



India

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THE ROLE/INFLUENCE OF THE SECTOR IN THE COUNTRY

History

The concept of “voluntary activity” is as old as Indian tradition itself. Philanthropy is and always has been an integral part of the Indian social ethos. Historically, families and communities have always helped those that were less privileged. Reference to this has been found in Vedic literature that dates back to 1500 BC. The fundamental role of political regimes then was merely to ensure that the civilisations were preserved. ‘Welfare’ aspects were largely taken care of by the joint and extended family system (which was ‘social security’ in a sense) and caste¹ solidarity. Religious conformity demanded that individuals be philanthropic, and reference to this is found across religions—in Hinduism, Christianity, Islam and Buddhism. Religious and individual philanthropy were practically synonymous. Organised voluntary activity or “institutionalised philanthropy ”as it exists today in India is largely a post independence phenomenon, transitioning from religious and faith-based philanthropy to more professional and modern trends emerging within the sector.

The Nonprofit Sector Today

In India today, the right of all citizens to form associations or unions is laid down in article 19(1)(c) of the Constitution of India. In India, church and state are legally separated.

Nonprofit organisations in India are free to address any public need as long as the need is addressed in a lawful manner (i.e., without attempt to promote disharmony or general public disorder) and without any intention of private gain. They are not permitted to engage themselves in any political activity. Even “political education” is outside the ambit of “charitable purpose” as defined in the Bombay Public Trusts Act. However, section 20 of the Societies Registration Act allows registration of a society whose object may be “the diffusion of political education.”

There is no single body of law for entire classes of NPOs. Instead, as specified above, there are specific laws, legislations and regulations for each major type. In other words, different legal provisions exist at the national and state level.

Under Indian law, there are five types of nonprofit organizations: (i) trusts, (ii) societies, (iii) companies, (iv) cooperatives and (v) trade unions. It is however a matter of dispute whether the last two really fall within the definition of nonprofit organizations.

Role of the Voluntary Sector

The voluntary sector in India continues to grow. Unfortunately however, there is not yet a reliable and credible source of information on the exact size and the scope of the sector, although efforts are underway. PRIA (Participatory Research in Asia), a leading research and publications organisation in India, estimates that there are million voluntary sector organisations in existence.

The past two decades have seen increased participation by other sectors in development—especially the private or corporate sector and the government. Partnerships within and between sectors are also increasingly being strengthened. This has led to greater visibility of the sector in the public than ever before. There are now increasing demands for accountability and transparency both within and from outside the sector. There has been a transition from a ‘reactive’ nature within the sector toward a more ‘proactive’ approach in demonstrating accountability. Yet, this has been insufficient in drawing indigenous support from an Indian public that remains largely unaware of the contributions of the sector. Organisations within the sector do not invest adequately in communicating what they do—through annual reporting of activities and financial information—to regulatory bodies. When they do disclose such information, it is either incomprehensible or inaccessible to the public. The laws that govern the sector, primarily the Societies Act, the Trust acts and the Company’s Act, do not provide adequate scope for public disclosure. In addition, the inherent differences between these laws make uniform reporting and therefore a unified perception of the sector almost impossible to achieve, raising issues around accountability.

The sector has begun to face issues of legitimacy with increasing visibility in the public. There are increasing demands from the public in terms of demonstrable indicators of outcomes and performance. It is clear that there is enough money within the Indian public to provide increased support for activities. Clearly then, it is a problem of inadequate legitimacy that deters support. It is estimated that the government lost Rs.1, 000 crores (approximately USD\$211 million) in tax revenue due to deductions under section 80G/ 80GGA (income tax exempt provisions) in the

financial year 1999/2000.² Indian taxpayers donated approximately Rs.6,000 crores under these sections in the same year. During that year, foreign donations (FCRA) came to just half of that amount. There are no records of where this money was given, or how it was spent. However, what is clear from these figures is that there is enough money in the Indian public to provide adequate support for the voluntary sector.

Different Roles

There are at least five roles for the voluntary sector in India. These are not mutually exclusive, in the sense that within the sector, one can find some agencies simultaneously playing one or more of these roles.

The first is as a “**public service contractor.**” This term implies that the NGO is a service provider in return for a fee, and that it can do the job better and more efficiently than government agencies, or can work in areas where private, for-profit service providers will not enter. Examples of this are primary education, where the quality of government schools is below minimum standards; or resettlement, where the government finds its own ability to deliver the goods is very limited. In other situations (e.g. disaster relief, slum resettlement, AIDS control), the for-profit sector is unwilling to provide the services and thus the NGO sector can be a useful public service contractor. Indeed, as the government is winding down its role due to budgetary constraints and/or inefficiency, the voluntary sector is increasingly playing this socially required role.

The second role for the voluntary sector is as a **collaborator** with the government and the private corporate sector in activities where community participation is necessary (e.g. watershed management, forest protection, and resettlement of displaced persons). Here the collaboration includes playing a role in program design and in policy reform if required. Already there are some working examples of this. The Rajasthan government has set up many autonomous societies to undertake work in various fields such as drinking water supply and rural microenterprises. The boards of these societies have many NGO activists. A similar step has been taken in setting up the autonomous Karnataka Watershed Development (KAWAD) Society, which is being established jointly by the Government of Karnataka and the DFID, UK.

The third role for the voluntary sector is as **social innovators**, experimenting with new technologies (e.g. treadle pumps), new services (savings and credit through self-help groups), and new methodologies of social organisation (e.g. joint forest management). In this role, they need to be given policy support and flexible funding

² AccountAid, New Delhi

Societies are the most common way of setting up an NGO. This is because they are relatively easy to establish, have independent status, are allowed to modify objectives to meet changing needs, and have limited liabilities on their members. A Section 25 Company is procedurally more difficult to set up. In addition, requirements such as auditing are more exacting and arduous. The major disadvantage of a trust is that the objectives of the trust cannot be changed after the death of the original founder; in addition, trusts are often viewed with a degree of suspicion in India.

Income Tax regulations on voluntary organisations include:

Section 80G Voluntary organisations working in specified areas (deemed to have a “public charitable purpose”) can register with the income tax authority under this section. This enables donors (whether individuals or companies) to claim tax relief on 50 per cent of the amount donated. The beneficiary organisation is required to issue a copy of an 80G certificate to the donor to enable the donor to claim the tax deduction. This is the most widely used tax benefit for charitable giving.

Section 35AC This allows contributions to be 100 percent tax deductible. It is applicable to specified projects rather than to organisations - generally for rural development or development of urban slums. To benefit under this section, the organisation receiving funds will typically have to undertake the project itself. Approval has to be sought from the National Committee for Promotion of Social and Economic Welfare in Delhi. Approval, if given, will generally be granted for three years. Only a very limited number of projects have been granted approval under this section, and the evidence so far is that it makes an enormous difference in their ability to fundraise.

Section 35 (1) (ii) and (iii) provide for a similar 100 percent exemption for donations to approved scientific research associations, universities, colleges or other institutions for scientific research, research in social science or statistical research. Approval has to be sought by the research institution from the Department of Scientific and Industrial Research in Delhi.

There is a widely held view in the voluntary and donor communities that the tax relief on charitable giving should be extended to make all charitable donations fully deductible. This would considerably enhance the attractiveness of charitable giving to donors, and could encourage far greater levels of giving. What seems to be holding back the widening of tax relief are fears of misdirection of charitable funds as a form of tax avoidance; and concern about the use of charitable funds for political ends, particularly with the growth of religious sectarianism and independence movements around India’s borders.



constitutional guarantees and international commitments. Such efforts signal an increasing unwillingness on the part of the government to tolerate criticism and dissent.

While the government has a legitimate interest in holding NGOs accountable for financial or other wrongdoing, normal regulatory and criminal justice procedures provide sufficient institutional resources to accomplish this task. Narrowly defined financial reporting requirements for NGOs serve legitimate governmental interests and should remain in place. However, these laws should be administered by the Ministry of Finance, rather than by the highly politicised Home Ministry. And to the extent that direct channels of political participation are to be open to Indian citizens, the proper targets of regulation are political parties and the candidates they field for office, not voluntary organisations and advocacy groups. Democracy and human rights depend upon the vitality of civil society which, in turn, depends upon the ability of NGOs to operate free of arbitrary legal obstacles. The government’s heavy-handed use of the FCRA to restrict the legitimate activities of politically disfavoured NGOs represents yet another troubling retreat from India’s democratic tradition.³

The flip side to the argument however is that there are an estimated 15,000 to 20,000 organisations now registered under FCRA to receive foreign contributions. The number grows slowly and steadily. However this is a very small number against the overall number of voluntary organisations in India – an estimated one million.

This suggests that foreign contributions to the voluntary sector are not significant in terms of the sector or the Indian economy. Such aid is negligible compared to the total budget of India and therefore of little interest to the Finance Ministry. Yet, there is money within the Indian economy that can be tapped. Its essential that the government creates an environment that is conducive to increased support by the public towards the sector.

The greatest need is for the government to change the acts governing donations (tax benefits/ incentives) to create a more enabling environment to promote indigenous giving. There is money in India. If more people were encouraged to give, the voluntary sector would become more accountable to Indian society.

The Tenth Five Year Plan

The Government of India in its tenth ‘Five Year Plan’ (2002 – 2007) has stated, “the issue of improving governance in the country has to be addressed at multiple levels, in view of the current context. Government can neither have a completely minimalist role nor an entirely proactive one. It has to be directed at building personal

³ Adapted from the article The Purse Strings as the Noose: Indian NGOs Face New Challenges

important to reform the tax administration to make it more transparent, equitable, and user-friendly. There is a need for a review of the system of rewards and punishments and also the procedures used for the same. The district revenue administration also needs to be revisited. With the passage of time, the function of actual revenue collection has become minimal, but what is left are the powers that enable the collection of revenue. These powers should be reviewed, and only those that need to be retained should be separately notified, clearly stating the authority and the responsibility.

(v) Mobilisation of Other Resources: An important step in funding development projects involves the ability of the system to identify and tap resources. This area of managing public resources is linked to identifying and addressing administrative and policy practices that get in the way of effective use of expenditures, particularly in the area of non-developmental activities of the State. An important issue is the subsidies, both direct and implicit, which are estimated to form a substantial proportion of GDP. The definition, magnitude, utility and justification of these subsidies merit reconsideration, all the more since it is the area with the highest potential for savings. The application and targeting of these subsidies must be made consistent with governance capabilities. Pension liability of the government is the fastest growing component of current expenditure. At present, these liabilities are unfounded and represent a claim on the general revenues. There is evidence that the management of pension accounts leaves much to be desired and the government may be paying considerably more than is justified.

The next area relates to infrastructure services that, hitherto, have been funded in such a manner that the public at large has gotten used to not paying economic charges for these services. Some of these services are power, water supply, irrigation, transport and even higher education. While equity considerations are, no doubt, important insofar as these subsidies are concerned, it is at the same time a fact that it is the better-off strata of the society that consume such services. It will be a priority in the Tenth Plan to improve the fiscal health of the government, both at the Center and at the State levels by making necessary corrections in the subsidy and the pricing regime for public provisioning of services.

(vi) Civil Society: The role of civil society in the development of the nation cannot be over-stated. Several thousands of civil society organisations, including voluntary organisations (VOs), non profit making companies, corporate bodies, cooperatives and trusts are actively involved in economic and social development. They have thus to be recognised as partners in development. The strengths of the voluntary sector, namely their advocacy skills, organisational skills and closeness to the people should be used to the advantage of all concerned. During the Tenth Plan it is proposed to:

The voluntary sector is expected to play the role of the ‘protector of the underprivileged’ from a government that is considered corrupt and inefficient. The government has not provided adequate services to its citizens, be it in the area of food, health, education, or shelter. Unfortunately, the voluntary sector is not well equipped enough to meet the challenge either. The reality is that while the sector enjoys the autonomy to spearhead any initiative, it has failed miserably when trying to scale up its efforts. Only the government has the required infrastructure as well as the resources to ensure scalability. Organisations within the voluntary sector are often leadership driven and dependent, making the replication of successful models of intervention extremely difficult.

While, in many parts of the country, collaborations between the government and the voluntary sector have produced remarkable results, trepidation and suspicion continue to dominate the relationship. Organisations within the sector are apprehensive of partnerships with the government. There is a fear of losing the autonomy that many organisations do tend to enjoy at the moment.

The most significant and positive collaborations have occurred in the area of education, gender and panchayati raj⁴. Nonprofit organisations have been called upon to aid in the implementation of programmes, largely because the sector has enjoyed greater credibility and has more first-hand experience working at the grassroots level than the government has. The government-initiated programmes have been most successful where the voluntary sector has played a significant role in implementation. The sector has also played a significant role in monitoring government-run programmes.

A significant attempt at collaboration was spearheaded by the Department of Information and Communication technologies early last year. The primary objectives of their program include assisting India’s development by acting as a platform where various development actors— government, private sector, civil society, and international organizations—will come and share best practices, interact, collaborate and build strong partnerships

In addition to these specific examples, there have been many instances of individual organisations collaborating with the government to bring about change. A very good example is that of Mahila Samakhya, which is a country wide programme to empower rural women through education, and is spread across nine states in the country. It is a programme of the Ministry of Human Resources and Development and demonstrates some excellent collaborations between government departments at the grassroots level.

⁴ A system of Local self government system, introduced by the State to increase stakeholder participation in governance. - *Human Rights Features*

Self-regulating Initiatives

Credibility Alliance

A self-regulating framework built by the nonprofit sector that establishes and promotes norms, and allows for certification or validation that the nonprofit organization concerned meets these norms, can go a long way toward restoring confidence among all stakeholders. Credibility Alliance is a voluntary initiative (so far it is not a formal registered body) with representatives from various national nonprofits which has recommended “minimum norms for enhancing credibility of the voluntary sector.” The minimum norms cover three areas:

- 1) Identity:** The organization should exist and be registered
- 2) Vision and impact:** The organization should state what it aims to do and state achievements related to its aims
- 3) Governance:** The organization should be committed to and practice good governance especially because voluntary organizations draw upon public funds.

Certain organizations have already begun to implement the norms and guidelines though compliance is strictly voluntary.

National Evaluation and Monitoring Agency

Recently, the Ministry of Health and Family Welfare asked the Society for Services to Voluntary Agencies (SOSVA) to carry out a feasibility study for creating a National Evaluation and Monitoring Agency (NEMA) for the voluntary sector. It is proposed that the NEMA will evaluate nonprofits with the object of certifying the genuineness of organizations based on certain minimum norms. NEMA will essentially focus on ‘validation’ and not ‘rating’. Similarly, the Charities Aid Foundation (CAF) India together with the Planning Commission has undertaken efforts toward validation of voluntary organizations. IndianNgos.com has also begun a similar exercise.

GIVE

The GIVE (Giving Impetus to Voluntary Effort) Foundation was created to promote giving by helping good NGOs raise funds, and to promote greater transparency and accountability

in the third sector. GIVE believes that if individual donors were convinced that the causes and organisations that they are donating to were credible and also knew exactly how their money was being used, they’d be more forthcoming in their support. Organisations are selected through an extremely rigorous screening procedure



Boards Are More by Default than by Design

The voluntary sector in India continues to grow at a rapid rate. Every new NGO that is registered can only come into existence if it fulfills the legal requirement of a board, trust, and a governing council. However, many ambiguities remain about these governing bodies, including what their real purpose is, how members are chosen, and what is expected of members in terms of contributions.

Generally, an organisation is founded by an individual or a group and then the board is created. Individuals are selected to constitute the board rather than competencies that the organisation would require for its governance. The thought processes behind selecting a board are usually to find willing individuals rather than to define the skill sets required.

Founder-Driven Boards

The majority of NGOs in India have rarely seen a conscious change in their leadership. Such change is almost always provoked by a crisis within the organization's internal or external environment. The identity of organisations is most often with who heads it rather than what it does.

Boards tend to fall into the lethargy of merely overseeing a competent CEO, and doing little else. Building second line leadership, which is technically the board's job, is often left to the chief executive or ignored entirely. In a situation where there is dearth within the sector of qualified, competent, enthusiastic and mission passionate people, it is often a daunting task but is not insurmountable.

Governing vs. Managing

Assuming that the situation is not as bleak as it seems where boards are concerned in India and that there are a handful or more of NGOs who do simultaneously have excellent boards and competent chief executives, the challenge is in figuring out the distinction between the role of the chief executive vs. that of the board. Often boards tend to become dominated by the day-to-day affairs of the organisation and handling crises. Not enough attention is given to the bigger picture issues of the organisation's mission, future, vision etc. It tends to be the CEO that worries about the future of the organization.

Inactive Board members

In any group of people there are those that are doers and those that are procrastinators. However, in the situation of a board of trustees, it is important to maximise the inputs from each member. In other words, NGOs cannot afford to indulge procrastinators. Very often, boards have members who are in themselves competent and skilled people, but they just do not do anything as board members. Many don't even attend meetings regularly. As discussed earlier, board members

are often chosen because either they are 'important' people, or friends of the CEO or another board member. The true test of whether a board member can and will contribute is finding out if she/he shares the same passion for the mission as the CEO and for the healthy growth and sustainability of the organisation.

NGO Boards and Corporate Boards: Lessons to be Learned

Governance as an issue to deal with both academically as well as in practice finds its origin in the corporate sector. What are the lessons that have been learnt? Can the NGO sector use the learning or contribute to the corporate boards especially in areas of accountability and ethics? Boards in the corporate sector have fairly good systems of accountability. This is partially due to the fact that it's easier to have accountability systems when the yardsticks are purely financial in nature as opposed to the intangible metrics of accountability in the voluntary sector.

One of the key things to adopt from corporate boards is their system of measuring outcomes and accountability, which the voluntary sector in India desperately needs.

A related issue is in recruiting board members who have corporate experience, which requires very high levels of professionalism. This is especially true of organisations in the middle to large sized range.

Board-Related Laws

Both the Societies Registration Act as well as the Indian Trusts Act are outdated. Framed in the 1800s, neither is adequate in terms of describing the role of the governing body as is necessary or relevant in the current scenario. The Societies Act makes very little reference to the role of the board in general and the Indian Trusts Act restricts the reference to the role of trustees to the control of trust property. The Companies Act, since it is more recent perhaps, does refer more directly to the roles and responsibilities of the board. Also, in many organisations that are governed by the Societies Act and the Trusts Act, the board exists only to satisfy the legal requirement. An interesting comparison may be drawn from the Charity Commission UK, which very clearly outlines roles and responsibilities for the board in general and specific office bearers. While it gives charities that are registered under it the operational freedom to constitute the board's structure, it is very specific in underlining the responsibilities of the board members.

In the absence of any other laws, organisations in the sector only have these to go by where their board is concerned and are forced to devise agency specific strategies for their boards. Often, these are devised just by the CEOs who are interested enough to do so, and the board rarely plays a role in framing guidelines for its own functioning.



Recommendations

It is recommended that there should be ‘single window clearance’ with regard to registration of nonprofits. The system of dual registration for societies in states like Maharashtra and Gujarat should be done away with. A suitable timeframe should be legislated for processing applications for registration. The term ‘nonprofit’ or ‘not-for-profit’ should be properly defined and incorporated in Indian law books. Even terms like NGO, PVO etc., are used colloquially and not recognized or incorporated in Indian law books.

Perhaps, it may be worth considering the idea of scrapping all the present choices available for legal status (trust, society, company) and introducing a single, new, comprehensive, federal “Indian Not-for-Profit Act” which would be uniformly applicable to all nonprofits throughout India.

The laws applicable to nonprofits in India only recognize ‘charitable purposes’ and ‘religious purposes.’ ‘Charitable purpose’ as defined under the Federal Income Tax Act is fairly comprehensive and covers besides relief of the poor, education and medical relief, “any other object of general public utility.” The law in India adequately enables nonprofits to be registered for ‘charitable purposes’ and implement welfare and development activities.

The terms “not-for-profit” and “nonprofit/s” do not exist in Indian statute books. Many voluntary organizations in India feel uncomfortable with the term “charity” or to be registered for “charitable purposes.” Perhaps, substituting the term “charitable purpose” with “not-for-profit purpose” would be more in keeping with modern international trends in philanthropy.

While the legal environment for promoting ‘charitable purposes’ in India is quite enabling, one often encounters problems in convincing the registering officers whether objects like “income generation programs for disadvantaged groups,” or “empowerment of women” are charitable. Registering officers are often known to go by the letter and not the spirit of the law. Registering officers should be given clear guidelines by the Ministry of Finance and also the Ministry of Law and Judiciary, regarding what is ‘charitable purpose’ and acquaint all registering officers with the new development terminology.

CONCLUSIONS

The voluntary sector in India is perhaps the most diverse in terms of its size and scope. Given that, it is a challenge to address issues in a unified fashion since the impact across the sector is dependent on far too many differentials. Yet, it is commendable that several initiatives are underway to address the broader issues of accountability and transparency and encourage a more enabling environment for the sector to function within, solicit support, and maximise outcomes.

