side of leniency to the voluntary sector. The language of section 2(15) also creates problems for the officers and the voluntary organisations. Furthermore, most of the people in the voluntary organisations are simple people who are not nimble on their feet to explain to the IT department that the TBC is not their main activity but only incidental.

To illustrate the points made above, If NABARD or a PSU gives a 'contract' to a voluntary organisation for a certain project, under section 194(c) and (j), a flag goes up in the IT department's record and when the voluntary organisation fills up IT Return it has to undergo vigorous scrutiny. A large number of cases have been victims under this. The government's apprehension was that voluntary organisations may spin off TBC under these entities and evade taxation. Many organisations like MP State Road Transport Corporation (MPSTRC), Kandla Port Trust (KPT), hotels and newspapers claimed to be charitable organisations doing public utility/service work. The last straw on the camel's back, as they say, was the Supreme Court ruling was in favour of KPT. So, Government intended to catch these big fishes; but the smaller voluntary organisations that were akin to shrimps also got caught in the net.

This explained the other cases quoted by the participants. In one case, Give India, an organisation that raises money for the other charitable/voluntary organisations, in an appeal to the IT officer, argued quoting various SC and HC judgements on the matter, but he disallowed IT exemption on the ground that the Organisation does not do it directly.

So, Give India changed its objectives to fit into those clearly stated in section 2(15), then the IT officer disallowed it stating that objectives would be considered prospectively and not retrospectively. The IT officers appeared to do a summary reading of the clauses and guidelines and in order to deal with their own pressure for achieving tax collection targets, interpret it narrowly. Another case was that of exemption for education. The IT officer does not treat 'awareness generation' as 'education'. For them it would only be a government recognised course that is education.

The other side of the picture was brought out by the government representatives and some experienced chartered accountants who highlighted the resistance of the VO to the idea of public disclosure of income. This, according to them resulted in the sector becoming a green pasture for corrupt practices. In addition they also quoted cases of misuse of the exemptions given under the tax regime e.g. claiming benefit U/S 35AC for building houses for employees; booking expenditure on furniture under research project where 150% tax exemption was allowed; showing whopping sums as cash transactions for giving food, clothing material to the poor.

A senior ex-bureaucrat who participated in the FGD stated the ideal interpretation of various sections of the IT Act that reflect the spirit of the law. The income of Trust is exempt under section 11. As the voluntary sector organisations are sharing the responsibility and burden of government in providing social services, income of the Trust for 'charitable purposes' is exempt.

U/S 2(15) the exemption is for charitable purposes, it should be understood and applied for the same. In other words, as long as the purpose of the activity is charitable it should qualify for exemption. The income ceiling of Rs 25 lakh is also incongruous for it appears as if the receipts of income are less than Rs 25 lakh the purpose and activity are charitable and exempted; but if the income exceeds that amount the purpose and activity become in the nature of Trade, Business and Commerce, hence taxable. The VOs should prove that **TBC** is not the intention or primary objective.

The law is also silent on the means to achieve the charitable purpose e.g. the objective of the religious trust could be world peace and prosperity but how that is achieved is not



precluded or restrained by law. So, one way out is to extricate the activities of the trust from the '6<sup>th</sup> limb and bring it in the purview of the first five.

The VOs were of the view that it may not be always possible for the VO/s to redraft the objectives to fit neatly in the categories listed in sub section 1-5 of Section 12 of the IT Act as the voluntary sector is becoming more complex. This would in effect restrict the scope of work of the sector. Issues like child abuse, old age homes and many more like these may not fit into the existing categories as the victims may not be poor, but require social support. Microfinance is another major grey area of operations of VOs. In this the private sector and public sector are also involved.

The Voluntary sector should take clear cut documents to the bureaucrats to show which provisions of the law and which practices are inconvenient to the sector and not useful for anybody. E.g. the CBDT Chairman convinced the FM that the 74 lakh government servants who earn less than Rs 5 Lakh pa have to fill in IT Return. This does not serve any purpose and adds to the workload of the department. This was done away with.

According to a very senior government official, who participated in the FGD, it is unlikely that government will repeal Section 2(15) of the IT Act, so he stressed the need to fit the purpose of the voluntary organisation into the stated parameters. He was of the view that many a times the nomenclature and terms used in the MOA create confusion and the IT officers interpret it as TBC activity e.g. multilateral agencies use the term "consultant/consultancy" and US agencies use the term "contractor". The focus should be on the nature of work and not the term used by the other agency. In a case of participatory research on the impact of emergency relief for women in a flood affected area by WHO, the valid question to ask would be who is doing TBC: WHO, voluntary organisation, and or people?

#### **4. Financial Sustainability of VOs: Exploring New Avenues through Corporate Social Responsibility (CSR)**

A new trend in the emerging economies after liberalisation is the gradual withdrawal of state from its hitherto accepted role of active agent of social change and transformation to only a passive regulator. The space so created is now being taken by the burgeoning corporate sector. The concept of economic development is being sublimated by adding the dimension of social development and corporates emerge as natural partners in this.

Government of India passed the Companies Act 2011 and in that under Section 135 Corporate Social responsibility has been introduced as a statutory provision for the first time. The first para of Sub-clause (5) of Section 135 now reads as follows: "The Board of every company referred to in sub-section (1), shall ensure that the company spends in every

financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.”

Such clause is also amended to provide that the company shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities. The approach to ‘implement or cite reasons for non-implementation’ retained.

That is on paper; but, in reality, the participants of the FGD listed out whole range of problems that they encountered when they approached corporates for funds.

The companies do not try to understand the importance of the programme for the community; but treat it as any other project. There is a need to get enlisted in the CSR hub to get access to the CSR funds that may be as difficulty for the small VOs. The companies have their own agenda which may or may not match with the felt needs of the people. Here also the VOs face almost same bureaucratic behaviour as in government departments. Funds stop abruptly.

CSR funding is a good opening, but it may not help in creating financial sustainability of the voluntary organisations. These are also project specific grants where administrative costs are minimised. Many corporates have started their won foundations that are not doing genuine people-related work. This should be regulated keeping in view the objectives and the role of voluntary sector in social development.

The foundations and CSR have their own agenda, which may or may not address the real issues that confront the people in any particular area. Like the government grants CSR money is also straitjacketed in too many rules. In areas like Khammam, Koraput where there are real issue of chronic poverty, malnutrition, this superficial approach will only provide palliatives.

CSR does not ensure long term commitment to any area or cause. Many of them sue the voluntary organisations as a tool to ground their business. Let them give money to the government and let government decided where it wants to spend what. The government is accountable to the people. MNC do not understand and neither wants to understand the local sensibilities, issues. Their whole approach is very superficial and at times non-serious e.eg one MNC showed the garden in its factory premises as the CSR activity for environmental protection, organised a musical chair game for older persons as a CSR activity! Some of them are pumping the CSR money back to their own coffers.

The other issue is the capacity of the corporate to undertake CSR work. Many of the CSR foundations have the full time employees working part time in it. Many of them have MBA degrees in marketing so the attitude and training are very different from what is required for social work. They cannot match the commitment, dedication and understanding that any voluntary sector worker would have.

There are no volunteers in the VOs all are professional staff expecting a certain amount of remuneration. There are labour welfare laws that ensure social security for the employees. The funders are generally hesitant to pay administrative costs. So tax exemption is essential for the VO to be able to sustain the organisation and the programmes in the community. At present the VOs are dependent on grants for sustenance.

### **5. Accreditation and Self-Regulation**

The statutory governance requirements are generally different for each form of non-profit organization — societies, trusts, associations, non-profit companies, cooperatives. Some statutes mandate detailed governance procedures for specific types of non-profit, while other, considerably weaker statutes allow the organizations themselves to prescribe governance norms through by-laws and other internal documents.

Regardless of whether a non-profit begins from a base of detailed statutory governance or weak legal governance, the result seems similar: there is little effective government-based, member-based or public monitoring or accountability for non-profit governance. And that has key effects. In governance terms, the result is almost invariably weak boards, strong founder or successor executives, organizations dependent upon personality, and weak accountability. The power of donors only exacerbates this problem.

#### **Accountability**

Accountability to the government is more on paper than of any real substance, accountability to members and other specific constituencies is weak, and accountability to the public is almost nil. VOs naturally feel accountable to their donors. But the sense of accountability to the general public is not an automatic response.” But recent developments indicate that as local individual donations increase in India, accountability to the Indian public may also improve.

Weak accountability systems for non-profit institutions are a particular problem because of the essential ambivalence of the voluntary sector toward strengthening its accountability. This ambivalence may be noted in Self-Regulation. If governance norms are inconsistent,

under monitored and under enforced; and accountability norms are inconsistent, weak and under enforced, then self-regulation naturally emerges as a potential solution. But it is a solution with deep problems, the most important being the difficulty of formulating and enforcing self-regulatory norms within the non-profit sector.

Self-regulation emerges, out of a number of different and occasionally contradictory motivations. The state is incapable; yet the state is too strong. The non-profit sector seeks to pre-empt stricter government regulation; the non-profit sector seeks to regulate itself because of the absence of any effective government hand; the non-profit sector seeks to self-regulate to evade “over-control” and other aspects of the interventionist government regulation. All of these are real motivations for the increasing attention to self-regulation despite their self-evident contradictions.

The experiments with self-regulation have proceeded with the most vigour and energy in India, with a number of experiments and initiatives underway: the development of codes of conduct, and monitoring or ranking or “validation” mechanisms; the formation of a “Credibility Alliance” to strengthen the sector’s understanding of how to improve accountability and the public’s understanding of the non-profit sector, and other activities.

Contradictions abound, and thus one of the more widespread self-regulation efforts has also been supported by the government, through the Planning Commission. The lessons of the Indian self-regulation experience thus far appear to be twofold: experimentation with diverse and innovative approaches is a useful step, rather than early choice of a single model for nationwide implementation (a choice that might be impossible to implement in India in any case); and the very diversity and contradictions of the Indian non-profit sector make the spread and acceptance of self-regulation particularly difficult. It will be a long road.

It is important to establish the credibility of the sector. There could be independent body or there could be mechanism for self-governance by the sector. But the government agencies could very well be used to verify the work of the VOs in their respective areas.

The participants from the VO were as already stated, worried about the increasing trust deficit. They were of the view that so many documents like quarterly report, utilization certificate, annual reports, audit et al were all a result of the trust deficit. They were of the view that there should be one authority that should have the mandate to ask for the

documents to prove the authenticity of the work of the voluntary organisation. There should be a ministry for the voluntary organisation so that all reports are submitted to it.

According to them, It was difficult to reach all the organisations in the sector, particularly the real CBOs working in the remote areas. Even today, many of them prefer not to register and open a Pandora 's Box for government scrutiny and compliances.

The other fallout of need to establish credibility by certification, according to them would be mushrooming of the 'bogus' city based organisations that would be adept in getting ratings etc and doing excellent paper work. Then they would get the funds and treat the real CBOs as sub-contractors to do the work. There are many such professionalised front organisations based out of Hyderabad that are very efficient with paper work but are not real workers. They get foreign funds and then exploit the local organisations.

A rating system would help, but it should be designed keeping these realities of the sector in mind. Government would also have to develop infrastructure for a sound rating system. Recently there was a CSR meet in Osmania University and HelpAge India approached for funding, but the application was rejected stating non-inclusion in the List as the ground. If this could happen to a national level organisation working in the country for 35 years what would be the plight often CBOs is not difficult to imagine.

The participants also were mindful of the challenges in recommending government as the major accreditation agency. According to them, government monitoring mechanisms were weak. The processes were faulty and there were loopholes. Government does not have enough qualified (hu) manpower to do the work. They did not have the specialisation and expertise to work in the social field. The same goes for the Corporate.

## **6. Solutions**

There were various long term and short term solutions suggested by the participants on the challenges faced by the VOs. The underlying principles of most of these suggestions were transparency, accountability and rationalisation. Some are listed below:

- a. Examine the registration laws so that meaningful classification can be achieved. Initially, it would be helpful to let Ministry of Corporate affairs chaperon this law, as it is a professional body and if the sector can get them interested in this law it would be good. The voluntary sector organisations should be classified into large, medium and small and IT process should treat them accordingly. This simplification of the whole process is likely to encourage organisations to follow the rules easily. The deeming provisions create confusion and should be avoided.

- b. The best solution in the given circumstances would be to push hard for the acceptance and implementation of the NPVS and setting up of a Commission or transform Voluntary Action Cell.
- c. Availability of information in public domain, on both, the substantial and procedural matters will help the voluntary organisations in the long run. It would improve governance and strengthen accountability.
- d. If FCRA renewal would have to be done, then digitised data would be so much more useful to strengthen their case as it would ensure transparency.
- e. For FCRA renewal There should be clear-cut criterion for renewal:
- No negative investigation
  - Regular Filing of Returns
- f. The voluntary sector people must try and build a rapport with the concerned officers of the government departments. Building rapport does not necessarily mean asking for and doing favours. The voluntary sector organisations should identify the relevant departments and officers and try to explain their work to them, take them for filed visits if need be.
- g. The sector should disinfect itself and try to persuade all to do voluntary disclosure. This would go a long way in establishing the credibility of the sector in the eyes of the public and government. It would also automatically segregate the proverbial 'black sheep' of the sector. Government should encourage this by introducing user friendly digitised mechanisms.
- h. The constitutional goal of distributive justice coupled with a growing feeling of disenchantment with the government to achieve this goal either through governance or through massive direct intervention programmes to reach out to the unreached; the need of the government to benefit by the rich grassroots level experience of many VOs and the desire on the part of VOs to have the interaction on a regular basis have reinforced the need for a collaborative relationship between VOs and Government.

- i. At the macro level, joint machinery should be set up consisting of select voluntary organisations with extensive field experience in the social development sector and secretaries to the relevant central and or state government departments/ministries. This body should develop people-centric models of development. Such models should involve the social mobilization and organization of the people at the grassroots level. The models evolved should be such that they would lead to the people being empowered and prepared to run programmes meant for them, on their own, with the required support from non-government organisations who would act as catalysts.
- j. At the administrative level, set up of separate committee in all concerned ministries to deal with the voluntary organisations with internal structural mechanism to ensure regular dialogue with them on contents and implementation of the social development programmes and schemes. .

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<sup>1</sup> India: FATF demands tighter regulations; restrictive new Act adopted

In July 2010, a joint FATF/APG inspection found that India was 'non-compliant' in respect to FATF SR VIII. The FATF report called on the Indian authorities to 'implement measures to ensure that all NPOs are licensed and/or registered as such and make this new information available to the competent authorities'; 'ensure that NPOs maintain information on the identity of the persons who own, control or direct their activities, including senior officers, board members and trustees'; 'demonstrate that appropriate measures are in place to sanction violations of oversight measures or rules by NPOs or persons acting on [their] behalf' and 'undertake comprehensive outreach to the NPO sector with a view to protecting the sector from abuse for terrorist financing as well as wider outreach in relation to good governance and accountability'.

The Indian government drew-up new regulations in advance of the publication of the FATF report and adopted the Foreign Contributions Regulations Act (FCRA) in mid-2010. The FCRA was condemned by CIVICUS, a global civil society alliance, for allowing broad executive discretion to designate organisations as being of 'political nature' and prevent them from receiving foreign funds. This is particularly problematic for organisations concerned with issues like human rights that rely more heavily on foreign grants to fund their activities. FCRA also places an arbitrary cap of 50% on the administrative expenses of an organisation receiving foreign funding; while those organisations that are given permission to receive funding from abroad must re-apply for permission from the government every five years.