A Review of Charities Administration in India

Sampradaan Indian Centre for Philanthropy

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Pushpa Sundar
Executive Director,
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PREFACE

India's development needs are vast; the resources to meet them are not. Most of them come from government and foreign donors. Promoting other sources of funds to supplement these two, and also to provide choice and independence of action is an urgent necessity. Private philanthropy, institutional and individual, offers an obvious alternative, especially as India has a long and distinguished tradition of philanthropy. However, in today's context, philanthropic attitudes and practices need a reorientation to keep abreast of new developments and to meet the needs of the time. The impact of private charitable resources (time, skills, money) could be improved with better appreciation and knowledge of the opportunities for making a difference, more professional practice and building of alliances or networks.

Established in 1996, as a national level organization, by a group of distinguished individuals from various fields, Sampradaan- Indian Centre for Philanthropy (SICP) represents an effort to facilitate the practice pf philanthropy and to increase its impact on society.

SICP's **Vision** is of an India in which private resources of money, assets, time and skills are shared willingly, and used effectively, to create a developed and equitable society.

Its **Mission** is to help strengthen civil society by enhancing the effectiveness of philanthropy.

Its **Objectives** are:

- To promote a culture of giving
- To ensure more effective philanthropy by acting as a resource for civil society in India.
- To influence public policy for support of philanthropy and to advocate for it.
- To encourage and promote co-operation between the state, corporate sector, and civil society organizations for improved philanthropic practice.

SICP fulfils its mission and objectives by undertaking research, advocacy, training; dissemination of information; playing a convening role for networking; and providing consultancy assistance to individual and institutional donors on philanthropic issues and practice.

It has, in the past, conducted several research studies on the different sources of charitable giving; on fund raising in India; on volunteering; and on Indian trusts and foundations. The studies have culminated in several publications.

The organization has also been in the forefront of advocacy on behalf of the voluntary sector in India esp. in relation to tax and law reforms.

The present research was undertaken in continuation of its goal of creating a culture of giving by creating an enabling environment, which not only encourages philanthropy to flourish, but also ensures that public trust in charitable organizations is maintained by proper regulation of the use of charitable funds.

Though the laws governing the sector have been reviewed before, this is perhaps the first systematic look at the official infrastructure for promoting and regulating charity. Its objective was to highlight inadequacies, if any, in the existing institutional set up, and to suggest improvements so that all those who work in and for charitable organizations can contribute their best to India's development efforts.

It is a subject of vast scope but also of vast importance for the social sector. We sincerely hope that this effort, though only a first step, will have a chain reaction leading to a reform of both the charitable sector and the official machinery charged with promoting and overseeing it.

Pushpa Sundar
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EXECUTIVE SUMMARY

1. INTRODUCTION

With the liberalization of the Indian economy, the enhanced focus on development, and the increasing awareness of the importance of human resource development, there is a growing awareness amongst government and the general public about the potential role of non-profit organizations in development. To facilitate the non-profit sector in realising its potential it is necessary to create an environment, which is conducive. This includes creating a legal and fiscal framework which allows voluntary non-profit organizations to come into existence without restraint and in a manner that is easy and inexpensive; to operate free of undue interference; and to have direct and indirect access to funds through tax benefits.

2. THE LEGAL AND FISCAL FRAMEWORK

Charity is on the concurrent list of subjects where both the Center and the States are competent to legislate. Accordingly some of the laws are Central and applicable all over India, while others are enacted by individual states.

There are five main laws governing the non-profit sector, each of which is administered by an agency specifically created for the purpose. These are:

- The Registration of Societies Act of 1860, a Central Act, and its versions enacted by different states, with a Registrar of Societies in each state to register and regulate organizations registered under this Act.

- There is no Central Act for registering or regulating public charitable trusts. A variation of the Indian Trusts Act of 1882, which applies only to private trusts, is in force in different states. Maharashtra and Gujarat have offices of the Charities Commissioner, created under the Bombay Public Trusts Act, 1950, to oversee charities in these states; Tamil Nadu has a Department of Religious and Charitable Endowments, and other states have some similar organization for charitable trusts.

- Section 25 of the Companies Act 1956, deals with nonprofit companies. It is administered by the Registrar of Companies, and

- The Income Tax Act, 1961, again a Central Act applicable all over India, provides fiscal benefits to NPOs, the administrative agency being the Department of Income Tax Exemption.

- The Foreign Contributions Regulation Act, (FCRA) a Central Act applicable all over India, was essentially a security measure to control external funds flowing to nonprofit organizations, which could be used to threaten national security. In practice it has come to regulate the receipt and spending of all foreign funds going to nonprofit organizations, irrespective of security concerns.

This basic legislative framework sets out the parameters within which the nonprofit sector can operate. During a hundred plus years of growth, rapid economic and social changes have changed the conditions under which the sector operates but the laws and institutional frameworks have not changed commensurately, though some attempts at change have been made sporadically.

The latest of such efforts was the establishment in October 2000, by the Planning Commission, Government of India, of a Task Force to review, analyse and suggest ways in which the present acts, rules and procedures can be modified or simplified to facilitate the growth and development of the voluntary sector. The problem, the Task Force noted, is not only of lacunae in the laws, but also of the way the laws are interpreted and implemented by the various administrative agencies created to enforce the laws. Unfortunately, in spite of many sound suggestions by the various expert committees, there has been very little appreciable change on the ground.

3. NEED FOR STUDY

The relevance of the present study stems from this need to reform the institutional framework to better meet the aspirations of the nonprofit sector. The present government has acknowledged the need for reform of the government machinery for better delivery of services to citizens. Reform of the charities administration, dealing as it does with an important sector of national life, needs to be a part of the process.

But there are two other important reasons: One, the misdeeds of a few charitable organizations have brought the integrity and accountability of the whole sector into question and there is a need to re build public confidence in charitable organizations through effective regulation. While self-regulation is better than legal regulation, it cannot, by itself ensure good governance, and needs to be supplemented by the authority of government. Two, the further growth of the sector is dependent on being able to mobilize private charitable resources to supplement government and foreign funds. Therefore, whether charities are able to access and use tax benefits effectively is important.

4. SCOPE

This study takes a critical look at the **existing institutional framework**, which administers charity law in India. By charity administration is meant the central and state level government agencies responsible for administering charity law, mentioned earlier.

The Foreign Contributions Regulation Act, (FCRA), though a very important part of the framework, is not part of the review because it is a special Act and has been reviewed by other organizations in some detail.

A further clarification: What are referred to here as Charities or the Charities Sector are only those nonprofit organizations (donating and non donating), which work for public benefit. This is the sector, which is the prime focus of this research.

5. OBJECTIVES

The purpose of this review is twofold: one, to help strengthen the voluntary sector's capacity to meet the challenges of change and development by improving its credibility with the public so as to be able to attract more financial contributions; and two, to improve the quality of the interface of the voluntary sector with the state, since the effective functioning of the former depends to a great extent on the nature of this interface.

The specific objectives of the research are two fold:

- To find out whether the state has been able to:
    - Promote charity and social action by facilitating those who wish to engage in it
    - Effectively investigate and check misuse;
    - Encourage public confidence in charity; and,
- To suggest, on the basis of an all India study, how the objectives can be met more effectively through reform in the existing institutional framework or through alternative legal and institutional arrangements.

6. METHODOLOGY

The study relied on both primary and secondary research, and included written survey questionnaires, in depth interviews, participant observation, focus group meetings, and scanning of published and unpublished material and the Internet.

The primary research consisted of participant observation in the offices of the authorities; a sample survey of 114 charities; and interviews with a total of 68 individuals comprising NPO leaders, professionals associated with the non-profit sector (lawyers and Chartered Accountants); and the law enforcers. Though the sample questionnaires were sent to organizations all over the country, the interviews were mostly conducted in the four metro cities of Delhi, Mumbai, Chennai, Kolkata, and in Ahmedabad and Madurai. Focus group discussions in three cities were also conducted. The details of the scope and methodology are given in Chapter 2.

In the secondary research we looked at the institutional arrangements in other countries (UK - England and Wales, the United States, and Canada). The details are given in Chapter 4 and in Annex 6.

7. FINDINGS AND CONCLUSIONS

The study sought the views of respondents on whether the procedures for registration, for compliance with reporting requirements under the law, and for appeals to remedy grievances were simple, adequate and cost effective; whether the facilities in the offices of charity administration authorities were adequate and user friendly; and whether the staff in the agencies were helpful and responsive. The study also sought their views on the reform measures and alternate institutional arrangements / frameworks which would facilitate effective monitoring and development of the NPO sector. Overall, three overwhelming conclusions emerge:

1. Though it is not as efficient, user friendly and facilitative as it ought to be, the charities administration has not proved a barrier to the growth of charities. Compared to many other countries, the Indian legal framework has allowed space for civil society organizations to emerge without restrictions. The main problem has not been one of denial to legal existence or legal protection, or even of right of protest to redress a wrong decision. In spite of its many flaws, such as cumbersome procedures, delays and corruption the legal framework and the agencies responsible for its administration, there have not been major impediments in the way of functioning of charities. The income tax provisions to encourage charity are about as encouraging as in most progressive countries, and better than in others.

2. But this is not to say that there is reason to be complacent. If there are no major impediments, certainly there are several roadblocks, and several irritants in the agency\ charities interface. If the work of the agencies was streamlined, the time and money saved by charities on unnecessary paperwork, and trips to the agencies, could be more fruitfully spent on their substantive work. A number of short-term reform measures, to be discussed later, could enhance the performance of these agencies. But more important than the procedural and other irritants is the failure of the agencies in performing two major roles. One is that they have not been effective in regulating the sector and securing compliance with the laws to ensure fiscal and management discipline in the sector, which would enhance public confidence in the sector. Seldom are charities visited, their work properly understood, and notice taken of the returns filed. Soft state that we are, hardly ever are any sanctions applied for misdemeanor. Firm regulation needs to go hand in hand with education, and facilitation to help charities to be legal compliant. This too has not happened at all.

3. A third conclusion that emerges is that all is not well with the charities sector. Even as it is being given an increasingly important role in national development, and hopes are being pinned on it being able to deliver what the government and the business sector cannot/have not, its higher profile has also thrown light on indiscipline, lack of professionalization and unethical behaviour within the sector. Even though it is willing to assist charities in their laudable work by supporting them with funds, the public is beginning to lose confidence in the integrity of the organizations and particularly in whether their contributions reach the beneficiaries for whom they are intended. A section of the charities sector has cynically manipulated the provisions of the law to their own personal ends. That the problem exists in other countries and they have also felt impelled to take stern action is borne out by the fact that the Financial Action Task Force in G8 countries mentioned that trusts are the ideal from of organization for money laundering and have been so used.

   In the USA too the Revenue Service issued guidelines recently for stricter monitoring of 501(C)(3). (charities) organizations. But even if there is no overt misuse, charities are guilty of non-compliance either out of ignorance of the law, or sheer indifference knowing that there will be no consequences. At the same time it must be stated that if the attitudes of the law enforcers were more helpful, and less heavy handed than they are, compliance would improve.

4. Finally, an overarching cause of the present hopeless drift is the lack of political will. More than anything charity administration suffers from the fact that charity or

voluntarism comes way down in the priority list of the government, both at the central and state level. Though the government expects a lot from the NPO sector for assisting it with nation building, it is yet to create commensurate conditions to enable it to play its proper role. As a result charity regulatory agencies suffer not only from poor budget allocations, but overall neglect. Not only that, charity is also being used for political reasons, both because of the huge pool of funds represented by some of the big trusts, and the potential the laws offer for political control. Influential people running schools and hospitals for profit are able to get politicians to waive action against them. Hence reform is possible only if the administration and the public perceives a will to act. As mentioned earlier, several committees and commissions and task forces have made recommendations, and very few have been adopted. Unless the charities sector is seen to be of importance in national life and resourced with funds and people accordingly, reforms will remain on paper.

In sum, action is required from both the charities sector and the Establishment. Against this background, we look at the specific problems, which have emerged, from our review.

7.1 Multiplicity of Laws and Agencies: There are a multiplicity of laws governing charity for different religions, for different types of organizations, and for different states, with no uniformity in the laws across states, and no consistency between laws. This implies having to understand a complex set of legal issues, especially if an organization works across several states in India. Multiple laws also mean multiple agencies to deal with. There was some difference of opinion about having a single charity law instead of three separate incorporation laws, with some wishing to retain the flexibility offered by three different options. But in terms of implementation, most favoured a single window approach and integrating the various agencies into a single agency to do registration and regulation.

7.2 Registration: By itself, registration does not appear to be a problem for those wishing to set up societies and trusts, since even small organisations have managed to register themselves without professional help. However, the procedures under the Companies Act were found to be more complicated and costly, and the registration process more lengthy. Therefore professional help was generally required, which added to expense. Therefore this form of incorporation appears to be more unpopular**,** unless there was some distinct advantage perceived by using this particular form. On the other hand, for ensuring accountability, the Companies Act. Was considered, especially by professionals, the most rigorous and therefore the best.

7.3 Delays: Under the Registration of Societies Act and the Trusts Acts, there is no stipulated time limit for completing the registration process. There is also no provision for automatic registration / approval in case the application is not processed within a particular time period. This can be expected to lead to delays. However, contrary to popular belief, the **time taken for registration** of Trusts and Societies is not very long, at least in the limited sample covered by the study. In a majority of the cases it has taken less than three months to complete the registration process **after all the documents were finally deemed to be in order.** The time taken for registration varies in different offices and regions depending on individual efficiency. However, delays were in the prior stages due to the reasons below.

7.4 Poor Public information and education: Though the procedure for registration was, by itself, not found complicated, what was problematic was the lack of information about the process and need for repeated visits to the offices to secure information and for follow up.

NPOs only get verbal information from the offices of the registering agencies and that also after repeated visits to collect the right information.

Of the various agencies reviewed, only two offices - the Income Tax Department in Chennai, and the Charity Commissioner's Office, Gujarat - have published Information booklets on procedures. While the Income Tax Department's booklet is in English, the Gujarat Charity Commissioner's Office booklet is in Gujarati. However, even in these cases, **not many charities are aware of these booklets since no proactive dissemination has been undertaken by the agencies**. **Nor have NPO networks, associations, intermediary agencies filled this gap,** and there is no one stop shop for getting all the information in simple language.

7.5 Inadequate Staff: Almost without exception, (though the Office of the Registrar of Companies to a much lesser extent), all official agencies pleaded inadequate staffing compared to need. Though, thanks to the rapid and phenomenal growth of the NPO sector, the workload on these offices has increased manifold, the staff strength has remained either the same or declined, since many positions have not been filled up.

7.6 Poor Facilities: A majority of the respondent organisations reported that the facilities for the public in these offices are very poor, with many lacking basic facilities like drinking water coolers, benches and toilets. Further, very few offices are equipped with modern office technology like computers, photocopying machines, e-mail and fax facilities, which are the minimum in office technology required to speed up the work.

7.7 Unhelpful attitude of officials: This was also mentioned as a major reason for delays in registration and harassment of NPOs, partly because a majority of the officials have no understanding of or experience with the charities sector, and partly due to lack of motivation. Right from the top, much of the staff in these agencies is de-motivated. Only a very few are there because they want to be there; a majority have been deputed from other departments. At the middle level the positions have been filled in by promotions from the lower cadres or staff rendered surplus somewhere else. Barring a few exceptions, even the top functionaries see themselves as being sidelined from more important \ lucrative departments \ ministries, and are biding their time, waiting to move on. They therefore either have no wish to develop expertise or, due to transfers, are not allowed.

7.8 Corruption: The interviews with NPO functionaries and professionals (lawyers and CAs) associated with the non-profit sector have reported instances of corruption, where staff of the registering authorities and the Income tax departments have approached them expecting favours for speeding up the process. This was also brought to light by the Report of the Public Accounts Committee, and in recent times has been a subject of newspaper reports as well. However, these instances are problems in most government offices / departments and are not unique to the charity administration authorities.

7.9 Diffused Government Responsibility: One reason for a poor human resource situation in most of these agencies is that **a**ll the agencies dealing with the nonprofit sector are embedded in some larger department. The Voluntary Action Cell for overall policy co-ordination is under the Planning Commission; the Income Tax agencies are under the Finance Ministry; the Registrar of Companies is under the Department of Company Affairs and Company Law; the Charities Commissioners in Gujarat and Maharashtra report to the Legal Department, and the Registrar of Societies are under the Co-operatives Department of various states or under the Home Department. No agency is autonomous, with its own sources of revenue, its own staff, and its own rules and procedures. They are also vulnerable to political intervention.

7.10 NPO Indifference: The study also brought out that **in many cases the NPOs themselves are to blame for the delay as they do not take the documentation seriously and present a slipshod job with inadequate documentation.**

Very few NPOs, especially large and "elite" NPOs, have any idea of how the regulatory agencies work, or the legal compliances that are required, since they prefer to work only through their CAs. They feel that visits to such offices or keeping in touch with them is a waste of time, and to some extent their attitudes are justified, because of the abysmal conditions in these offices and the unhelpful attitudes of the staff.

7.11. No central database/register exists for all registered non profit organisations and access to data on different aspects is difficult, even for bonafide purposes such as research.

8 PROBLEMS SPECIFIC TO VARIOUS AUTHORITIES

8.1 Registrar of Societies

- ***Lack of adequate provisions in the law that encourage and facilitate scrutiny at the time of registration of societies*** – At the time of registration, apart from making sure that a society has charitable objectives and that the required documentation has been enclosed with the application, the registrar of societies makes no further inquiries, nor is he empowered by the Act to do so.

- ***Renewal of Registration*** – In some Indian States, it is necessary that operating societies seek fresh registration at the end of a specified period. This piece of legislation is not provided for in the Central Legislation and is a source of unnecessary harassment and expense for the societies. The renewal process, just like registration, involves a lot of paperwork and time commitments from non – profit organizations. Organizations mention it as an irritant, especially since, in some states, it is sometimes used to pressurize an organization for political or other purposes.

- ***Provision for appointment of special officers* –** The Registration of Societies Act of Tamil Nadu and some other states contains a clause allowing for the appointment of "special officers" to manage the affairs of the society for a specified period of not exceeding one year. This has the potential of being misused for political purposes, and has been known to be used for this purpose.

8.2 Charity Commissioner

- ***Need for Societies to also register with the Office of the Charity Commissioner*:** In Gujarat, as also in Maharashtra, all societies that have a charitable purpose (development has been included in the definition of charitable purpose) have to be registered with the Charity Commissioner. This is resented as an unnecessary imposition on the societies in these states.

- ***Charging of Cess and its non- utilization*:** As per the provisions of the Bombay Public Trust Act (applicable in Gujarat and Maharashtra), the Charity Commissioner charges a cess @ 2% of the annual income of the trust or society which is to be paid into the Public Trusts Administration Fund. This fund is to be used to meet all the administrative costs of the office of the Charity Commissioner and for providing facilities, and for promotion work. We found that in Gujarat, the approximate collection per year from the cess is Rs. 2 crores, and interest accrued on the accumulated fund is an additional Rs. 4 crores per annum. The accumulated balance in the Fund is currently Rs. 40 crores. This sum is lying unutilized in spite of the fact that the office desperately needs more staff, better equipment and facilities!

- ***Multiple Roles of the Charity Commissioner*:** The Charity Commissioner has multiple roles, judicial as well as administrative, each drawing on his time and energies. In the state of Gujarat as also in Maharshtra, the Charity Commissioner is also the Registrar of Societies and the Administrator General under the Administrator Generals Act.

- ***Limited / No experience and exposure of the Charity Commissioner to Non-profit sector*:** The Charity Commissioner is always an officer of the judicial service for whom this work is out of the mainstream. He has no previous exposure to the non-profit sector and may or may not have any interest in charities work. Therefore this office does not always attract the best talent. It is therefore difficult for him to play the needed role of friend, philosopher and guide.

- ***Immense workload at the Charity Commissioner's office:*** Much of the workload of the Charity Commissioner's office, and the most troublesome, relates to litigation about property and appeals with respect to the determination of the income for purposes of the calculation of cess.

- ***Alienation of immovable property,* especially sale of land, for which permission is required from the Charity Commissioner.** The permissions required, the number of affidavits to be filed, the time taken to fix \the acceptable price and the stipulation for deposit of part of the sale price, all have been cited as causes of problems of time, harassment, and corruption. We give in annexure 7 an example of the types of problems faced by an organization in this regard.

- ***Change of Status Report:*** This is another problem area. Many litigation cases are related to change of status reports under sec 22 of the Bombay Public Trust Act whereby all changes in the name of trustees, either due to death or resignation, or appointment of new trustees have to be updated. We were told that there is a huge backlog, of approximately 4,000 cases under this section alone in Gujarat.

8.3 Registrar of Companies (ROC*)*

- ***The registration process is very lengthy and complex* –** The registration process for a Section 25 company is lengthy, complex and time consuming because it involves two procedures, namely granting of license and registration of the company. While the process of scrutiny is thorough, the fact that the registration information is complex and generally needs professional advice, and takes more time and resources, means that only a few, and generally the more well resourced organizations take recourse to it.

8.4 Income Tax Exemptions Directorate

The Income Tax Act, as it stands today, has the following problems for charities:

While a majority of the NPOs are satisfied with the functioning of the Income tax directorate /departments, the problems encountered relate to separate filing of applications for exemption certificates for 12 A, 80G, 35 AC.

Other problems relate to very long delays in securing a 35AC certificate; timely renewals of 80G registration; and securing quicker refunds. While the IT Act does provide for time bound action in certain cases, the time limit prescribed is too long (6 months).

- ***Exemptions u/s 35 AC –*** The prime cause for delay in income tax exemption under 35 AC is the centralization of the decision making process in a national committee of experts - "National Committee for Economic and Social Welfare" which is responsible for granting 35 AC certification. There is also no prescribed time limit for granting the exemptions. Further, there is no process of appeal if the application is rejected.

- ***Exemptions u/s 80G –*** NPOs who have exemptions under 80 G find that they do not receive renewals even after the 80G has lapsed, though they have applied for the renewal in time. They are generally requested to wait for applying till the certificate actually expires, and then the renewal takes several months. This handicaps NPOs in receiving donations.

- ***Definition of "Income of Trusts"* for purposes of the 85% spending criteria**: Income from grants in aid is also computed as "income" for purposes of the spending criteria (85% of income) though grants are not net income or surplus but require the fulfillment of certain obligations. They are therefore, not equivalent to business "income".

- ***Definition of "Income From Business"*** – Similarly the definition of "income from business" is causing hardship to NPOs, since many have to engage in some amount of business activity in order to become self sustaining, and to cross subsidize the non business and charitable part of their work.

- ***Provisions of the Act are complicated and difficult to understand –*** The various sections of the Income Tax Act are very complicated and difficult for a layman to understand. The NPOs thus need professional help to be able to understand the provisions, reporting requirements and the compliance.

- ***Frequent Changes in the Income tax Act –*** One reason for non-compliance, even by organizations with effective governance mechanisms, is that there are very frequent changes in tax laws, which is confusing.

- ***Policy based on impressions, not research:*** Tax laws are changed periodically on the presumption that tax incentives are being misused. But there has been no systematic research on how many have done so and what is the extent of the loss to the state.

9. General Conclusions

Apart from the above, the following are some of the other main conclusions that have been drawn from this research:

9.1 Does the Regulatory Framework Instill Confidence in Charity?

Non-profit organizations are expected to file annual reports with the registering authority at regular intervals. **However, except in the case of the Registrar of Companies,** these are seldom scrutinized properly to ensure compliance with law. Nor is the reporting used to promote sound governance and accountability. Very few audits are done for the purpose of monitoring. Though for trusts registered under the Registration of Documents Act, there is hardly any reporting required, for trusts registered under the Bombay Public Trust Act the reporting requirements are rigorous. But even then very few site visits and audits are done .

When audits are done, the attitudes and approach are that of " inspection", with the end goal being punishment, not education and reform Moreover, attention is paid more to numbers than to governance of the organizations.

In spite of the law being quite comprehensive, and the procedure elaborate, actual implementation and enforcement are weak. Weak monitoring means lack of deterrence to wrong action on the one hand , and on the other, unnecessary paperwork and trouble for the honest ones who comply.

From discussions with the law enforcers, professional advisers, and charities themselves, it is clear that though the present legal provisions for regulation are adequate, the problem really lies with the poor enforcement. While some are happy with minimum regulation there are others who feel that while the majority of charities are honest and are unnecessarily put to inconvenience by the regulating agencies, those who practice fraud or misuse tax exemptions for money laundering or personal benefit are not penalized in any way. This way all the organizations are getting a bad name.

Many professional advisers, (CAs and others) pointed out that the Section 25 Companies Act should be taken as a model for regulation and also for performance.

Therefore the conclusion appears to be that the agencies are not being effective in ensuring public confidence in charities. This is especially so in the case of charitable organizations like schools, hospitals and colleges which are particularly perceived to lack accountability and to misuse tax and benefits.

9.2 Regulation but no Facilitation: The laws, and particularly the way they are interpreted and implemented by the agencies are basically regulatory in nature. Their concern is to see that the government does not forgo revenue, and that the letter of the law is followed. Seldom is any effort made to understand the purpose or the people behind the organization, and the spirit behind the actions of an organization. There is no effort being made to promote voluntarism and the nonprofit sector.

9.3 NPO Education In Legal Compliance: None of the official agencies are concerned with educating the sector about good governance or legal compliance, or with educating the public about the non-profit sector.

9.4 Sanctions: Though some of the laws, such as the BPT, provide for penalty for non-submission of annual returns, as do the W. Bengal Societies Act, the maximum penalty is so low (Rs 1000 in case of BPT), and the CC has to approach a court to levy this penalty. The judge often awards a lower penalty, like Rs 25 or so. This proves to be no deterrent and the cost of litigation to ensure compliance is more than the penalty.

9.5 Complaint and Review System: In theory most offices have a complaint and review system to deal with dissatisfaction. However, in practice this is seldom implemented.

9.6 No Forum for Interaction of NPOs and Charity Administration Authorities: There is no forum, which provides a common platform for effective dialogue between the NPO sector, professionals such as lawyers and CAs, and the government agencies. There is no interaction between the various stakeholders and no attempts to understand each other's perceptive on what ails charity administration.

9.7 Perspective of Law Enforcers: In order to get a balanced view of the situation the review also canvassed officials of the agencies to learn of the problems they faced in ensuring integrity in the charities sector. Their views were sought on the problems they faced in enforcing legal compliance, in dealing with delays, and in meeting public expectations. They mentioned the following constraints:

- inadequate financial resources,
- a heavy workload,
- inadequate human resources and infrastructure support for effective discharge of duties and responsibilities,
- irresponsible attitudes of charitable organizations, and
- general lack of honesty in public dealings.

9.8 Alternative Institutional Models: Both law enforcers and charities were asked their suggestions for reform of the administration. Most favoured a single window approach with a Charities Commission modeled on the English pattern at either the state or the national level.

10 RECOMMENDATIONS.

The Recommendations have been classified as Short Term and Medium Term Measures.

10.1 Short Term Measures

10.1.1 General Recommendations:

10.1.1.1 Strengthen the Infrastructure

- ***Augmentation of financial resources of the agencies:***

- ***Modernization of offices***

- ***Staff Augmentation***

- ***Training and capacity building of all officers and staff***

10.1.1.2 Simplify Procedures

Time bound procedures: The time limit for registration should be put at 90 days or 3 months at the most, and should be specified in the rules of the Act.

10.1.1.3 More Effective Monitoring

Proactive Monitoring Mechanisms: A monitoring and evaluation system should be put in place whose objective is to improve performance, and not mere inspection. We believe there must be more thorough monitoring, with a certain percentage of organizations being regularly visited and scrutinized.

A minimum number of audits, which could be determined as a proportion of the total number filing returns, must be conducted in a year, both randomly and specifically selected. We recommend that for the purpose, NPOs could be put into two categories – big and small, depending on size of assets and annual income. An additional "sensitive" category should be created comprising the types of organizations which are held most guilty of abusing the charitable provisions – schools, colleges, and hospitals, charging high public fees. The level and intensity of audit for each of these categories could vary, with the small ones being less vigorously scrutinized.

Sanctions: Graded sanctions must be put in place and enforced. In case a scrutiny reveals that a charity is not providing public benefits on a scale significant enough to justify their charitable status they should, depending on the severity of the offence, receive an "education letter" for minor defaults; more serious offences could receive a reprimand with directions for reform, followed by punitive fines. For very serious offences such as fraud and malpractice, the registration should be cancelled as already provided for the in the last central budget.

Positive and Negative Sanctions: Apart from fines, other ways of securing compliance can be adopted. One such method is to make public the names of the NPOs not complying with the legal and reporting requirements. For organizations whose registration is to be revoked, the name of the organizations and the reasons for revoking the registration should be also be made public. In U.K. this strategy is called the "naming and shaming" strategy. Alternatively, use a reward system to secure compliance, viz. publishing the list of those charities that file returns on time and are considered legally compliant. This is public recognition of good governance of these charities and helps them build credibility and facilitates their access to funds from donors.

Complaint Systems: Simultaneously, there must be in place a formal complaint system such that it does not allow for victimization by the agency staff, and the complaints are reviewed by an Independent Complaints Reviewer.

10.1.1.4 Information and Education

Public Education in Legal Compliance: It is recommended that all agencies should publish simple booklets about the laws and procedures relating to their agencies in local languages along the lines of the publications brought out by the Charities Commission, UK.

Proactive Dissemination: Such information booklets should also be proactively disseminated through the Internet, by post to NGO associations and umbrella organizations, to and through Chartered accountants, legal aid societies, and other forums.

ICAI Role: The ICAI should require affiliated CAs to advise their clients properly in submission of documents, since our findings also showed that not all CAs advise their clients adequately about the documentation required, or ensure that it is complete.

Public Access to information: Data regarding charities should be available to the public on written request.

Public Register of Charities: We recommend that there should be a Public Register of Charities which is a central record of all registered organizations, such as exists in Hong Kong, U.K. and other countries, and which is open to the public. All the registering organizations, including the Income Tax department should be required by law to send the data to a central nodal department or ministry which collates this information.

Public Portal: Apart from a physical public register the Government should maintain the data in computerized form also. In fact the model of the US portal Guide Star can be adopted.

10.1.1.5 *Anchor Ministry*:

The Voluntary Action Cell of the Planning Commission should continue to be the nodal agency and should be strengthened by the addition of staff and resources. This should be the agency to maintain the Public Register of Charities.

10.1.1.6 Action By Charities

NPO initiatives to understand legal requirements: NPO associations, mother NGOs, intermediary support organizations and umbrella groups must make efforts to distribute official information widely, or make its existence known, apart from producing and disseminating their own information.

Forum for Interaction of NPOs and Charity Administration Authorities: In order to ensure more effective dialogue between the NPO sector, professionals such as lawyers and CAs, and the government agencies there is a need to establish a permanent forum which brings the two together periodically to discus pertinent issues. The government department authorized as the nodal department can anchor the same.

10.1.2 Recommendations for Specific Agencies:

10.1.2.1 Offices of IT Exemption

***Charities Directorate*:** We recommend that all charity related matters in the IT department should come under a Charities Directorate, as in Canada, where the Charities Directorate functions as an autonomous unit under the Canada Customs and Revenue Agency (CCRA) a unified agency responsible for registration, and ensuring that charities comply with the IT Act and rules, by monitoring, public education, research, application of sanctions and appeals.

***Income Tax Exemptions*:** In Canada, all non-profits are exempted from income tax on their income but only **registered charities i.e. those serving a charitable purpose with public benefit as the criteria can offer tax benefits to donors.** We might profitably examine this to exclude organizations such as chambers and professional associations of all kinds. Only developmental and charitable organizations, including religious trusts that actually undertake social development work should be eligible for 80G and similar registrations. Schools and colleges and hospitals etc could be put in a separate category for purposes of rigorous monitoring to ensure they remain charitable. And if there is any contravention of the conditions they should be deregistered for income tax exemption.

***Common Qualification for exemption of income and for tax deductibility for donor*:** In the USA a certification by the IRS under sec 501(c) (3) automatically qualifies the registering charity for exemption of income and for tax deductibility for donors. We recommend that the same be applied in our context.

***Decentralization of Decision Making / Approvals for 35 AC*:** We suggest that the function be decentralized and devolved onto the Regional Directors of Income Tax Exemption.

Requirements for getting exemptions under 35 AC: Since it is true that there is more malpractice and misuse in the 35AC exemption, we recommend that organizations should get 35 AC only after they have been in existence for at least 5 years and have proved their charitable credentials. Till then they could avail of 80G.

Monitoring of Compliance: We recommend that even the first registration for IT exemption be done carefully, on scrutiny of the papers to ensure that the objects are charitable and that at the time of renewal it should be even more rigorous, to weed out spurious organizations.

Renewal should be after 5 years, instead of 3 as at present, since it takes an organization a long time to establish itself, raise the required funds and establish a programme of charitable activities. Whether trusts have complied with legal requirements should be considered, and strict compliance should be obtained. However, strict compliance should be simultaneous with charity education to ensure that the non-compliance is not due to ignorance. Serious malpractices should be punished with deregistration after giving cause and a chance to appeal, as is proposed in the latest Finance Bill. Presently very few are deregistered.

Intermediate Sanctions: Intermediate sanctions should be in place such as suspension of tax exempt status, and forcing the charity to pay at least 5% of the charity’s previous year’s revenue, before registration.

Stability of Laws: Once the laws have been reviewed thoroughly, there should be no tinkering year after year, and stability in the laws should be maintained for at least 5 years.

Renewals of 80G and 35AC: We recommend that the Rules of the Act make it mandatory to apply for renewal three months before expiry of the date, and also mandatory for IT officers to renew the certificate within 90 days of receipt of the application.

Review of the IT ACT: The IT Act should be reviewed once, very thoroughly, with full consultation from the NPO sector. Some of the changes required are:

- Definition of " income" of trusts should be reviewed, Income from grants in aid, should be excluded from "income " since these require the fulfillment of certain obligations and are not equivalent to business " income".
- Criteria of " destination of income" should be applied to " business" income of charities, and income generation projects undertaken to ensure sustainability of the organization should not be construed as business income.

Simplification of the Act: As recommended by earlier Task Forces, the Act should be simplified and stated in simple language and there should be a unified scheme of taxation for NPOs.

***Creation of a data base of organizations registered with IT Exemptions*:** We recommend that the Income Tax Exemptions Directorate should create a database of charitable organizations registered with it, according to size of assets, annual income, and whether the organization is receiving funds, or donating funds or both. The Annual return form could have columns to indicate this, as is being done in Canada and other countries.

10.1.2.2 Charities Commissioners' Offices

Scrapping of 2% cess in Gujarat and Maharashtra, **and elsewhere**; since it imposes an unfair burden on charities in these states. No other agency providing a public service charges for the service. There should be scope to charge for discretionary services such as for forms, publications, training offered etc.

Raising limit for audit **–** Presently trusts with income above Rs 1500 per annum have to submit audited accounts. This income limit is too low, since the cost of audit is likely to be more than the income. The limit for auditing the accounts should therefore be substantially raised, and brought in line with Income Tax limits.

Change of Status Report **-** Section 22, as also section36 particularly related to sale of trust land, be reviewed more thoroughly in full consultation with Trust representatives to see how the many steps can be reduced, and the process made less irksome.

Enhancing the powers of the Charity Commissioners: to allow changes in the objects of the trust with out going to court.

10.1.2.3 Registrar of Societies

Scrapping of renewal of registration **:** In those states where an annual renewal or renewal after some other period exist, it should be scrapped.

***Monitoring to enhance performance of organizations*:** The annual returns should be scrutinized to monitor the performance of the organization, or to know whether it is defunct. In the case of the latter, it should be removed from the register, after giving a chance for appeal. The annual returns should be simplified for small societies and more detailed for those above a certain size in terms of income.

Limiting Political Control on Societies: We recommend that the provision in ROS Act of Tamil Nadu, and any other state which contains a similar clause, of allowing appointment of "special officers" to manage the affairs of the society for a specified period of not exceeding one year be removed, since this has the potential of misuse for political purposes.

10.2 Medium / long term recommendations

While the above recommendations may, if they are adopted, enhance the efficiency of individual agencies, they will not overcome some of the basic problems, such as those below, which are systemic. To deal with these issues a systemic change is required, involving new legislation, and new organizational set up and approaches. Our recommendations for these are as below:

10.2.1 A Comprehensive Central Incorporation Law

- To overcome this plethora of laws and agencies, and lack of uniformity in treatment, we recommend the enactment of a comprehensive central law for legal incorporation of nonprofit organizations which would review, integrate and include the best provisions of the various laws now in force, and apply to trusts, registered societies and section 25 companies alike. It would be possible to register any nonprofit organization under this law. It could be on the lines of the Charities Act of U.K and could be called the Incorporation Law for Non-Profit Public Benefit Organizations. Because charity is a concurrent subject, Parliament is competent to make laws with respect to charities and charitable institutions under entry 28 of the concurrent list in the Seventh Schedule of the Constitution of India. The Centre could formulate a model law for enactment by the states. The States could, enact the same law using the central law as a model, for their jurisdictions.

- Since there are distinct advantages to each of the three main forms of incorporation, at present, and many have argued for retaining the flexibility offered by the present three registration laws for different types of organizations we propose that the new uniform law should retain the flexibility and could offer registration for different types under different sections, just as Sec 25 of the Companies Act deals with a particular type of company.

- There could be a section also to distinguish development organizations from chambers, and other such professional membership bodies., as has been often demanded by the NGO sector.

- This Act would be in addition to the Income Tax Act which would continue suitably amended as recommended above, and which would be responsible for the Tax exemptions.

- While the NPO Act would emphasize governance and management of non profit organisations, the IT Act would be concerned with financial compliance.

10.2.2 Institutional Changes

For institutional arrangements we present three options:

- ***Model 1. – Maintain Status Quo, keeping the existing institutional arrangements as is*** but enhancing their performance by adopting the recommendations made in sections 10.1 to 10.1.2.3. above, for a more facilitative interface with the public, greater transparency of the regulatory process, measures for securing better compliance, and a better appeals process.

- ***Model 2 – Create an enhanced Charities Directorate in the IT department, plus state level registering agencies, plus an NPO Sector Agency. The Charities Directorate*** would be the main regulatory agency, looking after monitoring and compliance, as in Canada and USA at present, while the other state level registering agencies would exist only for the purely original registration function. In addition there should be an **NPO Advisory Agency Group** to advise the Charities Directorate, comprising representatives of the NPO sector and professionals such as lawyers and CAs, to provide policy guidance, give feedback from the sector, review mechanisms for achieving compliance, issues for consultation and so on.

  In addition to receiving advice from the NPO Advisory Group the Charities Directorate staff would visit different regions of the country and meet informally with NPOs and umbrella groups to discuss concerns, issues and answer questions.

  If a national NPO incorporation law is enacted, then an enhanced Charities Directorate could also be entrusted with the legal registration work, so that it becomes a single agency responsible for all matters pertaining to NPOs. Given the size of India and therefore the need for decentralization, we envisage that the Charities Directorate would have state level offices.

  Instead of forming a separate Advisory Group, we recommend using the newly established nonprofit organization Credibility Alliance, to bring about voluntary self regulation, for the purpose, and working in close co-ordination with them.

- ***Model 2A: Charities Directorate and a mandatory NPO Sector Agency***

  Here the difference between this model and the one above would be that the voluntary sector agency would be **created by the government**, though as an autonomous body, and would have mandated and not purely advisory functions. It would have its own governing body, and its own professional staff, and would have the general function of promoting the effective use of charitable resources by encouraging better management of organizations, and improving governance by providing trustees with information and advice on any matter affecting NPOs. It would also be responsible for compliance education function. It would be the permanent forum for dialogue that NPOs have been demanding and would be the interface between government and the sector and represent the sector to government.

However, we feel that since the Credibility Alliance is already in existence and can perform many of the functions outlined above, it, along with the various intermediary groups that exist can meet the need and there is no need to create another organization.

- ***Model 3: State level Charity Commissions \ NPO Regulatory Authorities + Charities Directorate, + An Appeals Tribunal.***

We believe that though the Credibility Alliance is an excellent model for self regulation, there will still be a need for legal compliance, esp. for defaulters, and that application of sanctions, judicial appeals etc, can only be done by a government agency.

Prima-facie it appears that it would be beneficial to have a Charities Commission on the lines of that in U.K., which would be concerned not only with financial regulation but also with the promotion of the charitable sector. Most of the respondents canvassed for this review also felt that such a body would be beneficial.

However, several experts felt that since charity is a state subject, and since the volume of work involved is far greater than in the UK, it would be difficult and unwieldy to centralize all work in a national level organization, even with state set ups. Instead, state level commissions were favoured whose function would be not only to regulate but also support the sector. The mandate would include modernizing the purposes, governance and administrative arrangements in the constitutions of existing charities; advising on legal and regulatory requirements; and authorizing actions and transactions which charities would not otherwise have the legal power to carry out.

Such bodies would parallel the Regulatory Bodies, which are being formed for various sectors such as telecom, power, etc. and could be called NPO Regulatory Authorities A majority of respondents in our survey have favoured a single window for charity through some such organization.

The Charities Commissions or the NPO Regulatory Authorities, would be autonomous bodies created by legislation with their own statute and regulations, and resources. They would report directly to Parliament or the Assemblies, though through a nodal minister on their annual performance.

The role of the Commissions would be to protect the public interest and provide effective support and regulatory system for charities. They would be required to enhance public trust and confidence in both the regulator and in charities in a transparent and fair way, and to see that the regulatory process is as simple, non-duplicative and cost effective as possible.

The functions of the Charities Commissions have been spelt out in chapter 8. In short they would act as a one-stop shop for the legislative requirements of charities

A Charities Commission should recruit its own staff like any other non-profit corporation and train them, and pay remuneration according to non-profit practice. This will ensure a stability of staff sympathetic to and well versed with nonprofit work.

We do not recommend the merger of the income tax work, presently handled by the Exemptions Directorate, since the income tax work is of a very specialized nature, and expertise has been built up over the years. However, we recommend that all the IT work related to NPOs should be put in charge of one NPO Directorate (Charities Directorate), which would work in close co-ordination with the Charities Commission and come together periodically to discuss issues of mutual concern and interest.

Overall, the CD in the IT department would be concerned only with tax compliance and the Charities Commission would be the supervisory agency for the CD as well.

While it is not recommended that the Charities Directorate of the IT department merge with the Charities Corporation, it would help the NPO sector greatly if they were **physically housed** within the same premises so as to be a one stop shop for charities.

It is hoped that this report will help the government and the Charities Sector to chart out next steps in terms of policy as well as institutional reform and that at least some of our recommendations will find their way into practice.

If this facilities the growth of a vibrant and socially accountable civil society, our work will have been worthwhile.

Pushpa Sundar
Executive Director
Sampradaan Indian Centre for Philanthropy
Sept 2004

CHAPTER 1

INTRODUCTION

1.1 The Nonprofit Sector

1.1.1 Brief History

Charity is defined as giving voluntarily to those in need. It covers the giving of both money, and of the self through service to the needy. The term is also used to denote an institution or organization, which helps those in need.

Though the roots of charity are to be found in religious belief and practice, charitable trusts and voluntary organizations are its secular and institutional manifestation.

Those who wished to work together for social reform or to provide service to the poor and needy-formed associations or societies for the purpose. Religious organizations, especially Christian missions, also took up work to help the poor to improve their condition. This was the genesis of what came to be referred to as voluntary organizations. With the freedom struggle and Gandhiji's advocacy of voluntary constructive work to improve the lot of the masses, many more voluntary organizations were formed.

Those who were unable to serve society directly, but were able to provide money and other material resources, either established charitable institutions like *dharamshalas*, schools, orphanages, women's homes and the like, and donated funds to run them, or established endowments to provide monetary help in perpetuity to some charitable cause.

The beginning of the industrial revolution in India led to establishment of large fortunes, and gave a fillip to the establishment of endowed foundations to support welfare and development work. Later, inspired by Gandhiji's message that rich businessmen should look upon themselves as trustees of society and hold their wealth in trust for the less fortunate, many wealthy families and businesses added to the numbers of foundations and trusts, just as his message of constructive work to bring about national development led to the formation of many voluntary agencies.

During the 19th and early 20th century such organizations received legal recognition through the enactment of laws such as the Registration of Societies Act 1860, and the Indian Trusts Act 1882. Such enactments gave public recognition to the intention of the founders and extended the protection of the law to their income and property, and to their office bearers.

The British Government in India also recognized that it could not, by itself, provide for all the welfare and development needs of society, and therefore sought to encourage private charitable contributions for public purposes by giving incentives. This included award of official titles and exempting donated income from the income tax. The Income Tax had been introduced in 1860, and in 1922, the government granted 50% tax exemption to individuals on donations for charitable purposes.

After Independence the numbers of voluntary organizations expanded to meet national development goals, especially when it became apparent that the governmental programs were inadequate to respond to the development needs of the deprived sections of the society.

The Government of independent India continued and extended the tax concessions given earlier, fully aware of its own limitations in meeting social needs. The Finance Act of 1948 extended the exemption, earlier given only to individuals, to companies making charitable contributions. The Companies Act of 1956 introduced Sec 25 to enable individuals and corporations to set up nonprofit companies for charitable purposes. The Income Tax Act of 1961 broadened the definition of charitable purpose, which is in force today. Charity is now defined as " relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

The broadening of the definition of charity thus brought within its ambit a very wide range of organizations working for both welfare and development, and not only those working for relief of distress.

These measures, coupled with high tax rates, led to the formation of several charitable trusts and organizations.

Collectively all such organizations are today referred to as the nonprofit sector, (NPO sector) which has grown almost exponentially over the last few decades. Today the non-profit sector comprises organizations that

- Donate money for charitable causes,(trusts and foundations)
- Charities for the welfare of the poor and the needy, (charitable organizations)
- Organizations that are development oriented, (NGOs)
- Organizations engaged in advocacy, protection of human rights, research and resource centers, environmental conservation et al., (intermediary support organizations, umbrella groups, networks,) and,
- Associations of all kinds, including chambers, associations of lawyers and chartered accountants, who are not public benefit but mutual benefit organizations, though nonprofit making.

Traditionally many of them would not have come within the ambit of "charity".

1.1.2 Nature and Scope of Nonprofit Sector

Non-profit organizations (NPOs) have certain common characteristics. These are:

- **Formal**: institutionalised to some extent or, if not registered, demonstrating a definite program or aims and objects, as well as rules and regulations of governance;
- **Private**: institutionally separate from the government;
- **Self-governing**: not controlled by the government or any other outside entity;
- **Not-for-profit**: non-profit-distributing;
- **Voluntary:** involving some meaningful degree of voluntary participation, either in the actual conduct of the organization's activities or in the management of its affairs;

- **Non-religious**: not primarily involved in the promotion of religious worship or religious education. This automatically excludes from voluntary organizations any temples, churches, synagogues, mosques, and other places where religious worship takes place, but includes not-for-profit service organizations affiliated to religious institutions, e.g., schools run by the *Arya Samaj* or Christian missionaries;

- **Non-political**: not primarily involved in promoting candidates for elected office, etc.

India today has a vigorous nonprofit sector playing a pivotal role in accelerating the process of social and economic development. There has been a rapid expansion in the numbers of non-profit organizations in India. The sector has also matured in terms of outreach, sophistication of approach, diversity in types of organizational forms, the amounts invested in the sector and the employment it offers to people at all skill levels. According to a recent study of the non-profit sector in India by Participatory Research in Asia (PRIA) there are as many as 1.2 million non-profit organisations operating in the country, approximately half of whom are not registered. In the year 2000 this sector was providing paid employment to as many as 2.7 million people and mobilising resources to the tune of Rs. 17,922 crores.[1]

Non-profit organizations in India today encompass a wide-range of activities, including designing and implementing innovative programs in various sectors of development, research, documentation, and training and advocacy. They range from very small people's organizations to highly sophisticated and technologically advanced research and health care or educational institutions.

1.1.3 Legal Status

Legally, these various organizations become a legal entity by registering either as a

- Public Charitable Trust under the Registration of Documents Act, or under the Bombay Public Trusts Act 1950, in Maharashtra and Gujarat, or their equivalents in some of the states.

- Registered Society under the Registration of Societies Act 1860 or its equivalent in force in various states.

- Section 25 Nonprofit Company under the Companies Act 1956.

The distinctions between the three are explained in greater detail in Chapter 3.

1.1.4 Definition of Terms

Hereafter, this broad composite entity including foundations, NGOs, and large charitable institutions like colleges and hospitals, and service clubs, membership associations, chambers of commerce and similar organizations **is referred to as the Non-profit Sector;** non donating, voluntary organizations providing development services of all kinds are referred to as **NGOs**, **and collectively as the Voluntary Sector.**

What are referred to here as Charities or the Charities Sector are only those nonprofit organizations (donating and non donating) which work **for public benefit.** This is the sector,

[1] See The Non-Profit Sector in India, PRIA, N. Delhi, 2003. The statistics are for the year 2000.

which is the prime focus of this research. Thus it does not concern itself with mutual benefit non-profit associations such as professional bodies, chambers and the like.

1.2 Need for the Study

1.2.1 Importance of the sector

With the liberalization of the Indian economy, the enhanced focus on development, and the increasing awareness of the importance of human resource development, especially of women and children, there is a growing awareness amongst the government and the general public that the government machinery alone cannot adequately meet the demands of the situation, and that non-profit organizations can play a very vital role in bringing change and development because of their social and non commercial orientation, and closer interaction with local people.

Moreover, NPOs help to build a strong civil society, act as a vehicle for social cohesion, and are a bridge between the government and citizens. Because of this it is necessary to create conditions, which are conducive to its growth. A conducive environment includes an enabling legal and fiscal framework, which allows voluntary non-profit organizations to

- Come into existence in a manner that is easy and inexpensive and without restraint;
- Exist and operate free of undue interference; and
- Have direct and indirect (through tax benefits) access to funds, whether these come from private sources, the state or through economic activities of the organizations themselves.

1.2.2 The Legal and Fiscal Framework

By and large the basic legal framework governing the sector satisfies these conditions. Charity is on the concurrent list of subjects where both the Centre and the states are competent to legislate. There are 4 main laws governing the nonprofit sector, each of which is administered by an agency specifically created for the purpose. These are:

- The Registration of Societies Act of 1860 and its versions enacted by different states, and a corresponding Registrar of Societies to deal with organizations registered under the Societies Act.
- A variation of the Indian Trusts Act of 1882 is in operation in different states. Maharashtra and Gujarat have offices of the Charities Commissioner to oversee charities in these states; Tamil Nadu has a department of Religious and Charitable Endowments, and other states have something similar for charitable trusts.
- The Companies Act, Section 25 deals with nonprofit companies from the office of the Registrar of Companies, and
- The Income Tax Act is concerned with providing fiscal benefits to NPOs, administered through the Directorates of Income Tax Exemption.

In addition, there is the Foreign Contributions Regulatory Act, (FCRA) applicable all over India, enacted to meet the special condition of inflow of foreign funds to charitable organizations. The FCRA was essentially meant to control external funds, which could be used to threaten national security. However, in practice it has come to regulate the receipt and spending of foreign funds irrespective of security concerns.

1.2.3 Need for Administrative Reform

The non-profit sector has grown within this basic legislative framework, which sets out the parameters within which it can operate. However, during a hundred plus years of growth, rapid economic and social changes have changed the parameters within which the sector operates. On the one hand, both state and society expect it to take on much more than was initially expected, and for which it is not well prepared either in terms of financial, human or organizational resources. On the other, the state has not fully recognized this need for more resources and for a more liberal and facilitative approach to enable charities to operate more effectively. In short, the laws have not kept pace with changed circumstances or with need.

From time to time, as will be noticed in detail later, the state has attempted to review these laws through consultations with the charities sector. The latest such effort was the Task Force established by the Planning Commission, Government of India in October 2000 to review, analyse and suggest ways in which the present acts, rules and procedures can be modified or simplified to facilitate the growth and development of the voluntary sector. However, its recommendations are yet to be implemented.

Moreover, it did not go into the administrative functioning of the agencies, merely noting in its report submitted in July 2001, that though there is scope and need to change parts of certain laws, **the problem is not only with the formulations of the laws but also in their administration, with either cumbersome procedures or lack of understanding on the part of those who administer the charity laws, of the unique nature of the charities sector.**

It also noted other lacunae which do not lie in the realm of laws as such, but in the administrative sphere, which if remedied could enhance the functioning of the sector. These are:

- A need to review and redefine accepted definitions of popularly used concepts – “charity”, “non-profit”, “voluntary”, “civil society”, “development organizations” and so on, especially for interpretations of the laws and regulations.
- Lack of authentic official statistics pertaining to the sector and lack of access for bonafide purposes, to information collected by the government;
- The lack of a mechanism for redressing grievances without recourse to the courts;
- Lack of a permanent forum for ongoing interaction between civil society and government so as to find a voice in policy making;

To achieve socio economic and sustainable development an effective state is necessary and there are growing pressures on governments and organizations round the world to be more responsive to the demands of internal and external stakeholders for good governance, accountability, effectiveness and achievement of tangible results. It is this pressure and need for administrative reform, which have prompted the present exercise.

1.2.4 Availability of Resources

A subset of this need for reform is connected to the availability of resources for charities to ensure sustainability and future growth.

To enable it to discharge its obligations properly, charities, like all other organizations, need resources. PRIA's study of the non-profit sector quoted earlier, found that of the Rs. 17,922 crores mobilised by non donating, non-profit organizations in the year 2000, 32.4 percent of the funds were from government sources, 31 percent were self generated and only 16.6 percent were private funds from Indian as well as foreign donors.

Government funds ensure stability and continuity, and lend credibility to the organization and its programmes. Government support to voluntary organizations has existed since 1950s, when the government started providing funds to NGOs through the Central and State Welfare Boards, and other government departments, and has increased steadily over the years, from Rs. 150 crores in the Seventh Plan to Rs. 462 crores[2] in the year 2001-02. However, government support is far from adequate to meet their needs, government funds are difficult to access, lack flexibility, and are beset by delays.

Foreign assistance to the voluntary sector from multilateral and bilateral funders, routed through the government, though it has declined from a high of $ 500 million in 1980-81, is still substantial at an average of $ 250 million per year. In addition are the amounts contributed by private foreign donors. In the year 2000-01, 14,598 organisations including large religious trusts received Rs. 4,535 crores[3] ($ 1 billion) as funds from private foreign donors.

Though there has been an increase of 15 percent per annum in funds from foreign sources, only 7.4 percent of the total receipts of voluntary organisations are foreign funds. The inflow of foreign funds is restricted due to the provisions of the Foreign Contribution Regulatory Act, which makes it mandatory for organisations to be registered with them or have prior permission before receiving foreign funds. Foreign funders have their own criteria for funding and for managing programmes that are usually complicated and difficult to understand for the smaller NGOs. The funds from this source are also unstable as they are driven by geopolitical considerations and can be withdrawn anytime. In fact foreign funds are on the decline or becoming more difficult to access, and foreign donors are increasingly encouraging local resource mobilization.

Therefore it is imperative that an additional alternative source of funds, viz, donations and grants from Indian trusts and foundations, and individuals is developed.
Though a recent research study by Sampradaan Indian centre for Philanthropy (SICP),[4] indicates that 96% of urban individual households donate in charity, a major portion goes for ad hoc charity to individuals in need (50% of the total donated,) or to religious organizations, (29% of total) and only 21 percent of the total amounts donated goes to voluntary organizations.

There is, therefore, a need to increase charitable contributions from private sources, including from donating trusts. It is in this context of the need to stimulate private charity for development that tax incentives to donors provided by the Income tax law become important.

Moreover, because of the dependence of nonprofit organizations on donations and grants from government and well wishers and the uncertain as well as the particular characteristics

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[2] B. N. Makhija, "Voluntary Sector in India – Quest for credibility", 2004
[3] N. C. Saxena, "New Government Policy on Bilateral Assistance to India", 2003
[4] Investing in Ourselves: Giving and Fund Raising in India, Sampradaan, N, Delhi, 2001

of their income stream, with few chances to generate income of their own, their income and expenditure patterns are also substantially different from those of government and the commercial sector, and these need to be understood, if the tax regime is not to cause undue hardship.

Therefore how facilitative or restrictive the IT administration is matters greatly to the charities sector. But whatever committees and commissions of enquiry have been constituted for review of the tax administration so far, such as the Direct Taxes Enquiry Committee (1958-59) the Wanchoo Committee on Direct Taxes (1971), the Raja Cheliah Committee, or the Public Accounts Committees, have had the limited mandate of checking tax evasion and misuse of tax benefits. They did not approach the problem from the point of view of the need of the charities Sector for resources for healthy development. Nor were they concerned with promoting internal good governance.

1.2.5 Public Accountability

Though inadequate in terms of need, the resources mobilized by the charities sector are still sizable. Not only do charitable organizations receive funds directly from the public, but they are also indirect beneficiaries of public benevolence. They receive grants from government out of the tax revenues contributed by society. Besides, government foregoes tax by offering exemptions on income tax and other taxes such as excise, as well as land at concessional rates. Therefore the public, apart from the government and the sector, has an important stake in seeing that charities are transparent and credible in terms of their governance and use of funds.

Instances of misuse of tax provisions, fraud, and poor governance by some sections of the sector appear to be increasing, and have brought issues of ethics and values underlying voluntary work, and the accountability of voluntary organisations to the government and the public. In particular, there are two categories of misuse, which need to be checked. One is that by large hospitals and educational institutions, which by claiming to be charitable, or promising to reserve a certain percentage of their services for the poor, have availed of benefits like land nominal or concessional rates, exemption from excise duties and the like, apart from exemption of income from tax, but have gone back on their promises. They are running these organizations as business ventures. A second category is organizations, which exist only on paper, and have been established only to launder black money or to avail of grant funding.

If the misuse is not checked, public trust in the nonprofit sector will be eroded, and because of a few black sheep the whole sector stands to have its image tarnished. This will also affect the chances of NPOs receiving funds from the public as well as donors. The possibility of increasing private charitable resources is not only a function of tax incentives and education of potential donors on the need to give, but also of accountability of nonprofit organizations. If the public perceives that charitable resources are not being properly used, it will reduce, not increase the flow of private resources to the nonprofit sector. Therefore proper regulation of NPOs for tax and other legal compliance is very necessary.

People will support charities if they can see that charities are meeting their legal obligations. Regulatory effectiveness, in turn depends on charities perceiving distinct advantages of complying with legal regulations; or its converse, see distinct disadvantages of not complying with legal requirements. Nonprofit organizations will comply with the law if they see that the regulator

- acts with integrity
- is open about its decisions and performance;
- is committed to high standards of service and
- is willing to work with the sector in seeking knowledge and innovation.[5], and if
- compliance is not burdensome with complex and time consuming procedures.

They will not comply if they feel that they can get away with wrongdoing and there will be no adverse consequences for them.

Though **self-regulation** of the charities sector to ensure good governance and accountability is very necessary and better than heavy state regulation, there will still be a need for an effective state mechanism to enforce the law in case of transgression of a code of good conduct. A self-regulatory body cannot administer legal sanctions, or adjudicate in disputes regarding property of trusts, or give protection of the law to office bearers discharging their official duties.

1.2.6 Effective Regulation and Compliance Education

In sum the above discussion raises the following points:

- How effective have our charity laws and the charity administration been in
    - ensuring public confidence in charitable organizations by ensuring good governance , and
    - encouraging charity through the concessions provided?
- What are the problems faced by NPOs in getting registration, tax exemptions and in complying with the laws?
- Is there in place a system for appealing the decisions made by the regulator. How effective is the present system of grievance redressal?
- Does the public have access to information about charities, and is there a public forum for debating issues related to the regulation of the charities sector?
- Does our charities administration play an educative role as distinct from the regulatory role, educating charities about legal requirements, providing the general public with information about the regulatory process, and educating the public about nonprofit organizations and how they operate? Should they play this role or should it be left to another organization?

These are the questions to which this study seeks answers.

[5] Strengthening Canada's Charitable Sector: Regulatory Reform, 2002? (check full citation)

1.2.7 Recent Developments

The study of the charities administration has become timely for three other reasons:

One, there is a disturbing trend towards using the charity regulatory framework and administrative agencies for political purposes. Various states have enacted their own Registration of Societies Act in place of the central Act of 1860. These amendments to the simpler and more liberal 1860 Act allow for much greater degree of state control over voluntary organizations, with powers to the state agencies to supersede the existing managements or to appoint state officers to the managing boards. It is reported that some states like Tamil Nadu and UP have used such provisions for political reasons.

Instances have also been reported in Maharashtra of political appointment of trustees to rich temple and other trusts like the Siddhi Vinayak Trust and others to control the vast funds at their command. And most recently, newspapers have reported the use of the charity laws to selectively send notices to activist groups involved in critiquing or protesting against the government after the Gujarat and Mumbai riots.

Two, the present Prime Minister, has, time and again, stressed the importance of the nonprofit sector in accelerating development and distributive justice, as also the need for administrative reform to meet public aspirations, and to see that the benefits of development reach all.

Several state governments too, the Maharashtra and Gujarat governments among others, have set up State Law Commissions to review several of the laws which are old and in need of amendments. The Maharshtra Law Commission has reviewed both the Bombay Public Trusts Act and the Registration of Societies Act and has made recommendations for new enactments to replace these, especially keeping in view the inadequacy of the present administrative structure to meet emergent needs, though it is important to note that their draft recommendations have called forth protest about certain recommendations from the charities sector in Maharashtra.

Three, globally too there is much interest in charities infrastructure reform and experiments with new models. For instance U.K., Canada, Australia, New Zealand, etc. are reviewing the effectiveness of their charity laws in the context of changed demands. It is possible to learn from their experience.

1.3 Objectives of Review

It is against this background and context that the present review of the charities administration has been undertaken to highlight areas for reform and to suggest institutional alternatives.

Its objective is twofold:

- To strengthen the voluntary sector's capacity to meet the challenges of the future, and especially to meet the public demand for more accountability, and

- To improve the state- nonprofit sector interface.

1.4 Structure of the Report

The present report on "Charity Administration in India" has been organized into eight chapters in all, beginning with this brief background of the non-profit sector in India and why this study is necessary

The second chapter presents the objectives, aims and methodology of the study. Details of the research coverage and difficulties encountered during data collection have also been enumerated in this chapter.

The third chapter presents an overview of the existing legal framework for charity administration in India. This chapter gives details of the provisions under various laws for incorporation, reporting, compliance and grievance redressal. Various national and state level laws have been analyzed in this section. The acts covered include Societies Registration Act, 1860 and its state level variations; Indian Trust Act, 1882; Companies Act, 1956; Bombay Public Trust Act and Income Tax Act, 1961. In addition it also discusses previous attempts at reform.

Chapter four reviews the existing institutional frameworks for charity administration in other countries (like UK, USA, and Canada) to enable a comparison.

The fifth chapter presents the findings of the all India study of non-profit organisations. It brings to light the procedural and other problems faced by non – profit organizations, with respect to registration, reporting, compliance with laws, and grievance redressal as well as participants' suggestions for reform and alternative arrangements.

This is followed in chapter six by the perspective of law enforcers, including Charities Commissioners, Registrar of Societies, and Directors of Income Tax Exemption on what ails charities and how social development can be enhanced by proper utilization of charitable resources.

The seventh chapter presents the conclusions, which emerge from the study.

The final chapter gives our recommendations for policy changes and institutional measures that are required to facilitate the growth and development of charities and the non-profit sector in India.

Detailed statistical and other information is given in appendices. The reports submitted by the West Bengal Team and the Chennai teams are contained in Vol.2

It is hoped that this report would help both the government and the charities sector to chart out next steps in terms of policy as well as institutional development.

CHAPTER 2

OBJECTIVES, SCOPE AND METHODOLOGY

2.1 Objectives

The current research project on "Charity Administration in India" is aimed at undertaking a critical review of the existing institutional framework, which administers charity law in India. The purpose behind the review is twofold: to strengthen the voluntary sector's capacity to meet the challenges of change and development by improving its financial sustainability and governance; and to do this by improving the quality of its interface with the state since its effective functioning depends to a great extent on the nature of this interface.

The specific objectives of the research are:

- To find out, on the basis of an all India study, whether the existing framework for charities administration has been able to meet the objectives for which it was established, viz.
    - To promote and facilitate charity for social action;
    - To ensure public confidence in charitable organizations by effective monitoring of charitable activities and checking misuse; what are the inadequacies if any, and
    - To suggest, how the objectives can be met more effectively through policy and administrative reform in the existing institutional framework or through alternative legal and institutional arrangements.

In terms of activities to be undertaken, the research was to

- Identify the present institutional mechanisms for
    - Classifying, supervising, and regulating non-profit / charitable institutions;
    - Proper receipt and accounting of charitable contributions;
    - Providing tax incentives to encourage charity; and
    - Effective governance of public benefit charitable organizations (charities for short)
- Identify the procedural and other problems faced by non – profit organizations, with respect to registration, both original and renewals, reporting and compliance with laws, and the appeals process for redressal of grievances.
- Record and present the perspective of the authorities on their view of charities and the problems faced by them in securing compliance.
- Record and present the views and experiences of professionals, including lawyers and Chartered Accountants, who often act as the intermediaries and advisors to charities and the authorities.

- Review existing institutional frameworks and procedures for charity administration in other countries (like UK, USA, and Canada) and assess the feasibility of their adaptation in India.
- Recommend, on the basis of the findings of the research, policy changes or institutional measures that would be required to facilitate the growth and development of charities and to ensure their accountability to all the stakeholders.

Hypothesis to be tested:
The existing institutional mechanisms for promoting charity and good governance in the voluntary sector, represented by the offices of the Charities Commissioners and their equivalents in different states; the Registrars of Societies and Companies; and the Directors for Income Tax Exemption have not kept pace with the rapidly changing needs and demands of the growing non profit sector.
And that since there is a need for an institutional mechanism to promote good governance and to redress grievances outside the judicial system, it is necessary to either reform the existing institutional arrangements, or to adopt alternative / additional arrangements for better monitoring and development of the sector

2.2 Scope of the Research

By charity administration we mean the central and state level government agencies responsible for administering charity law, viz. the offices of the Charities Commissioners and their equivalent in different states; offices of the Registrar of Societies; The offices of the Registrar of Companies, and the offices of the Director General and Directors for Income Tax exemption.

Though the Department of Foreign Contributions Regulatory Act (FCRA) under the Home Ministry of the Government of India is also part of the charity administration, **this research does not cover the FCRA Department,** since it deals with a complex and special situation, and because other research groups such as Voluntary Action Network of India (VANI) have focused on the problems of FCRA administration.

The research is confined to non – profit organisations operating in India, and within these to what we call public benefit charitable organizations, thus excluding professional associations, chambers, sports bodies and others which, though nonprofit making, are in the nature of mutual benefit organizations.

The organizations covered are those registered under the Societies Registration Act, 1860; Trusts registered under the various Public Trusts Acts of different states or equivalent provisions; and Section 25 Companies registered under the Companies Act, 1956.

The research covers both donor organizations (foundations and trusts) as well as receiving non – profit organisations, (popularly called NGOs). The views and experiences of chief functionaries of these organisations have been sought on issues of registration, reporting, compliance with laws, and the appeals process for redressing of grievances and whether agencies have supplied adequate information regarding these. They were also asked for their suggestions for improvement in the processes and procedures.

The research also covers professionals, including lawyers and Chartered Accountants, associated with the non – profit sector. Understanding their perspective and experiences is of immense importance as increasingly charities are seeking professional help to deal with the agencies.

To ascertain whether the special provisions granted to non – profit organisations (tax exemptions, indirect benefits and government funds) are being utilised by them in a just and effective manner, it is imperative to record the views of the law enforcers.

Finally the reviews and reforms carried out by other countries in this field are also considered with a view to suggesting alternative scenarios.

The laws themselves are not the focus of the current research since the Task Force set up by the Planning Commission to Review Laws Pertaining to the Voluntary Sector in 2000 has already reviewed them.

Other issues facing the charitable / non – profit sector such as funding by government or other donor organizations, sustainability issues, capacity building of civil society organisations, etc. also do not fall within the purview of the current research.

2.3 Research Methodology

The research is both reflective and empirical. It is based on data already available from secondary sources and primary data collected for the purpose of this research.

2.3.1 Secondary Research

The secondary research includes collection of published material / information from the following sources:

- Annual reports and any other published material from the agencies mentioned.
- Research organisations / networks involved in undertaking research on similar themes and issues.
- Libraries,
- Internet.

The data / information collected included

- Relevant Acts including Societies Registration Act, 1860; Indian Trust Act, 1882; Bombay Public Trust Act; Companies Act, 1956; and Income Tax Act, 1961.
- Published and unpublished reports of institutions and departments involved in enforcement of charity law, as well as information material prepared by them for the public.
- Reports of Public Accounts Committees, and other Committees set up by the government, central and state.
- Unpublished relevant material viz., memos submitted by SICP and other organizations to the Finance Ministry on Income Tax proposals for annual Budgets, Report of Task Force set up by Planning Commission, and so on.

- Reports on the non – profit sector – Government interface, related to laws and regulations, published and unpublished, from other countries.

2.3.2 Primary Data Collection

The secondary data collected has been supplemented by primary data collected through the following different methods:

A postal \ email survey using a written questionnaire: Three separate sets of questionnaires were formulated for societies, trusts and section 25 companies. The questionnaires have been attached with this report as Annexure 2 (a), 2 (b) and 2 (c). This was mailed to 453 organizations representing the three different legal forms – trusts, societies and Sec 25 companies, selected randomly to represent different regions of India. The purpose of the survey was not statistical quantitative enumeration or co relation, but collection of information from as wide a range of organizations as possible, taking into account legal form, size and regional differences.

The questionnaires seek information about the procedural and other problems faced by non – profit organizations with respect to registration, reporting, compliance with laws and redressing of grievances. They also sought suggestions for alternate institutional mechanisms to ensure both effective monitoring and development of the NPO sector.

In depth interviews with representatives of NPOs, professional advisers such as chartered accountants, lawyers, past and present government functionaries of the regulatory agencies, and leaders of representative networks such as Society for Service to Voluntary Agencies (SOSVA), Voluntary Action Network of India (VANI), and Centre for Advancement of Philanthropy (CAP). Sample questionnaires used for different categories of people are attached as Annexure 2 (d).

Written Information from Government Agencies: In addition to interviews with government officials, written information was requested from Government agencies. Annexure 2 (e) gives details of the information requested from Government agencies.

Focus Group Meetings: Focus group meetings were held in Madurai, Ahmedabad and Delhi, which included professional advisers, and NPO representatives and community leaders, and in the case of the Ahmedabad and Delhi meetings some Government officials were also present.

In the Delhi meeting the preliminary findings of the all India level study were presented and the views and opinions of the participants were sought regarding the findings and the implications for institutional as well as policy improvements.

Participant Observation: The researchers also visited some of the agencies as ordinary citizens would to find out about the physical environment and facilities for applicants, information available, and attitudes of the staff.

2.4 Coverage of the research

While the survey of a random sample of NPOs through a written questionnaire, sent by post or email, tried to cover as much of India as possible, the interviews were confined to the metro cities of Delhi, Calcutta, Chennai, Mumbai, Ahmedabad and Madurai.

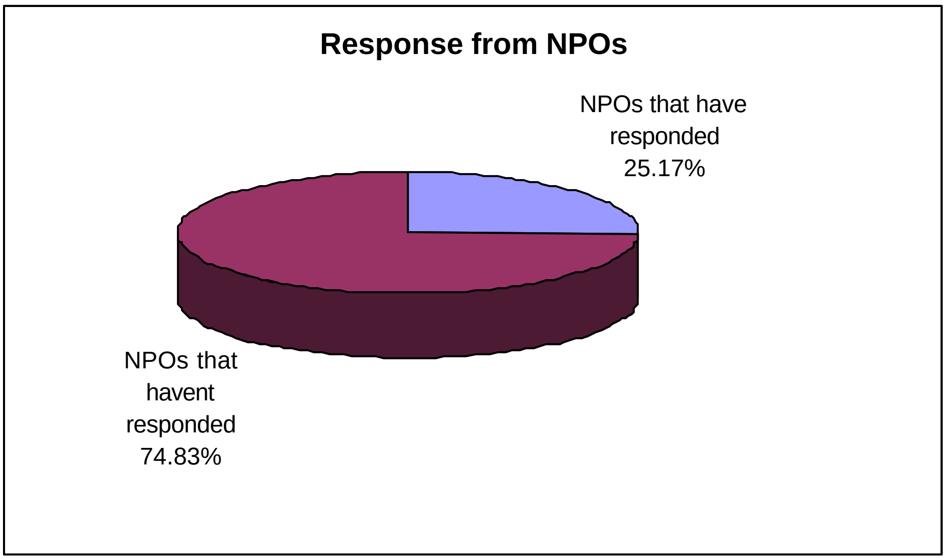
The following table presents an overview of the number of organisations to whom questionnaires were sent and those that have responded to the same. As is clearly evident from the figures the response to the questionnaire, despite rigorous follow-up, was lukewarm, of the 453 organisations to whom questionnaires were sent, response in the form of filled up questionnaires or personal interviews have been received from only 130 organisations (29%). A list of organisations to whom questionnaires were sent has been given in Annexure 3.

This can be attributed to a variety of factors, including difficulty in reaching the organisations due to outdated contact information in government records and other directories; apathy and cynicism among non – profit organisations towards questionnaires and surveys, as many believe that such research exercises will not lead to any reform; preoccupation of the staff of non – profit organisations with their on going work; difficulties of recall, especially about questions related to original registration, which may have been done several years ago, or which may have been done by chartered accountants; and finally, survey fatigue since the number of such surveys has increased taking up much time and effort.

Table 2.1 – Response from NPOs

State	NPOs to whom questionnaires were sent (No.s)	NPOs that have responded (Nos.)
Delhi	128	6
Gujarat	22	9
Maharashtra	52	18
Tamil Nadu	99	56
Orissa	25	1
Karnataka	8	1
West Bengal	119	23
Total	**453**	**114**

Figure 2.2 – Response from NPOs



While attempts were made to seek the views and experiences of non – profit organisations across all the states, responses have been received largely from the states of Delhi (including National Capital region), Gujarat, West Bengal, Tamil Nadu and Maharashtra. The following table presents an overview of the response received from Non Profit organisations. Detailed lists of all the organisations that have responded to the questionnaire have been attached along with this report as Annexure 4.

Table 2.3 – Break-up of NPOs that have responded - by type

State	NPOs that have responded			NPO Case Studies
	Societies	Trusts	Section 25 Companies	
Delhi	4	2	0	3
Gujarat	5	3	1	0
Maharashtra	15	2	1	0
Tamil Nadu	29	27	0	0
Orissa	1	0	0	0
Karnataka	0	1	0	0
West Bengal	15	5	3	13
Total	**69**	**39**	**5**	**16**
	114			**16**

Table 2.4 – Details of Interviews conducted –
NPO leaders, Professionals and Government Functionaries

State	Interview of key NPO leaders	Interview with Professionals		Interview with Government Functionaries
		CA / Accountant	Lawyers	
Delhi	1	3	0	5
Gujarat	13	0	2	6
Maharashtra	4	4	4	6
Tamil Nadu	4	7	3	4
Orissa	0	0	0	0
Karnataka	0	0	0	0
West Bengal	0	1	0	1
Total	**22**	**15**	**9**	**22**

The list of professionals, officials and other individuals interviewed has been attached with this report as Annexure 5.

In primary data collection for Chennai and Tamil Nadu, SICP was assisted by the Confederation of Indian Organizations for Service & Advocacy (CIOSA) Chennai, which promotes co-operation and collaboration among NGOs for support and information dissemination. The Centre for Social Markets,(CSM) Calcutta, a non profit organization whose mission is to fundamentally change the culture of market and other social institutions to advance social justice, human rights and social development, assisted in the data collection and analysis for the Kolkata and the W. Bengal segment.

Though these organizations did the major part of the data collection for the two regions, remaining gaps were filled in by SICP, which had the overall responsibility for conceptualisation, data collection, co-ordination, analysis and report preparation for the entire country.

2.5 Limitations

The study is limited by the difficulties in data collection at various stages, and is itself indicative of the areas for reform.

1. The first major problem relates to identification of the sample, according to different types of incorporation. There is no public register of NPOs either at the national or state level, which could be used to identify NPOs by type of registration. From the non-official directories or databases of NPOs available with various organizations or networks it is not possible to find out whether an organization is a society, a trust or a section 25 company. One needs to go to each separate registering agency to find out NPOs on their register.

2. In getting data for the sample from the different registering agencies, the following problems were encountered:

    a. The first major problem is that of public access to the information. In certain cases there was unwillingness to part with data and information by government officials, largely on the pretext of confidentiality even when the information sought was in the public realm. This brings forth the issue of ensuring transparency and accountability of the government to the public. While the Income Tax office pleads confidentiality under the law, even the other agencies are reluctant to give access to information with them to the public.

    b. Only when it was known that the current work was sponsored by the Planning Commission and the official letter was shown was any information offered. Even then, since there is very little official data kept on various aspects, most of the agencies pleaded that they were unable to give the data required; that it would require a lot of time to collect it; that they would send it on later. However, almost no written quantitative data was ever received from any agency.

    c. Such information as was available had the following problems: The Income Tax department lists all those given exemptions from IT as charitable trusts, without distinguishing societies, sec.25 companies etc. Only if one has access to their papers can one find out the form of incorporation.

    d. In other cases the registers and records are not up to date, nor kept in a systematic form, since almost none of the offices are computerized. Nor are there any current published directories. In some offices the last published directories were as old as 1965.

e. The result is that the contact details mentioned are wrong, it is difficult to trace the organizations mentioned, and a lot of time and money are wasted. Clearly, any attempts aimed at reforming and revolutionising charity administration in India needs to address the issue of information management in government agencies. Apart from ensuring effective retrieval of data, an effective data management system would also facilitate any attempts aimed at analysing trends, and providing accurate information for policy changes.

3. Data collection from NGOs had its own problems. As mentioned above, NGOs are beginning to have survey fatigue since there are surveys of all kinds requiring information from them. Moreover, many of the NGO functionaries had limited recall with respect to the information pertaining to registration, income tax exemptions, and compliance requirements. In many cases the process of registration and seeking income tax exemptions took place so long ago that no one in the current organisational set up had any information on the same. In other cases these responsibilities have been given out to professionals such as CA and only they have the required information. Therefore, the response rate was less than expected, and the information was not always complete.

Though these difficulties made it difficult to quantify the information, and to give a statistical output, such as numbers and proportion of total NPOs who find registration procedures difficult etc., the aim, in any case was not a quantitative but a qualitative look at how adequate or inadequate the present structure was, what the major difficulties were, and what procedures in particular were irksome and needed change. Thus, though the data collection from non – profit organisations could not meet the targets set out in the research proposal despite attempts made to reach out to organisations across all the states, the wide coverage and in depth interviews supplementing questionnaires have amply brought out the main issues and areas for reform in charity administration.

CHAPTER 3

LEGAL AND INSTITUTIONAL FRAMEWORK FOR CHARITY ADMINISTRATION IN INDIA

3.1 Introduction

Charity is a concurrent subject under the 7^{th} schedule, List III, Item 28, of the Constitution of India, which means that both the central and the state governments are competent to legislate on this subject. In practice, charity is primarily considered a state subject although presently there are both Central and state statutes which govern the non-profit sector.

There is no single central legislation laying down the law of charity. Instead there are three separate laws for non-profit registration or incorporation. Charity may take the form of a trust, an endowment, a society or a non-profit company. For the purpose there are two Central enactments; otherwise there are state enactments. The two national acts, which govern incorporation and regulation of NPOs, are:

- Registration of Societies Act, 1860; and
- The Companies Act, 1956

Several states have enacted their own versions of the Registration of Societies Act, and framed their own rules, though in the main they follow the Central Act. There is no separate state enactment for companies.

For registration of public charitable trusts there is no all India enactment. The Indian Trusts Act of 1882, which has all India applicability, applies only to private trusts. However, where no special differentiation is called for, the provisions of the Act have been applied by analogy to public trusts as well. Some states have separate acts governing the administration of charitable institutions and endowments. Where there is no specific Trust Act, trusts are registered under the Registration of Documents Act. Muslims in India can constitute either trusts or *wakfs* for charitable and pious purposes. A *wakf* differs from a trust in that the corpus of the *wakf* is vested in God Almighty while the usufruct is given to the beneficiaries or class of beneficiaries set out in the settlement.

3.2 Legal Forms of Non Profit Organisations

3.2.1 Society:

A society is essentially an association of persons (seven or more) united together to achieve some common purpose. Such objects are normally charitable, scientific, literary etc. Theoretically, a society need not be registered but registration gives the society legal recognition and is essential for opening of bank accounts, filing of legal suits, obtaining Income Tax approvals, lawful vesting of properties etc.

A society is registered under the Societies Registration Act, 1860. In addition various states have framed their respective acts and rules for ensuring propriety in functioning of societies, including provisions for compulsory division, amalgamation or dissolution. The registration is done under the auspices of the various state governments in whose territories the organisation is located. An organisation can be registered in any district of India with the Assistant Registrar of Societies within that district.

A society is a distinct legal entity entirely independent of the members constituting it. Thus, it can sue or be sued independent of its members. No member either independently or jointly can claim ownership rights in the assets of a society during its existence. On its dissolution, the surplus assets are given to some other society with similar objects. The membership rights are non transferable and it has perpetual succession not affected by the changes in its membership or employees. Along with having the flexibility to undertake a wide range of activities, a society also has a more democratic set up with membership and an elected body to mange it. The original members can continue to remain in control as long as they are elected to the managing committee. The society can exist beyond its original members and there is a possibility of a complete renewal of members and objects can be modified easily.

3.2.2 Trusts:

A Trust is created if a person wishes to set apart either property or income for a charitable purpose so that the income may be devoted in perpetuity for the fulfilment of the charitable purpose or if he / she wants to limit the control over the disposal of that income to persons whom he knows or trusts. Charitable Trusts need to satisfy the definition of "charitable purpose, which includes relief to the poor, education, medical relief and advancement of any other object of general public utility" as laid down in Section 2 (15) of the Income Tax Act, 1961 and amended by the Finance Act, 1983.

The trust has primarily three parties: the donor/s, the trustees and the beneficiaries. It is usually created through a trust deed. A trust may be private or public, fixed or discretionary (among others).

A private trust can be set up anywhere in the country under the Indian Trust Act of 1882. A public charitable trust can be set up under the Bombay Public Charitable Trust Act, 1950 in the states of Maharashtra and Gujarat. Elsewhere in the country it can be set up under the general law, i.e., registration of the Trust deed with the registrar. Or under the public trust act of the state, if any.

The management of a public trust remains with the Board of Trustees who remain so for life and need not stand for election. Changes in the board are usually by invitation and not election. This ensures that the trust is managed by those approved by the original donor / trustees who cannot be removed by election. There are no legal requirements for meetings. There is thus minimum danger of take over by persons not approved by the trustees.

The provisions as existing in the various statutes for a trust make it very difficult to modify the objects as laid in the trust deed and these can be changed only by the settlor. In many cases if the original settlor is unwilling the trust may very well become redundant. Further, the possibility of mismanagement of trusts is higher due to an undemocratic governance style. The government, and offices of the Charity Commission have more power to intervene in the affairs of the trust as compared to societies.

3.2.3 Section 25 Company:

A Non – Profit Company can be set up under Section 25 of the Companies Act, 1956. A section 25 company is a voluntary association of people for promoting commerce, arts, science, religion, charity or any other type of other useful object, the profits of which, if any, or other incomes are applied for promoting the objects of the company and no dividend is paid to its members (Sec. 25 (1) (a) and (B) of the Companies Act).

A Section 25 company has a distinct legal entity, entirely independent of its members and has perpetual succession. While the non-profit companies enjoy limited liability like a limited company or society they don't need to use the words limited in their name. No member can independently or jointly claim ownership rights in the assets of the company during its existence and cannot distribute profits or assets to its members. Membership (ownership) rights are transferable. Under the company's law, the formation and regulation processes are very complex. Though the process is complex, the objects of a company can be modified if need arises. Providing services and trading on a non – profit basis is possible. The management rests with the Board of Directors. The voting is based on number of shares held and not on number of members, alone which allows increase in membership without worrying about controlling votes.

There is one uniform law across the country for companies, the Companies Act, 1956. It is this robust law protected by powerful commercial interests that makes it very difficult for the state government to take over a section 25 Company. The company form is recognised all over the world, it is more closely regulated and monitored than trusts and societies.

A Comparative Perspective

SECTION 25 COMPANY	SOCIETY	TRUST
Objects Non profit Activities	Charitable, Literary, Scientific etc.	Charitable, Socially Beneficial
Alteration of Objects Complex legal procedure	Simple procedure	Bound by covenants of Trust Deed; Normally only Settlor can modify
Formation Complex Procedures; Three to six months required	Simple and easy	Simple and easy
Name Prior approval required; Authorities have framed narrow Guidelines	Comparatively simple	Comparatively simple

Management Formalities of company law to be observed	Few restrictions imposed under the Act	Very few restrictions imposed under the Act
Meetings To be held as per provisions of law which are quite extensive	Annual Meeting according to provisions of law. Governing body meetings as prescribed in Rules of the Society	No provisions laid down
Penalties Various offences and lapses attract severe penalties in theory	Few offences and penalties have been prescribed	Very Negligible
Legal Status Full legal status	Legal status with certain limitations	Legal status with certain limitations
Statutory Regulation Exhaustive but mature	Very limited	Nominal
Transfer of membership Totally free or controlled, as desired	Not possible	Not applicable
Admission of new members Controlled by general body or Board through issue of capital	Controlled by Governing Body	Not applicable
Removal of members Not possible without consent	Possible without consent	Not applicable
Dissolution or take-over by state Very difficult	Possible	Possible

3.3 Charity Laws

3.3.1 Societies Registration Act, 1860

The Societies Registration Act came into force in 1860, two years after the Revolt of 1957 was put down. The “Sepoy Mutiny” also termed as the “First War of Independence” caught the British imperial Law and order machinery in India by surprise. After the rebellion was crushed with an iron hand, an analysis of how it happened led to an amazing discovery for the British Government when they realised that the intellectual underpinnings of the rebellion came from numerous arts and cultural societies that had sprung up in India in the middle of the nineteenth century. Most of these societies had served as front organisations for the radical elements attempting to free India from the colonial yoke.

With an attempt to control and monitor these societies, the Societies Registration Act was enacted which required all associations of more than seven or more people to be formally registered with the government. The act was modelled after the English Literary and Scientific Institutions Act, 1854 and it was hoped by the British Government that it would be able to monitor and prevent the proliferation of insidious activities. After independence, the act was adopted along with many other acts. However, some regions already had their own laws while others made modifications to the act from time to time[6]. Yet, other states passed completely new laws to regulate societies. The newer laws have many more regulatory provisions than the original act. The following is a list of states wherein the central act, namely, the Societies Registration Act is applicable, as amended from time to time by various states.

1	Assam
2	Bihar
3	Delhi
4	Gujarat
5	Maharshtra
6	Orissa
7	Punjab
8	Haryana
9	Himachal Pradesh
10	Goa, Daman and Diu
11	Tripura
12	Nagaland

The following is a list of states that have passed independent acts

S. No.	**State**	**Name of the Acts**
1	Rajasthan	The Rajasthan Societies Registration Act, 1958 (Act No. 28 of 1958; Total Sections 21)
2	Mysore	The Mysore Societies Registration Act, 1960 (Act No. 17 of 1960)
3	Karnataka	The Karnataka Societies Registration Act, 1960 (Act No. 17 of 1960; Total Sections 31)
4	West Bengal	The West Bengal Societies Registration Act, 1961 (Act No. 26 of 1961; Total Sections 36)
5	Madhya Pradesh	The Madhya Pradesh Registration Adhiniyam, 1961 (Act No. 44 of 1973; Total Sections 44)
6	Tamil Nadu	The Tamil Nadu Societies Registration Act, 1975 (Act No. 27 of 1975; Total Sections 58)
7	Manipur	Manipur Societies Registration Act, 1989
8	Meghalaya	The Meghalaya Societies Registration Act, 1983 (Act No. 12 of 1983)
9	Jammu and Kashmir	The Jammu – Kashmir Societies Registration Act, 1998 (Act No. 6 of 1998; Total Sections 18)
10	Andhra Pradesh	The Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 F (Act No. 1 of 1350 F; Total Sections 15)
11	Uttar Pradesh	Societies Registration (Uttar Pradesh Amendment) Act 2000

[6] This was permitted under the law, as charitable and religious institutions fall under the sate list of the Indian Constitution.

Essentially the provisions of the Maharashtra and Gujarat Act are the same for both the states, though Mahrashtra has amended the act and rules a few times and the Charities Commissioner, the chief functionary under the Act, has more powers than the Gujarat counterpart.

At present, in some states the present acts are under review. In Maharshtra, there is a move towards the enactment of an independent act to govern and regulate societies in the state.

Even after a century and a half, the Government of India, by and large, uses the same provisions of the Societies Registration Act, 1860 to monitor and control the formation of service oriented non-profit voluntary organisations.

3.3.2 Indian Trusts Act, 1882

The Indian Trusts Act, 1882, is applicable for the registration of a private trust. The act extends to the whole of India, except the State of Jammu and Kashmir and the Andaman and Nicobar Islands. The Central Government, form time to time, by notification in the Official Gazette, can extend it to the Andaman and Nicobar Islands or to any part thererof. The Indian trust Act applies only to private trusts.

Some states have separate acts governing the administration of charitable institutions and endowments. These include Maharashtra and Gujarat (The Bombay Public Trusts Act of 1950), Madhya Pradesh (Madhya Pradesh Public Trusts Act, 1951), Rajasthan (Rajasthan Public Trusts Act, 1959), Andhra Pradesh (Andhra Pradesh Charitable and Religious Institutions and Endowments Act 1966), and Tamil Nadu (Hindu Religious and Charitable Endowments Act, 1959). Where there is no specific Trust Act, trusts are registered under the Registration of Documents Act.

3.3.3 Bombay Public Trust Act, 1950

The provisions of the Bombay Public Trust Act, 1950 are applicable in the states of Maharshtra and Gujarat. The Bombay Public Trusts Act, 1950 provides for a machinery of charity commissioners to regulate the administration of public, religious and charitable trusts. It makes registration of all the public, religious and charitable trusts including the religious trusts created under Hindu, Muslim and Christian personal laws mandatory and prescribes certain norms for the maintenance and audit of budget, and accounts of such trusts and further empowers the charity commissioners to inspect and supervise the property belonging to a public trust, as well as the proceedings of the trustees and books of accounts of such a trust. That apart, the act also creates certain restrictions on the investment of public trust money and alienation of immovable property of such a trust.

While the act applicable in Maharashtra was amended when Gujarat was bifurcated from Bombay state, in Gujarat no new rules have been framed under the Act, nor has the Act been reviewed or amended since. However, at present there is a move in Gujarat to review the Bombay Public Trust Act in order to bring it in line with the Maharashtra model. This has been prompted by the Gujarat Government's belief that the Charity Commissioner in Gujarat does not have as far reaching powers as his counterpart in Maharashtra who can decide on many matters without reference to the Courts.

3.3.4 Charitable and Religious Trusts Act, 1920

This law was enacted to provide more effectual control over the administration of Charitable and Religious Trusts. It extends to the whole of India except the State of Jammu and Kashmir. The Central Government, form time to time, by notification in the Official Gazette, can extend its coverage to Jammu and Kashmir.

3.3.5 Companies Act, 1956

The Companies Act, 1956 applies uniformly to all non-profit making companies across the length and breadth of India and this in fact provides impenetrable armour against vested interests.

The following sections describe the provisions under the different acts for registration, reporting, monitoring and procedure for redressing grievances.

3.4 Incorporation / Registration & Renewals

3.4.1 Society

To initiate the registration process of a society, the founders / subscribers need to form an association of interested people and minute the first meeting of the association. They also have to draw up a Memorandum of Association (MOA) that states the name and the objectives of the society along with the details of the governing board. The MOA also needs to state the rules and regulations of the society, including the powers of the society and the ground rules for its conduct.

The following documents need to be submitted along with the application for registration of a society to the Registrar of Societies:

- Memorandum of Association along with the certified copy signed by all subscribers
- Bye laws of the society (rules and regulations of the society)
- Affidavit on non-judicial stamp paper sworn by the President / Secretary. The affidavit has to be signed by an Executive Magistrate or Notary Public.
- Documentary evidence of the premises of the registered office. The evidence would include House tax receipts or rent receipts (along with no objection certificate from landlord)
- A covering letter along with the requisite fee, requesting the registrar for Registration. The fee payable ranges from Rs. 10 to Rs. 100 in different states.

Along with the above stated documents, the association also has to file an affidavit indicating that the name of the society proposed by them does not already exist. In the absence of such an affidavit, the registering authority takes its time to establish whether such a name already exists.

The Registrar of Societies verifies and processes the documents submitted by the association and after satisfying himself about the name of the society and about the compliance of the provisions of the act and the fact that the documents are in order issues the Certificate of Registration.

All societies in India have to be registered under the Registration of Societies Act (1860). Many states in India have the variations, the details of the same have been provided in

Section 3.2.1. By and large, the registration and filing procedures are similar in all the states. The only difference is that in some states there is alittle more paperwork than the others.

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

Renewal of Registration

In some Indian States, it is necessary that operating societies seek fresh registration at the end of a specified period. This piece of legislation is not provided for in the Central Legislation and is considered a source of unnecessary harassment and expense for the societies.

The states of Uttar Pradesh and Kerela, have added another section for "Renewal of Certificate of Registration" after Section 3 "Registration and Fees" of the original act. Under the Societies Registration (Uttar Pradesh) Act, 1974 there is a stipulation of renewal after a period of two years and in the Societies Registration (Kerela) Act, registration is valid for 18 months and thereafter the registration is to be renewed. In the state of Tamil Nadu, as per the provisions of the Tamil Nadu Societies Registration Act, 1975 societies have to renew their registration every five years. Since authorities can take action against any organisation that engages in malpractices, it should not be imperative for organisations to provide and furnish bonafides at the end of a specified period of time, like one year or five years.

3.4.2 Trusts

The application for registration of a trust needs to be made in the prescribed form (10A), which is available from the office of the charity commissioner. After providing details (in the form) regarding designation by which the public trust shall be known, names of trustees, mode of succession, etc., the applicant has to affix a court fee stamp of Rs. 2 to the form and pay in cash, registration fee that may range from Rs. 3 to Rs. 25, depending on the value of the trust property. If the value of the trust property does not exceed Rs 2,000, the registration fee levied is Rs 3. If the value exceeds Rs 25,000/- it is Rs 25/-. The application form is to be signed by the applicant in front of the regional officer or superintendent of the regional office of the charity commissioner or a notary.

The documents that need to be submitted at the time of making an application for registration are:

- A copy of the trust deed (the original may be produced, later, for verification) that is the main instrument of the trust. The trust deed is a document every trustee must turn to, whenever in doubt regarding the aims and objects of the trust, mode of succession or any issue concerning the management of the trust. The trust deed must be executed on non-judicial stamp paper, the value of which would depend on the valuation of the trust property and which would amount to 4% of the established value of the property.

- Affidavit which must be sworn (by the trustees making the application) before a notary and executed on non-judicial stamp paper of Rs 10/-

- Consent letter, which may be prepared on an ordinary sheet of paper and signed by the trustee/s other than the trustee making the application.

In the absence of a consent letter from the remaining trustees, the deputy / assistant charity commissioner can insist on the presence of all the remaining trustees for the hearing.

While the processing of the application usually takes about six to eight weeks, **there is no stipulated time limit under the law.** A notice informing the applicant about the day and time fixed for a formal hearing is dispatched usually 10 to 15 days in advance. The applicant generally has to appear in person or depute his / her lawyer. The original trust deed should be produced for verification at the time of the hearing.

The deputy / assistant charity commissioner before whom the enquiry is held has to ascertain:

- Whether a trust exists and whether such trust is a public trust;
- Whether any property is the property of such trust;
- Whether the whole or any substantial portion of the subject matter of the trust is situated within his jurisdiction;
- The names and addresses of the trustees and managers of such trust;
- The mode of succession to the office of the trustee of such trust;
- The amount of gross average annual income and expenditure of such trust;
- Any other particulars as may be prescribed under sub-section (5) of section 18.

After making inquiries on the aforesaid issues, the deputy / assistant charity commissioner makes entries in the register kept under section 17 (popularly known as schedule I) of the Bombay Public Trust Act and issues a certificate of registration which bears the official seal and registration number of the trust. If the certificate of registration is lost or damaged over the years, a duplicate certificate can be obtained from the department, on application and payment of a nominal fee.

Public Trusts under the Indian trust Act, 1882 can submit an application for registration to the deputy / assistant Charity Commissioner having jurisdiction over the region / sub region in which the trust is sought to be registered. The office of the charity commissioner is situated in Mumbai (Bombay) for Maharashtra and Mumbai, and in a Lower Registry Court in other major cities (including Delhi, Chennai and Calcutta).

The Bombay Public Trusts Act is applicable only in the states of Maharashtra and Gujarat. Rajasthan, Gujarat and Tamil Nadu have their own Trust Acts. Most charities have to be registered as a Charitable Trust. Only the state of Mahrashtra has a Charity Commissioner and a Charity Administration Fund helps support the office of the charity commissioner in the state.

Trusts do not have to renew their registration unlike the societies.

3.4.3 Section 25 Company

The Indian Companies Act, 1956 is a central legislation. The Registrar of Companies, which is the regulatory authority for Section 25 companies, has offices in all states and a Section 25 company is accountable to the office of the Registrar of Companies in the state in which it is registered.

The formalities to be completed for registering a company are more than those of a society or trust. The process includes the following steps:

- <u>Application for Name</u>

The organization must apply for the availability of name to the Registrar of Companies. The application for availability of name must be made in the prescribed form No. 1A, together with a fee of Rs 500. It is advisable to suggest a choice of three other names by which the company will be called, in case the first name, which is proposed, is not found acceptable by the registrar.

According to section 25 of the Indian Companies Act, "where it is proved to the satisfaction of the Central Government that an association is to be formed as a limited company for promoting, Commerce, Art, Science, Religion, Charity or any other useful purpose, and it intends to apply its profits, if any, or other income in promoting its objects and prohibits the payment of any dividend to its members, then the government may, by a licence, direct that the association be registered as a Company with limited liability without the addition to its name, of the word, "Limited" or call it "Private Limited". The process of availability of name takes two weeks.

- <u>Application for Registration – License under Section 25</u>

Once the availability of name is confirmed, an application should be made in writing to the Regional Director, Department of Company Affairs. There are four Regional Directors at Mumbai, Calcutta, Chennai and Kanpur for West, East, south and North respectively.

The application should be accompanied by the following documents:

- Three printed or typewritten copies of the memorandum and articles of association of the proposed company duly signed by all the promoters with full name, address and occupation.

- A declaration by an advocate or a chartered accountant that the memorandum and articles of association have been drawn up in conformity with the provisions of the Act and that all the requirements of the Act and the rules made there under have been duly complied with, in respect of registration or matters incidental or supplementary thereto.

- Three copies of a list of the names, addresses and occupations of the promoters (and where a firm is a promoter, of each partner in the firm), as well as of the members of the proposed board of directors, together with the names of companies, associations and other institutions in which such promoters, partners and members of the proposed board of directors are directors or hold responsible positions, if any, with description of the positions so held.

- A statement showing in detail the assets (with the estimated values thereof) and the liabilities of the association, as on the date of the application or within seven days of that date.

- An estimate of the future annual income and expenditure of the proposed company, specifying the sources of the income and the objects of the expenditure.

- A statement giving a brief description of the work, if any, already done by the association and of the work proposed to be done by it after registration, in pursuance of section 25.
- A statement specifying briefly the grounds on which the application is made.
- A declaration by each of the persons making the application that he/she is of sound mind, not an undischarged insolvent, not convicted by a court for any offence and does not stand disqualified under section 203 of the companies Act, 1956, for appointment as a director.

The applicants must also furnish to the registrar of companies (of the state in which the registered office of the proposed company is to be, or is situate) a copy of the application and each of the other documents, which had been filed before the regional director of the company law board.

The applicants should also, within a week from the date of making the application to the regional director of the company law board, publish a notice in the prescribed manner at least once. This should be done in a newspaper in the principle language of the district in which the registered office of the proposed company is to be situated or is situated and circulating; and at least once in an English newspaper circulating in that district.

The regional director shall, after considering the objections, if any, received within 30 days from the date of publication of the notice in the newspaper, and after consulting any authority, department or ministry, as he may, in his discretion, decide, determine whether the license should or should not be granted.

The regional director may also direct the company to insert in its memorandum, or in its articles, or in both, such conditions of the license as may be specified by him in this behalf.

It generally takes about 8 to 12 weeks after application to receive the license under section 25 of the Companies Act, 1956.

- <u>Registration with ROC</u>

After making corrections, if any, suggested by the Regional Director in the Memorandum and Articles of Association, these are filed along with the Section 25 license at the ROC office in the state. In all states there are offices of the Registrar of Charity. **The registration certificate is normally granted within one month after filling the Section 25 license.**

3.5 Legal Compliance - Reporting requirements and Penalties for Non compliance

3.5.1 Society

The Societies Registration Act, 1860 provides that each society has to submit an annual report to the Registrar of Societies in the state in which it is registered.

A Society has to file list of Managing Body once in every year to the Registrar of Societies. The list has to be filed on or before the fourteenth day succeeding the day on which annual general meeting of the society is held. However, if the rules of the society do not provide for an annual general meeting, the list is to be filed in the month of January. The list should contain the names, addresses and occupations of the members of governing council or other governing body entrusted with the management of the affairs of the society.

With regard to financial reporting, societies in majority of the states do not need to file audited or even un-audited accounts. Only in the states of Bihar, Chattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharshtra, Pondicherry, Tamil Nadu and in parts of Kerala societies have to file audited accounts. In other states either they have to file un-audited accounts or there are no reporting requirements at all. The following table provides details about state wise requirements for filing of accounts

State	**Filing of accounts**
Andhra Pradesh	No requirement
Arunachal Pradesh	No requirement
Assam	Balance sheet and audited report need to be filed
Bihar	Audited balance Sheet, Income and expenditure statement and annual activity report
Chattisgarh	Audited balance Sheet, Income and expenditure statement and annual activity report
Delhi	No requirement
Gujarat	Audited accounts along with audit report need to be filed
Goa, Daman and Diu	Audited accounts need to be filed
Haryana	No requirement
Himachal Pradesh	No requirement
Jammu and Kashmir	No requirement
Jharkhand	Audited balance Sheet, Income and expenditure statement and annual activity report
Karnataka	Audited accounts along with audit report need to be filed
Kerela Malabar region Rest of Kerela	 No requirement Audited accounts to be filed
Madhya Pradesh	Audited balance Sheet, Income and expenditure statement, audit report and report on financial activities to be filed
Maharashtra	Audited balance Sheet, Income and expenditure statement and

	audit report to be filed
Manipur	No requirement
Megahlaya	Balance Sheet, financial report and audit report to be filed
Mizoram	No requirement
Nagaland	No requirement
Orissa	No requirement
Pondicherry	Audited balance Sheet, Receipts and expenditure statement to be filed
Punjab	No requirement
Rajasthan	No requirement
Sikkim	No requirement
Tamil Nadu	Audited balance Sheet, Receipts and expenditure statement, and audit report to be filed
Tripura	No requirement
Uttar Pradesh	Balance Sheet to be filed
Uttaranchal	Balance Sheet to be filed
West Bengal	Balance Sheet and audit report to be filed

States of Maharshtra and Gujarat have added Section 11 to the Societies Registration Act which provides that "Members guilty of offences would be punishable as stranger" – this section is aimed at penalizing officers of the society in case they furnish false information or file improper returns.

3.5.2 Trusts

The reporting requirements under the Public Trust Act for trusts are as follows:

- Annual report and annual return of income have to be filed with the authorities having jurisdiction over the region where trust is registered.

The reporting requirements under the Bombay Public Trust Act are more exhaustive and include (Also see Box No. 3.1 at the end of this Chapter) :

- Trusts with income above Rs 1500 per annum have to submit audited accounts and those with annual income below Rs 1500 have to submit only income and expenditure statements within 6 months of closing of accounts to the Charity Commissioner's office. Penalty for non-compliance on this count is a fine of Rs 1000.

- Changes in moveable or immovable property or names of trustees: Under section 22 of the BPTA, whenever a change in any movable or immovable property or names of trustees etc, takes place or is desired, such changes or proposed change must be reported to the deputy or assistant charity commissioner in charge of the regional office where the register is kept. Where the change to be reported relates to any immovable property, the trustee along with the report needs to furnish a memorandum in the prescribed form containing the particulars relating to the change in the immovable property of such public trust, for forwarding it to the sub-registrar. In all such cases change must be reported to the regional office, **within 90 days from the date of occurrence of such change. Failure to do so is an offence under section 66 of the Act incurring a penalty.**

- Lease of Land / Building: Under BPTA no lease for a period exceeding ten years in the case of agricultural land and for a period of three years in the case of non-agricultural land or a building, belonging to a public trust, shall be valid without the previous sanction of Charity Commissioner.

- Acquiring Immovable Property: When acquiring immovable property, prior permission of charity commissioner is necessary.

As per the provisions of the Bombay Public Trust Act (applicable in Gujarat and Maharashtra), the Charity Commissioner charges a cess @ 2% of the annual income of the trust or society which is to be paid into the Public Trusts Administration Fund. This fund is to be used to meet all the administrative costs of the office of the Charity Commissioner and for providing facilities or promotion work. There is a provision for exemption from the payment of cess granted for a specific period on grounds of "public interest". There is no clear criteria or guidelines as to who qualifies for this exemption and thus leads to arbitrariness and corruption.

All trusts have to file annual reports. Notices are sent to defaulters. In cases of persistent default and in case of mismanagement and misuse of funds, the Charity Commissioner is empowered to sanction prosecution. If sanction is granted then a complaint is lodged with the metropolitan magistrate according to the jurisdiction.

Under Section 41 A the Charities Commissioner can give directions for the proper administration of trusts. In serious cases of fraud and mismanagement the Charities Commissioner can suo moto institute proceedings and set up an inquiry for the removal or dismissal of the trustees. While the inquiries can be started at any time there is no prescribed time limit for concluding such proceedings under the law.

3.5.3 Section 25 Companies

All section 25 companies have to adhere to the following legal requirements and report in accordance to the Registrar of Companies.

- Board meetings must be held regularly, normally once a quarter. Proper detailed minutes should be maintained.

- The shareholders or members of the company must meet each year in the Annual General Meeting. At these meetings they are expected to review annual accounts, elect some of the Directors and also appoint auditors. It is compulsory for companies to give copies of the audited accounts to the members. Proper notices and minutes of the meetings are also required.

- If there is any change in the directors or office addresses, the ROC has to be informed

- The audited accounts, annual report and an annual return have to be filed with the ROC. Important resolutions also have to be filed.

- All directors and important stakeholders have to disclose names of their relatives each year. They also have to give names of other companies or concerns of which they are directors or shareholders.

- They cannot vote on any contract in which they may be interested. All such contracts have to be entered into a register.

- If directors borrow some money from the company it has to be disclosed in the balance sheet, if it is above the stipulated amount. Even if it is settled within the same year.
- Any other payment to the directors, their relatives or their firms has to be disclosed. Similarly payments to highly paid employees also needs to be disclosed.

Alteration of Memorandum:

- A company registered under section 25 can alter the provisions of its memorandum with respect to its objects only with the prior approval of Central government obtained in writing.
- The Central Government may revoke the licence of such body if alteration is made without its approval.

All section 25 companies have to submit a balance sheet at the end of every year. The same is scrutinized and reveals mismanagement of funds if any. **The ROC also has the power to call for information from any organization and also to cancel the registration on grounds of misuse and mismanagement of funds.**

3.6 Grievance Redressal Mechanisms – Appeals

3.6.1 Society

The Societies Registration Act at the central level and its state level variations do not make any provisions for grievance redressal or appeals. The only recourse possible is through the civil courts.

3.6.2 Trusts

If any trustee or beneficiary is dissatisfied and disputes any action of the trustees he can lodge a complaint with the Charity Commission. In case of disputes related to property the complaint has to be filed under Sec 18 which is managed by the Deputy Charity Commissioner. If they are not satisfied with his judgement they can appeal to the Charity Commissioner, who gives directions for removal of cause of complaint. However, if the case is not resolved at this level appeals can be made to the civil courts.

3.6.3 Section 25

Indian Companies Act does not make any provisions for grievance redressal or appeals.

3.7 Dissolution

3.7.1 Society

The Societies Registration Act contains certain provisions to deal with extreme cases. The nature and severity of these provisions vary from State to State. In the state of Uttar Pradesh amendments have been made to Section 13 –"Provisions for dissolution of society and adjustment of their affairs" by adding a clause "if reasonable evidence exists, to empower the registrar to send to the society a notice calling upon it to show cause within such time as may be specified in the notice, why the society may not be dissolved". The latest amendment introduced in March 1994 to the Tamil Nadu Societies Registration Act, 1975 provides for the appointment of "special officers" to manage the affairs of the society for a specified period not exceeding one year, if (a) the committee of any registered society is not functioning properly, or (b) the registered societies activities are mis-managed, or (c) the registered societies activities are not in furtherance of the objects of the society, or (d) the registered society has contravened any provisions of the Act.

In seven states, the Registrar of Societies has powers to dissolve a society in case he feels that the society is not functioning properly, is mismanaged or has contravened the provisions of the acts. The following table provides details of the sections under which such provisions exist.

Andhra Pradesh Telangana Rest of the State	 Section 18, 19 Section 23, 24
Bihar	Section 23 deals with the cancellation of registration which is different from dissolution
Kerela Travancore Region	 Section 25
Madhya Pradesh	Section 34
Tamil Nadu	Section 36-39, 41, 44
Uttar Pradesh	Section 13 B
Wets Bengal	Section 25

3.7.2 Trusts

The Bombay Public Trust Act does not provide for winding up of the trusts by trustees themselves. They have to approach the Charity Commissioner, often if the original trustees are not alive or if the trust funds have dwindled, the Charity Commissioner’s office suggest how to wind up the trust. The Charity Commissioner in Gujarat, however, has no powers to remove the offending trustees and has to file a civil suit for removal of trustees for mismanagement. In Maharashtra the Charity Commissioner has powers under Section 41 D of the Bombay Public Trust Act, 1950 regarding removal, dismissal or suspension of trustee (s) and also for issuing injunctions and directions to the trustees of public trusts so as to prevent them from causing damage to the trust property.

3.7.3 Section 25 Company

The Registrar of Companies has the powers to cancel the registration on grounds of misuse and mismanagement of funds.

3.8 Income Tax

The Income Tax Act, 1961 is a federal / central piece of legislation, which affects all nonprofit organizations (trust, society or company) uniformly throughout India.

Any non profit organisation engaged in ***charitable purposes***, defined as relief for the poor, education, medical relief, and the advancement of any objects of general public utility not involving any activity for profit, can claim exemptions of its income from tax provided that it fulfils the conditions laid down in Sections 11, 12 A and 13 of the Income tax act.

An important principle under the Income Tax Act is that non-profit organizations in India **are not liable to any income tax** provided certain conditions required under law are fulfilled. Some of these conditions include the following:

- The non-profit organization must utilize 85 % of its income in any financial year (1 April to 31 March) on the objects of the organization. In case the organization is unable to spend 85 % of its income in the previous financial year due to late receipt of income or any other reason, the trustees may exercise the option to spend the surplus during the immediately following 12 months. Surplus income can also be accumulated for a period ranging from 1 to 5 years, for specific projects.

- The funds of the organization are invested/deposited only in approved securities specified under section 11(5) of the Income Tax Act.

- No part of the income or property of the organization is used or applied directly or indirectly for the benefit of the founder, trustee, relative of the founder or trustee, or a person who has contributed in excess of Rs.50,000/- to the organization in a financial year.

- The organization files its return of income annually within the prescribed time limit.

3.8.1 Special Exemption for Certain Institutions (Section 10)

The income of certain non-profit organizations engaged in activities pertaining to scientific research, education, running charitable hospitals, etc., is exempt from payment of tax by various provisions contained in a group of different clauses of section 10 of the Income Tax Act, 1961.

In order to qualify for exemption under various clauses of Section 10, the association or institutions should

- Apply its income only for the purposes of scientific research, education and medical relief, etc.

- Should not operate for the purpose of making profit, however, if profits are incidentally earned the exemption would not be denied.

Under the provisions of Section 10 (23) certain types of income of institutions / associations established in connection with the profession of law, medicine, accountancy, engineering, or architecture or any other profession the Central Government may notify, from time to time, would be exempt from income tax. This will, however, be in respect of certain sources of income as specified therein.

A charitable hospital or medical institution approved under Section 10 (22 A) or an education institution approved under Section 10 (22) need not invest its funds only in the form and modes specified under Section 11 (5) nor use 85 percent of its income on the objects of the trust within the same financial year.

Organisations recognized under Section 10 do not need to get themselves registered with the commissioners of Income Tax under the provisions of section 12 (A) of the Act. However, to qualify for the benefits of exemptions under section 11, in case the organisation is denied exemption under Section 10, it is advisable to register the organisation with commissioners of Income Tax.

The notification under Section 10 contains the information regarding the number of years for which the exemption is effective.

3.8.2 Business Income

Section 11(4A) of the Income Tax Act, 1961 has been amended with effect from 1-4-1992 and, accordingly, if the income from business is incidental to the attainment of the objects of the non-profit organization and separate books of account are maintained by such an organization in respect of such business, the profit is not considered for taxation. In other words, the profit is fully exempt from tax.

Income from a business undertaking which is itself held under trust for charitable purpose [under section 11(1) (a)] is also exempt.

Further, an activity resulting in profit need not always be treated as income from business. Income of a non-profit organization from letting out halls (for private or public functions), rest houses, or auditoriums does not amount to business.

3.8.3 Income derived from property

Income derived from property held under trust wholly for charitable or religious purposes are exempt, provided 85 percent of the same is applied to such purposes in India (Section 11).

In case a trust is unable to spend 85 percent of its income in the previous financial year due to reasons such as late receipt of interest or a grant, the trustees have the option to spend the surplus during the succeeding twelve months. A letter to this effect, however, must be submitted to the Income tax department, at the time of filing the returns.

Surplus income can also be accumulated for a period not exceeding five years, for specific projects such as construction of a school building, or a new wing of a hospital, etc. Application for accumulation of surplus income should be made in a prescribed form (Form No. 10). The accumulated income, during the period of accumulation, should be invested according to the form and modes prescribed under Section 11 (5) of the Income Tax Act. If the accumulated income, or any part thereof, is not utilized for the specified purpose during the period of accumulation or in the sixth year, the amount which has not been utilized would be liable for tax as the income of the previous year immediately following the expiry of the accumulation period. If due to circumstances beyond the control of the trustees, the accumulated income cannot be spent for the purpose for which it is accumulated or set apart, the assessing officer on the basis of an application submitted by the trustees, may allow the accumulated income to be utilized for other charitable or religious purposes in conformity with the objects of the trust.

Non profit organizations undergo assessments at the end of each financial year and can lose or retain the tax exemptions according to performance, as determined by the assessing officer.

3.8.4 Donations to Charitable Institutions

Corpus donations are not subject to the compulsory 85 percent spending regulation. Hence these can be accumulated for the purpose of permanent projects. However, donations received through the charity box cannot be taken into the corpus of a trust to the corpus of the trust. It has to be treated as income and no deduction can be allowed u/s 11(1)(d).

NPOs can also secure income tax exemption for other donations made to them by getting certificates under Section 80G, 35AC, 35(1)(iii), 35CCB of the Act.

3.8.4.1 80G

A donor (whether an individual, association, company, etc.) is entitled to a deduction (in computing his total income) if he makes a donation to a nonprofit organization enjoying exemption under section 80G of the Income Tax Act. The amount donated, however, should not exceed 10% of the donor's gross total income as reduced by the deductions (other than the deduction under section 80G) for the purpose of rebate. If the donation is in excess of 10% of the donor's gross total income, the amount in excess of 10% cannot be considered for deduction under this section.

Donations in kind (such as computers, medical equipment, vehicles, etc.) are not eligible for deduction under section 80G. The donation must be a certain sum of money.

While donations made to various funds set up by the National or State Government (like the National Defence Fund, the Jawaharlal Nehru Memorial Fund, the Prime Minister's Drought Relief Fund, and the National Foundation for Communal Harmony) qualify for 100% tax rebate (i.e., the whole of the amount donated is allowable as a deduction) donations made to nongovernmental, non-profit organizations exempt under section 80G (5) of the Income Tax Act qualify for only 50% tax rebate.

With an 80 G certificate donors can claim 50% deduction from their taxable income (as distinct from the tax payable) Almost any NPO who is exempt from income tax can be approved under this section. The NPO needs to obtain the approval of the Commissioner of Income Tax (CIT). The CIT issues a letter granting approval under section 80 G, with a number and period of approval (can be upto 5 years at a time).

To obtain approval, an NPO should:

- Make an application in form 10G in triplicate.
- The application should be accompanied by the following documents:
  - Copy of registration granted under section 12A or copy of notification issued under section 10(23) or 10(23C);
  - Notes on activities of institution or fund since its inception or during the last three years, whichever is less;
  - Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

The commissioner may call for further documents or information if necessary. If all is in order the certificate is given specifying the year or years for which the approval is valid. If the application is rejected the reasons for the same will be recorded in writing and a hearing will be given prior to rejection.

The time limit for the approval/rejection is 6 months from the date of application.

3.8.4.2 Section 35AC

Section 35AC was inserted in the Income Tax Act, 1961 by the Finance (No. 2) Act, 1991 and came into force with effect from April 1, 1992.

Contribution(s) made to a project/scheme notified as an eligible project or scheme for the purpose of section 35AC of the Income Tax Act would entitle the donor (individual, institution, or company) to a 100% deduction of the amount of such contribution. In the case of withdrawal of 35 AC certification, the organization / company has to pay tax on the funds raised under the project in the financial year. The tax benefits given to individual donors are however not revoked and the benefits of 100% tax exemptions continue.

Eligible projects and schemes for exemption under section 35AC include one or more of the following:

- Construction and maintenance of drinking water projects in rural areas and in urban slums, including installation of pump-sets, digging of wells, tube-wells and laying of pipes for supply of drinking water;
- Construction of dwelling units for the economically weaker sections;
- Construction of school buildings, primarily for children belonging to the economically weaker sections of the society;
- Establishment and running of non-conventional and renewable source of energy systems;
- Construction and maintenance of bridges, public highways and other roads;
- Pollution-control projects;
- Promotion of sports; and
- Any other program for uplift of the rural poor or the urban slum dwellers, as the national committee may consider fit for support.

To secure the certificate a proposal has to be submitted along with the budget to the National Committee at Delhi. **The validity for the exemptions granted under 35 AC are for three years.** The exemption can be extended after the three-year term for which the organisation needs to submit a fresh proposal.

There is only one national committee - "National Committee for Economic and Social Welfare" which is responsible for granting 35 AC certification. The committee has fourteen members, consisting of individuals of prominence in public life. The committee is headed by Secretary and is a nominated body for a three-year term. At present there is no functional committee, the last nominated committee's term expired on 20th May 2004 and ever since a new committee has not been constituted. The committee meets once a month for reviewing applications and proposals. Since all the members are unable to attend all meetings and to ensure that the same does not hinder the work there is a quorum based on which the work of the committee is decided. There exists a Secretariat that is headed by Joint Secretary (FTD) Central Board of Direct Taxes (CBDT). The other members include Deputy Secretary and two section officers.

With respect to the processing mechanism for applications, a section officer reviews the applications received; based on his review, in cases of proposals with certain deficiencies he issues deficiency letters or if the proposals are in order he forwards it for the consideration of his superiors and the committee. The completed proposals and applications are presented before the committee for their decision. One committee member is required to visit the project / organization site and prepare an assessment about the organization and the project which he / she presents in the next meeting of the committee. In its monthly meeting the committee is able to take up about 25 to 30 proposals. Since the number of receipts of proposals is much higher it results in back log. There is no time limit stated by law for granting approval under 35 AC. **The time taken to grant exemptions varies from case to case – from two to six months.**

Each organization which houses a project with exemptions as granted under Section 35 AC has to submit an six monthly report which outlines the progress of the project and the details about the resources / donations received. There is no concrete effort taken by the department for monitoring the projects / organizations. The committee is busy reviewing applications and granting exemptions under Section 35 that no time is left for taking on monitoring responsibilities. If the committee is not satisfied with the progress of the project or if it feels that the project is not meeting it's said objectives the approval can be withdrawn by the committee. **The decision of the committee is final** for deciding whether 35 AC certification is to be given to a project or not, as well as for repealing the certification. **There is no provision for appeal.**

3.8.4.3 Section 35(1)(ii) & (iii)

One hundred per cent deduction is allowed to donors for contribution(s) made to organizations approved under section 35(1)(ii) (such as scientific research institutes or a university, college, or other institution) specifically for "scientific research" and under section 35(1)(iii) specifically for "research in social science or statistical research."

3.8.4.4 Section 35 (1)(iii)

Donors giving under this section can claim up to 125% deductions; donations can be 100% of the taxable income, but donations must be made to projects approved under section 35(1)(iii). Only organizations undertaking research in social sciences or statistical research can be approved. NPO should apply in form 3CF and send it to the Central Board of Direct Taxes through CIT. The approval is not given for more than 3 years at a time. It can be renewed. The NGO needs to maintain separate accounts for the money so received. This does not mean separate cash or bank account but only a separate ledger. An Annual Return also needs to be filed. This deduction will be withdrawn in 2005.

3.8.4.5 Section 35 CCB

Where donation is made to an association or institution, which has as its object the undertaking of any programme of conservation of natural resources or afforestation, to be used for carrying out any programme of conservation of natural resources or afforestation approved by the prescribed authority; or to such fund for afforestation as may be notified by the Central Government, then the donor shall be allowed a deduction of the amount of such expenditure incurred. The prescribed authority (Secretary, Department of Environment, Govt. of India, New Delhi) shall not grant such approval for more than three years at a time. Under the Indian Income Tax law, it is mandatory for organizations to retain accounting records for 8 years from the end of the assessment year.

3.8.5 Legal Compliance under Income Tax rules and regulations:

Compulsory Audit (Under Section 12A):

- If the total income of a non-profit organisation as computed exceeds Rs.50,000/- in any financial year, the accounts are to be audited by a Chartered Accountant.
- The audit report in Form No. 10 B duly signed and verified and setting forth such particulars as may be prescribed, is to be submitted along with the return of income for the relevant assessment year.

Filing Annual Returns:

- Every non-profit organisation is required to file a return of income in the prescribed Form No.3A every year on or before the due date if the total income exceeds the maximum amount, which is not chargeable to income tax.
- The due date means;-30th July of the assessment year if the total income is less than Rs.50,000/- but in excess of the maximum amount which is not chargeable to Income-Tax 1st October of the assessment year if the total income is in excess of Rs.50,000/-

Permanent Account Number: (Under Section 139 A)

- All non-profit organisation should apply for a permanent account number, if they have not already been allotted such number.
- The application should be made to the assessing Officer, in duplicate, in Form No. 49 A.

Deduction of Income Tax at Source (TDS)

- **From payment of Salary (section 192)**
  - Any non-profit organisation who is responsible for paying any income chargeable under head "*Salaries*" shall, at the time of payment, *deduct income tax on the amount payable*.
  - The amount so deducted shall be deposited to the *credit of the Central Government within 7 days* from the date of payment
  - An *annual return in Form No. 24* is to be sent by the employer to the Assessing Officer by *May 31* in respect of salaries pertaining to the preceding financial year.
  - *Failure* to furnish the returns makes the person liable to pay *penalty*

- **From Payment to Contractor and Sub-Contractor (section 194 C):**
  - Where any sum is credited to a contractor for carrying out any work and where contract amount exceeds Rs.20,000/-, a nonprofit organisation must deduct TDS at source from such sum at the time of its credit or payment to the contractor.
  - The amount so deducted must be deposited to the credit of the central Government within one week from the last day of the month in which the deduction is made.
  - An annual return in Form No. 26 C is to be filed with the concerned Income Taxofficer by the 30th June.
- **From Payment of Rent (section 194 I):**
  - Any non-profit organisation which is, responsible for paying any person any income by way of rent in excess of Rs. 1,20000/- during the financial year, must at the time of payment or credit thereof, deduct income tax at source at the rate of 15% if the payee is an individual or a Hindu undivided family and 20% in other cases.
  - The amount so deducted shall be deposited to the credit of the Central Government, within a week from the last day of the month in which the deduction is made.
  - An annual return in Form No. 26 J is to be filed with the concerned Income Tax Officer by 30th June each year in respect of the preceding financial year.
  - Failure to furnish the returns makes the person liable to penalty.
- **From Payment of fees for Professional and Technical Services (Section 194J):**
  - Any non-profit organisation which is responsible for paying to a professional any sum by way of fees for professional services, or fees for technical service in excess of Rs. 20,000/- must deduct an amount equal to 5% of such as income tax on income comprised therein.
  - The amount so deducted must be deposited to the credit of the central Government within one week from the last day of the month in which the deduction is made.
  - An annual return in Form No. 26K is to be filed with the concerned Income Tax Officer by June 30 each year in respect of preceding financial year.
  - Failure to furnish the returns makes the person liable to penalty.
- **Certificate for Tax Deducted at Source (Section 203):**
  - Every non-profit organisation deducting tax at source shall furnish to the person on whose behalf tax is deducted, a certificate to the effect that the tax has been deducted
  - The certificate should specify the amount so deducted, the rate at which tax has been deducted, and such other particulars as prescribed in Form No.16 for salaries and Form No.16 A for other deductions.
  - These certificates can be issued by the employer/payer on his letterhead or on an ordinary paper.

- o The certificate is to be furnished within one month from the close of the financial year in case of deductions made from salaries. For other cases such certificate shall be furnished within one month from the end of the month in which such credit is given or payment is made.

- **Publication of accounts in newspaper**

  Those NPOs whose annual ***income/receipt exceeds 1 crore*** are required to publish their accounts in newspapers. So far, there are no clear guidelines whether the full statement of accounts, or just a summary has to be published.

3.8.6 Provisions for Penalties

The law provides for a penalty of Rs. 5,000 for non-filing of income tax return. There is also a provision to levy interest for the delayed submission of return. In case a return of income is not furnished even after a notice from the Assessing officer a penalty of Rs. 10,000 is levied. A wilful failure to file return can even attract prosecution. However, in practise the enforcement of this provision is very poor.

3.8.7 Provisions for Appeals under Income Tax Act

Appeal for Refusal of registration - Section 12 AA has been inserted with effect from financial year 1997-98 to provide for a procedure to be followed for grant of registration to a trust / institution. It provides that the Chief Commissioner or Commissioner shall call for the documents and information and hold enquiries regarding the genuineness of the trust / institution. In case he is satisfied about the charitable / religious nature of the objects and the genuineness of the activities of the trust or institution, he will pass an order granting registration. However, if he is not satisfied he will pass an order refusing registration. However, ample opportunity has to be provided to hear the applicant trust / institution.

There is a clear procedure under the Income Tax act for appeals for refused registration. The organisation that has been refused registration may ask for a reasoned order. The case is reviewed by officials different from those that took the initial decision of not registering the organisation. In case of continued dissatisfaction an appellate commission and the IT tribunal may be approached. The High Courts can be approached only on issues of interpretation of the law. Most of such cases centre around what constitutes “objects of general public utility” that is questions of definition.

It is also proposed to amend Section 253 of the Income Tax Act relating to appeals to the appellate tribunal. The existing provisions do not provide for an appeal to the Appellate Tribunal against an order passed under Section 12 AA relating to the registration of a trust or institution. It is proposed to amend this section so as to insert a reference to section 12 AA so that appeal may be filed against an order passed under Section 12 AA.

3.9 Previous Attempts at Reform

3.9.1 State Level Reform Initiatives

Attempts have been made periodically by the state to check mismanagement of charitable institutions. Since charity was considered a state subject, majority of the attempts to improve governance of charitable organizations have been taken up by the state governments. The central government's attempts at dealing with recalcitrant trusts were largely through the Income Tax Act, which regulated the utilisation of charitable funds.

Some of the earliest efforts at trust reform have been by the then Madras Government in the form of a series of acts applicable to Hindu religious and charitable endowments. The main purpose of the Acts of 1951, and 1959 was to provide for better management and administration of Hindu religious and charitable endowments act; to secure efficiency and speedy disposal of the work of the organization; to preserve the properties and the income of the institution and endowments; and to ensure that the incomes of the institutions and endowments are utilised for the purposes for which they were intended. But this act related mostly to religious organizations, and those set up by Hindus alone. It did not bring into its ambit societies or other kinds of organizations.

The other state where serious attempts were made to review the functioning of charities periodically was Maharashtra, where the Bombay Public Trust Act was amended 25 times between 1950 and 1997. Each amendment gave more and more powers to the Charities Commissioner to check mal-administration, to enable him to check the misappropriation and misuse of trust funds, and to check abuses of powers by trustees. Each successive amendment granted more powers to the Maharashtra Charities Commissioner for removal, dismissal, suspension of trustees; for issuing injunctions and directions to them; and to appoint receivers, etc. The amendments were to bring the Maharashtra Charities Commissioner at par with the Commissioners in Andhra Pradesh and Orissa. Till these amendments were introduced the Charities Commissioner had to go to court of law to remove trustees or give injunctions to trustees to prevent loss to the trust that lead to considerable delays.

The Bombay Public Trust Act was again reviewed by the Maharashtra Law Commission constituted in 2001, on the grounds that there is "general public discontent about the administration and implementation of the Bombay Public Trusts Act, 1950, not only in the minds of the public, **but also in the minds of political leaders, in the administrative department of the government,** and in the officers who administer this act." (emphasis ours) In short, the review was not because of public representation as such but because of a political mandate.[7] The Commission has submitted its report to government for introducing a new Bill. While several of its provisions for improving the performance of the Charities Commissioner's office by strengthening its capacity have been welcome steps, other provisions vis-à-vis Section 21.1.4 and 21.2 which provide for appointment of government officers on to important and wealthy trusts (having an income above Rs 5 lakhs), and the drawing up of a trust constitution which would supersede the instrument of the trust, have raised an outcry from charitable organizations. The bill, therefore, has been stayed till objections from the public have been received[8]. SICP's representation is attached as Annexure 8.

Gujarat has not amended or so far reviewed the Bombay Public Trust Act, as applicable to it, nor framed separate rules for itself. However, Gujarat too is reported to be considering an amendment on the lines of the Maharashtra and Andhra model, to give more powers to the Charities Commissioners.

3.9.2 Central Level Reform Initiatives

[7] See Maharashtra State Law Commission Thirteenth Report on The Bombay Public Trusts Act 1950, October 2003.
[8] See Sampradaan, p.10, No 38, May June 2004, for the letter written by SICP to the Law Commissions for full details of the proposals, and SICP's representation.

Apart from these steps taken by some states, the state of charity in the country has been mainly a concern of the Income Tax department and relates mostly to misuse of tax concessions. Several committees and commissions have gone into the state of charity as apart of a wider exercise of looking at tax reform. One of the earliest attempts in recent times was the ***Direct Taxes Administration Enquiry Committee, 1958-59***. The committee noted that loopholes in the provisions relating to charity in the Income Tax Act had helped the formation of pseudo charitable trusts by businesses that appropriated trust funds for their own businesses and continued to enjoy tax exemption. [9]

The Wanchoo Committee (The Direct Taxes Enquiry Committee) of 1972 noted that the misuse continued. It quoted the Public Accounts Committee's 121st Report thus: "While trusts fulfil a laudable social objective, they have also been used as a device to avoid tax" Though recommending measures to plug the loopholes the Committee simultaneously remarked that the law should not be so draconian as to discourage the growth of genuine trusts and charities and the law should continue to create a congenial climate for the growth of charitable institutions. They recommended that the Income Tax Act be amended to require trusts above certain minimum size to register themselves with the income tax authorities; to furnish annual income tax returns, and to have their accounts audited in a prescribed manner. Most of the recommendations were incorporated in subsequent Finance Acts.[10]

The ***Raja Chelliah Committee on Tax Reforms***, set up in 1992, also examined the charities and charitable organizations with a view to streamlining the procedures. The committee made a number of suggestions for simplifying procedures and minimising delays. These included:

- Application under Sec 12 A and sub section (5) of section 80G to be processed together and with utmost expedition, that is, within a period of 3 months from the date of receipt of the applications. (Has been incorporated)
- Approvals granted and renewals of approvals should be valid for 5 years. (Hasn't been incorporated)
- The last date for filing returns in case of organizations registered under sec. 11 and 12 of the Income tax act to be fixed at 31 December instead of 31stv August. (This has not been implemented and it remains 31 August or extensions as announced from time to time)
- The income limit for audit laid down in clause (b) of section 12 A to be enhanced from Rs. 25,000 to Rs. 50,000 (Has been incorporated)
- The law should be made uniform for all charitable organizations irrespective of the dates on which they were set up.

Many of these recommendations have found a place in later Finance Acts. The committee concluded that while "charity is indeed a desirable objective, there is no case for making it more attractive at the expense of revenue."

Similarly, the ***Public Accounts Committee, 1994-95*** in its 102 report to the Lok Sabha, took the stand that the amount of revenue involved in giving tax exemption to trusts is substantial and, since there has been no systematic evaluation of the funding of these trusts, of their

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[9] See Report of the Direct Taxes Administration Enquiry Committee, 1958-59, Ministry of Finance, Government of India, 1959, pp.179-181

[10] Report of the Direct Taxes Enquiry Committee. Final Report. Dec 1971. Ministry of Finance, Government of India, pp.79-84.

contribution towards the enhancement of social objectives, or of abuses if any, there was no case for extending tax exemptions until there has been such an evaluation.[11]

Perhaps the most comprehensive look at the regulatory and promotional structure for the charitable sector so far as that of the "***Task force on Laws relating to the Voluntary Sector"***, set up in November 2000, and reported in 2001. The Task Force considered all the central acts pertaining to the sector including the Income Tax Act, 1961; Registration of Societies Act 1860; FCRA; and Labour laws. It, however, did not consider the charitable trusts act on the grounds that they were not central acts.

The Task Force considered the various provisions of the Income Tax Act from the point of view of ironing out difficulties experienced by NGOs, without taking away from the basic features of the Law. The Task Force also considered that the provisions of the Income Tax law should facilitate larger and smoother flows of grants / donations to NPOs from income tax payers of all categories. The recommendations of the Task Force have been framed in the light of the considerations above and are set out in the following:

- It accepted that the definition of charity needed to be broadened to take into account development and special aspects of it such as empowerment of the powerless, and advocacy of a public cause. It recommended that "charitable purpose" as defined in Section 2(15) of the Income Tax Act may be replaced by "charitable purpose including relief of the poor, education, medical relief, and the advancement of any other public cause or object for social and environmental welfare including economic empowerment and development of the weaker and disadvantaged sections for sustainable livelihood and social justice". The Task Force noted that this definition is of an inclusive nature, and should cover all activities of NGOs deserving public support.

- It recommended that NPOs whose gross income does not exceed the general income limit for exemption from income tax (presently Rs. 50,000 in the year) should be exempt from income tax. (This recommendation has been incorporated. Infact from this financial year the limit for exemption would be Rs. 1 lakh, non-profit organisations with income less than Rs. 1 Lakh would not need to file tax returns).

- The task force recommended that there should be no limits to the amount a donor can donate for providing tax exemptions. (This recommendation was not accepted and it remains at 10% of a donor's income that qualifies for tax exemption on donations).

- The task force felt that it would be in order if deductions from taxable incomes of donors, under any provision of the income tax law, are allowed only for donations made by cheques or demand drafts on banks, Where the donor indicates his PAN (Permanent number from the Income Tax Dept), he should be entitled to 100% deduction of the donation from his taxable income.

- The task force recommended that the present wording of Section 10 (23 C) sub clauses relating to eligibility for complete exemption for tax of all income of an NGO engaged in activities of importance to a state or the nation, needs to be modified so as to include activities which may be taken up by the NGO in a part of the state or the country in terms of the new definition of " charitable purpose" recommended above in

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[11] Assessment of Religious and Chari6table Trusts, Public Accounts Committee, 1994-95, 102nd Report, Lok Sabha, N. Delhi, 1995,p.42.

para 4. The present wording gives room for an individual officer of the Income Tax department to apply it in a narrow manner, for instance that an NGO works only in a part of a state, and therefore cannot be considered for exemption under this section.

- Any capital gains accruing to an NGO should be exempt from tax if it is used/applied for activities in furtherance of its objects.

  - The Act should be modified so that income from income generation projects of an NGO is not treated as business income attracting Section 44AB. (This has not been implemented)

  - NGOs registered under section 12 A of the Act should be entitled to receive interest on investments made by it (within the categories permitted under section 11(5) of the Act) with out deduction of income tax at source on the interest amounts.

- Section 11(2) of the Act should be modified to do away with the percentage stipulations applicable to expenditure from grants/donations received by an NGO for particular programmes or projects, so that no unspent balance is liable to tax. It should be left to the person or the agency making the grant/donation to make sure that it is spent properly.

- Section 13(3) (b) has a monetary limit of Rs. 50,000 for the cumulative contribution to an NGO by a person, above which he is considered a key person. All transactions with that person come under scrutiny. This monetary limit would be too low for a regular donor contributing say just Rs. 50,000 or 6,000 a year to an NGO, because in 8-10 years that donor would become a key person. Large NGOs like CRY would have to track hundreds of donors' cumulative contributions for years, not knowing when any of them would cross the monetary limit. As an alternative, the Task Force suggests that instead of a monetary limit, say 1 per cent of the cumulative income of an NGO, or Rs, 50,000, whichever is higher, may be stipulated. With such a small financial stake a donor will not be able to manipulate the NGO's affairs, and the intention of the law will be met.

- Far too often the intention of the law in providing exemptions from taxable income under different sections is defeated by the delays in disposal of applications from NGOs under Section 80G, 35AC, 10(23C), etc. The Task Force recommends that where an NGOs application is complete, it must be disposed off within say 60 days, or 90 days, as may be appropriate for applications under different sections.At the end of the period, the exemption sought should be taken as automatically granted, unless within that period the departmental officer raises any serious queries on any matter furnished in the application. If an application is rejected, the reasons for the rejection must be clearly specified, so that the NGO can appeal to a higher departmental authority against the rejection, or ask the first authority to review its decision.

- The Task force feels that if the government amends the law on the lines recommended above, the NGOs on the other hand should accept the obligation to make public sufficient details of their affairs to enable interested people to from informed opinions of the worth of NGO's work. It is suggested that where an NGO is given a dispensation under one or the other Section Providing for exemption of donations from income tax, or is allowed complete exemption of its income from tax, the NGO should also published in local newspapers. The abridged audited accounts and a sufficiently informative report of its activities for that year. Local people in the area of the NGO's work would be the best placed to judge how it has performed. The NGO should furnish to the tax officer copies of the material published thus in local newspapers. Failure of an NGO in this regard should automatically lead to its losing the tax exemption dispensation. This condition may not perhaps apply to NGO's which are engaged in only training, facilitation and funding support to other NGO's and have no direct activities in the field. (Note: this recommendation was accepted, though not many of the others and was reflected in the Finance Act of 2002. But it led to protests from the charitable sector and was therefore retained only for organizations with income over Rs 1 crore.

- There are thousands of small-localised NGO's in the country who have not registered themselves under the Income Tax Act, or field returns under the Act. They need to be helped to come into the mainstream, without attracting penalties. It is recommended that some sort of a voluntary disclosure scheme may be framed, under which they could register themselves now, and be excused from penalties for the omission to do so in the past and for not filing returns.

- The Income Tax department should develop a database for donations by tax payers for which they claim and have been given exemptions from tax. It is necessary that this database is published and is available to researchers, the NGO community, and the general public. The database could categorise donations by different categories of tax payers, the Sections of the Act under which exemptions have been allowed/claimed, the categories of NGOs and the purposes/ activities for which the donations were made.

- The Task Force feels that officers of the Income department need to be given through orientation and training in this area of their work of administering the Income Tax Act.

- It would be very desirable for the department to set up standing committees at the CBDT level and in the Commissionaires (various IT offices), to which NGOs can represent their grievances and suggestions for improving the interfaces between the department and NGOs.

It is regrettable that inspite of several previous attempts at reform and many sound suggestions by expert committees of both government and non-profit sector, there has been very little appreciable change on the ground.

Applicable for Trusts registered under Bombay Public Trust Act 1950

Documents to be filled	**Period**	**Prescribed form**	**Important Points**
Application for Registration of trust	Within 3 months of creation of the trust	Schedule II	Application to be signed and affirmed by the trustees / by any other person having interest in the public trust. A true copy of instrument of the trust. If executed, to be enclosed.
Application of registration of a trust created by Will	Within 1 month of granting of probate / within 6 months of Testators death whichever is earlier	Schedule II	Application to be signed & affirmed by the applicant & to be accompanied by a true copy of Will
Memorandum of Particulars of Immovable Properties	Within 3 months of creation of the Trust	Schedule II-A	Memorandum to be signed & affirmed by trustees.
Intimation of changes	Within 90 days of occurrence of change	Schedule III	To be signed & affirmed by trustees – Resolution copy Resignation copy, Acceptance copy, Death certificate, Election record & other relevant evidence.
Memorandum of change relating to any immovable property	Within 90 days of the occurrence of the change	Schedule III-A	Memorandum to be signed & affirmed by trustees.

Box No. 3.1

Budget	1 month before commencement of Accounting Year	Schedule IV-A	Required to be filed only if the annual income exceeds Rs. 5,000 in case of public, religions trust and Rs. 10,000 in case of other cases
Accounts	Accounts to be audited within 6 months of closing of the Accounting Year	Balance Sheet (schedule VIII) Income & Expenditure (Schedule IX), Statement of Income Chargeable to contribution (Schedule IXC)	Trust exempt from Audit required to file IX A and IX B, Auditors report must be forwarded to the office of Charity Commissioner within fortnight of completion of Audit

Immovable Property (Section 36)

Investment in immovable property requires Charity Commissioner's permission. No permission is required if immovable property is acquired to fulfill objects of the trust e.g. Construction of school building. libraries, office, sale, exchange or gift of any immovable property of a public trust is invalid unless previously approved by Charity Commissioner.

Contribution (Section 58, Rule 32 & 33)

Every public trust not exempt having gross annual income exceeding Rs. 25,000/- has to pay contribution to Public Trust Administration Fund at rates notified by State Government from time to tome. For last 11 years, the rate notified is 2%.

Gross annual income means gross income from all sources including donations and offerings, but excluding corpus donation. Contribution is payable at prescribed rte on the gross annual income after making deduction in Rule 32.

The following trust are exempt from payment of contribution:

1) Small trusts having annual income of Rs. 25,000/- - or less
2) Public trust exclusively for advancement relief / veterinary treatment.
3) Recognized Public Libraries & Reading Rooms.
4) Public trust exclusively for the purposes of relief of distress caused by scarcity, drought, flood, fire or other natural calamity.

Borrowing Power of Trustees

No trustees shall borrow money (whatever by way of mortgage or otherwise) for purpose of or on behalf of the trust except with the previous sanction of Charity Commissioner and subject to conditions and limitations as may be imposed by him / her in the interest or protection of the trust.

Penalties (Section 66)

Section	Subject	Maximum Fine
Sec. 18(1) 18(4)(1)	Duty of trustee to apply to Deputy / Asstt. Charity Commissioner for registration of public trust within time	Rs. 1,000/-
Sec. 18(7)	Duty of trustee to send memorandum of immovable property to certain officers / authorities within time	Rs. 1,000/-
Sec. 22 B	Failure to make an application within time provided for	Rs. 100/-
Sec. 22C	Failure to send memorandum within the time provided for	Rs. 100/-
Sec. 29	Duty of an executor to apply for registration of public trust within the time provided for.	Rs. 1,000/-
Sec. 32	Failure to keep regular accounts	Rs. 1,000/-
Sec. 35	Failure or omission to invest money in modes Specified.	Rs. 1,000/-
Sec. 41 AA	Failure without reasonable cause to comply with any direction issued under this Section.	Rs. 2,000/-
Sec. 59	Failure to pay contribution u/s 58 by trustee or by a person changing or collecting dhramada.	Rs. 1,000/-

Trustee: In short who runs the trust with the control and management of the Charity Commissioner. He, who is holding legal ownership or permission of or dominion over the subject of the trust is bound to allow the beneficial enjoyment of usufructs of property to be reaped by another recalled beneficiary.

Section 10: Trustee cannot renounce after acceptance except by – (1) permission of a principal civil court of original jurisdiction, (2) consent of beneficiary competent to contract and (3) by virtue of special power of the instrument.

Trustee cannot delegate his duties unless instrument of trust so provides, or the delegation is in the regular course of business or the delegation in necessary or the beneficiary being competent to contract consents the delegation.

Trustee to Act jointly

1) Duty to obey direction of settlement.
2) Duty to be ready with his accounts
3) Duty to preserve properties.
4) Duty to realization of debts.
5) Duty to Act jointly
6) Duty, not to delegate his powers or duties.
7) Duty, not to take advantage of trust property.
8) Duty, not to harm charity but must work for good of charity.

Statutory duties of Trustees

1) Registration of Public Trust u/s 18.
2) Change Report u/s 22
3) Further inquiry u/s 22 A
4) Keeping Accounts u/s 32 & auditing the same u/s 33.
5) Investment of public money u/s 35.
6) Sanction of alienation of immovable property u/s 36 and for borrowing money u/s 36 A and for keeping list u/s 36 B.
7) Appointment of new trustee u/s 47.
8) Suits relating to public trust u/s 47.
9) Suits relating to public trust u/s 50.
10) Cypres Doctrine application u/s 35.
11) Application to court for opinion, advice and direction u/s 56A.
12) Contribution to be paid u/s 58.
13) Inviting tenders u/s 19 …… etc.

CHAPTER 4

REVIEW OF INSTITUTIONAL FRAMEWORKS FOR CHARITY ADMINISTRATION IN OTHER COUNTRIES

The present chapter is based on a review of the institutional framework for charity administration in other countries including Canada, United Kingdom (UK) and United States of America (USA). The main aim of the review was to identify some components of the charity administration framework that have proved to be successful in promoting the non – profit sector / charities and in encouraging good governance of these organisations. The review also aimed at ascertaining the adaptability of such successful components in the Indian charity administration scenario.

4.1 Charity Administration in UK

4.1.1 Charities in UK

There are 188,000 registered charities in England and Wales[12]. Their numbers have been growing by approximately 1,800 per year since 1990. Most registered charities are relatively small. In 2001, the 372 large charities whose annual income exceeded £10 million received more than one-third of the £26.71 billion total income of registered charities. There were 42,012 registered charities with an income of £1,000 or below, and 59,699 with an income between £1,001 and £10,000.

There are also a large number of charities that are not registered. For example, very small organizations with income of £1,000 or less, along with certain classes of charity including churches of particular denominations, do not have to register – these are collectively called *"excepted"* charities. Other types of charities, including universities, housing associations and some schools, termed *"exempt"* charities, are not registered on the grounds that they are regulated by other agencies.

The sector also has economic weight. It is an increasingly significant employer: full-time equivalent jobs (FTEs) increased by 6.7 percent between 1998 and 2000, more than in either private or public sectors. General charities now employ over half a million workers, representing the equivalent of 451,000 full time equivalent jobs or 2.2 percent of the total UK workforce.

The charities in UK are registered, monitored, and facilitated through a Charity Commission.

4.1.2 Charity Commission

The Charity Commission has been established by law as the regulator and registrar for charities in England and Wales. It has no direct equivalent in either Scotland or Northern Ireland, though proposals for a similar body in Scotland are under consideration. The Charities Commission aims to provide the best possible regulation of charities, in order to increase their efficiency and effectiveness and public confidence and trust in charities.

[12] "Private Action, Public Benefit" - A report of the Strategy Unit, Government of UK, 2001

The Charity Commission has the following roles:

- To secure compliance with charity law, and deal with abuse and poor practice;
- To enable charities to work better within an effective legal, accounting and governance framework, keeping pace with developments in society, the economy and the law; and
- To promote sound governance and accountability.

The commission's aim is to maintain public confidence in the integrity of charity. It is operationalised by encouraging the development of better methods of administration, giving advice to trustees and correcting abuses of charities. The Charity Commission does not have power to administer charities and does not normally interfere with the trustees' exercise of their discretion. The Commission cannot change decisions properly made by the trustees. However, if an inquiry into the affairs of a charity reveals misconduct or mismanagement, then the Commission may intervene to protect the property of the charity. The commission has no power to make grants to charitable organisations and cannot make donations to charities.

4.1.2.1 Charity Commission – Organisational Structure

Charity Commissioners are appointed by the Home Secretary and derive their authority from the Charities Act of 1993. The act provides for at least three and no more than five Commissioners, two of which must be legally qualified. The Chief Commissioner is both Chair and Chief Executive of the Commission, as well as its Accounting Officer. A second Commissioner has an executive role as head of the Commission's legal division. The other three Commissioners are non-executives. The Commissioners are answerable to the Courts for their legal decisions and their interpretation of charity law, and to the Home Secretary and Parliament for the effective performance of the Commission as the statutory organisation that regulates charities.

Commissioners have the general function of promoting the effective use of charitable resources by:

- Encouraging the development of better methods of administration;
- Giving charity trustees information or advice on any matter affecting the charity; and
- Investigating and checking abuses.

The Commissioners have overall responsibility for the strategic direction and work of the Commission. They have a range of functions including taking decisions on major cases. In practice, assistant commissioners acting under delegated powers exercise most of the powers of the Charity Commission.

4.1.2.2 Charity Commission – Governance

Responsibility for the strategy and future direction of the Commission rests with its Board. The Board comprises all the Commissioners and four Directors responsible for operations, policy, resources and legal services respectively. A small board such as this has the advantage of manageability and ease of decision-making, but is open to the accusation that it is narrowly focused and that the interests of some groups of stakeholders are not fully represented in its discussions.

Corporate decision-making that affects the day-to-day operation of the Commission is delegated to the Executive Group, comprising the Directors and Head of Strategy and Change and chaired by the Chief Executive. The Directors' duties include implementing the programmes and policies arising from the Board and ensuring effective service delivery.

The Board is supported by an Audit Committee. The Directors are each supported by committees comprising their own senior staff together with representatives of other key parts of the organisation.

The Strategy Unit, Government of UK has undertaken a review of charities and related issues in 2001. Among many other recommendations it has proposed that the Board of the Charity Commission should be expanded by adding four new Commissioners, one of which should be appointed by the Secretary of State for Wales and the remainder by the Home Secretary. It has also proposed that the appointments should achieve wider representation of voluntary sector and other stakeholder interests. With the proposed increase in the number of Commissioners, and the higher public profile that the Commission is to adopt, there is a strong case for introducing separate Chair and Chief Executive posts. The Chair's particular role would be in ensuring good corporate governance and the smooth functioning of the enlarged board, and in representing the Commission in public and at high level within Government and the charitable sector.

4.1.3 Roles / Functions of Charity Commission

The Charity Commission has statutory powers in four principal areas:

- The registration of charities;
- Annual monitoring of the financial and other affairs of larger charities;
- Assistance on legal, governance and administrative issues to help charities run themselves more efficiently (also termed "Charity Support"); and
- The investigation of mismanagement and misconduct within charities.

4.1.3.1 Registration of Charities

All charities in England and Wales, which are not specifically exempt or excepted from registration, are required to register with the Charity Commission. Exempt charities are charities that Parliament has specifically decided do not need to be supervised by the Charity Commission, typically because other arrangements already exist to supervise and regulate them. Examples include universities, many maintained schools, and many national museums and galleries. An excepted charity is a charity which is exempted from the duty to register either by Regulations made by Ministers or by an Order made by the Commissioners. A charity is also exempted from registration if it has neither:

- any permanent endowment; nor
- the use or occupation of any land (including buildings); nor
- an annual income from all sources of more than £1,000.

Charities that are registered places of worship are also exempt from the need to be registered.

The Charity Commission is required to register any institution which is a charity (unless is excepted or exempt). The procedure for applying for registration as a charity, the "gateway procedure for registration", requires applicants to provide, in addition to their constitutional documents, a range of information about their actual or proposed activities, plans for funding and trading, and trustees. The "gateway" process was developed in response to suggestions from the Public Accounts Committee that greater scrutiny of charities was required at the time of registration. However, this process has been criticized by charities for taking into account the viability of an organisation when deciding whether or not to register it. The critics argue that the Commission is not legally entitled to do this; and applies an "activities test" by looking at an applicant's actual or proposed activities as an aid to interpreting the purposes stated in the applicant's constitution. Some critics are of the view that this process is making it more difficult for charities to register, infact this procedure is onerous for very small organisations.

Registration means that while the organisation remains on the Public Register of Charities it will be legally presumed to be a charity and must be accepted as a charity by other bodies such as the Inland Revenue. Although registration does not necessarily indicate approval of the management of the charity, it does mean that it is subject to supervision by the charity commission and that information about it, including its governing document and accounts, is open to examination by the public. Once a charity is registered, the trustees must inform the charity commission about any change to the charity's registered details. The organizations have to submit their annual accounts to the charity commission and may be asked periodically to complete a return or supply additional information.

The Commission maintains the Public Register of Charities that contains key particulars of all registered charities. During 2001, 5,900 new charities were added to the register taking the total to 188,000 at the year-end. The Public Register of Charities can be accessed via their website or at any one of their three offices. Copies of extracts from the Register, and of governing documents and accounts can be purchased for a small fee. Annual reports of charities are available in the same way.

The Public Register of Charities:

- is the only record of organisations which have been officially accepted as being for the public benefit and which, therefore, receive privileged tax treatment;
- allows charities to give conclusive proof of their status to funders and others;
- gives members of the public up to date information about charities, individually or in groups, and access to the people running them;
- allows the regulator to monitor charities and their affairs on an annual basis;
- allows people running charities, or thinking of starting new ones, to identify others carrying out similar work;
- gives local authorities, umbrella bodies and special interest groups an overall view of the size and scope of charitable provision in their sphere of interest; and
- provides policy-makers and researchers with evidence about the economic weight of the charitable sector and the distribution of wealth within it.

The Charity commission has also prepared guidelines, books and information packs to facilitate the charities in various facets of their work. For example, the guidebook "Registering as a Charity (CC21)" provides all information that the promoters or trustees of an organization need to read before proceeding with the registration. Information packs, like "Application to register a Charity" including guidance about setting up a charity in England and Wales, application forms, etc is also made available. To facilitate the setting up of charities and to simplify the process of registration, the charity commission has also produced a set of draft model governing documents, covering the three main forms taken by charities, namely, Model Memorandum and Articles of Association for a Charitable Company (GD1); Model Declaration of Trust for a Charitable Trust (GD2); and Model Constitution for a Charitable Unincorporated Association (GD3).

4.1.3.2 <u>Annual Monitoring of Charities</u>

Statutory power to monitor charities, through a compulsory annual return, was given to the Charity Commission in 1996, when the relevant Charities Act 1993 provision came into force. The annual monitoring system makes greater demands on charities, and subjects them to greater scrutiny, as their size, and the risk of harm that could result from their failure, increases. Around 50,000 charities – those with an income or expenditure over £10,000 – are monitored annually. The statutory accounting, reporting and auditing requirements are similarly graduated.

A charity, which is not a company must have its accounts for a particular financial year professionally audited (i.e. audited by a person registered as an auditor under the Companies Act 1989) if either:

- its gross income or total expenditure exceeded £250,000 in that financial year; or
- its gross income or total expenditure exceeded £250,000 in either of the two years preceding that financial year.

A charity, which is a company, must have its accounts for a particular financial year professionally audited if its gross income is over £250,000 in that year.

Experts feel that these rules are unnecessarily complicated and impose a professional audit requirement at too low a level. The charity threshold should be raised to £1 million. Below that level (down to an income threshold of £10,000) charities should continue to be required to have their accounts examined by a competent independent person.

4.1.3.3 <u>Assistance on legal, governance and administrative issues</u>

This function, which the Charity Commission calls "Charity Support", consists of modernizing the purposes, governance and administrative arrangements in charities' constitutions, advising on legal and regulatory requirements, and authorizing actions and transactions which charities would not otherwise have the legal power to carry out.

The Commission's primary function is a regulatory one and the bulk of its resources are rightly dedicated to this function. However, it is also part of the Commission's function to give charity trustees "information and advice on any matter affecting the charity". This clearly allows the Commission not only to tell charities what their legal obligations are, but also to adopt a wider advisory role on good practice. The Commission on the Future of the Voluntary Sector, an independent review, examined the tensions that have sometimes arisen out of this "dual role" of regulator and adviser. It concluded that:

- There were good reasons for the Charity Commission to have an advisory as well as a regulatory role; and
- It should do more in its communications with charities to distinguish between matters of law and matters of good practice.

4.1.3.4 <u>Investigation of mismanagement and misconduct within charities.</u>

The Commission has statutory power to investigate any registered or excepted charity. It also has powers to:

- protect charity assets at risk; and
- take action against those responsible for misconduct or mismanagement in a charity.

In 2000 – 02, the Commission concluded 212 investigations in which some "cause for concern" was established. There are a number of criminal offences in charity law, designed to ensure compliance with important obligations and to penalize those who fall down on their obligations. In many cases the consent of the Director of Public Prosecutions is needed before proceedings can be taken in many cases.

4.1.4 Mechanisms for Grievance Redressal and Appeals

4.1.4.1 <u>Complaint and Review systems</u>

The Charity Commission has a complaint system and a review system. The complaint system allows people dissatisfied with the Commission's conduct or service to lodge a formal complaint. This begins as an internal process but, if the complaint is not resolved that way, it passes to the Independent Complaints Reviewer, whose role is similar to that of an external ombudsman.

The review system allows people dissatisfied with a decision that the Commission has made in exercising its statutory powers to ask for the decision to be reviewed. This is a process with several stages that could go up to Board level within the Commission, but ends there. It can take considerable time to go through the process, which has no external or independent element.

4.1.4.2 <u>Right of Independent Appeal</u>

It is important that the Commission's decisions should be, in both fact and appearance, open to challenge. The right of appeal to an independent authority against a decision of the Charity Commission is to the High Court. However, in practice this right is rarely exercised. There is a widespread perception that appeals necessitate undue expense and delay, and that the Commission is virtually unchallengeable in practice.

The Government believes, therefore, that an independent tribunal should be introduced to hear appeals against Commission decisions. A person or organisation affected by a decision will have an automatic right of appeal and will be able to represent themselves. This will bring the Commission's procedure into line with other departments (the Financial Services Authority, War Pensions Agency, Customs and Excise, and the Inland Revenue) that have an independent review before court action is necessary.

4.1.5 Regulator's funding

The Charity Commission is funded from taxpayers' funds. The Commission does not charge for any of its regulatory services to charities. However, certain discretionary services and products such as training events and publications are charged.

4.1.6 Charity Law Reform in UK

The Government of UK recognizing its role in creating an enabling environment by providing a sound legal and regulatory framework for the non-profit sector; launched a review of the existing legal and institutional framework in July 2001. The details of the review process are available in this report as Annexure 6.

4.2 Charity Administration in USA

4.2.1 Charities in USA

The American Non profit sector has grown from some 50,000 organisations in 1950 to more than a million at present. The charity friendly legal structure is a significant factor for this growth. The laws provide incentives to organisations as well as their financial supporters in the form of tax benefits, and they regulate the non-profit sector to ensure that its assets are used for public good. The American law of charities is not found in a single unified statute or code. Because of the magnitude of tax incentives the tax law is the starting point.

Due to the multiplicity of tax categories, American non-profit organisations fall into two broad groups: charities and other public benefit non-profits and mutual benefit non-profits[13]. The traditional common law definition of charities as derived from English law, speaks of four charitable purposes

- The relief of poverty;
- The advancement of religion;
- The advancement of education; or
- Other purposes beneficial to the public and analogous (or similar) to purposes,

In the modern era however, the traditional definition in the United States has been largely superseded by the tax definition of charity – that is, by the definition of an organisation that pays no tax on its income and whose donors derive tax benefits as a result of their donations.

4.2.2 Tax Exempt Charitable Status

To qualify for a tax exempt charitable status, an organisation must satisfy the requirement of Section 501(C) (3) of the Internal Revenue Code, which provides that an organisation must satisfy the following six requirements:

- <u>It must have an exempt purpose</u> – that is one or more than one of the purposes as defined in 501 (C) (3). The Section lists seven different purposes, namely, religious,

[13] Mutual Benefit non-profits are organized to benefit their members. e.g., social clubs, labour unions, professional organisations, rural co-operatives, etc

charitable, scientific, testing for public safety, literary, education, fostering national or international amateur sports competitions, or the prevention of cruelty to animals.

- It must be organized only for exempt purposes – Section 501 (C) (3) requires a charity to be organized exclusively for one or more exempt purpose. This test, known as the Organisational test, focuses on the charity's governing documents. For charitable trusts the governing document is the trust agreement. The organisational test is satisfied only if the charity's governing documents limits its purpose to one or more purposes listed in section 501 (C) (3) and does not "expressly empower the organisation to engage, otherwise than insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

- It must be operated primarily for that purpose – Section 501 (C) (3) taken literally, require an organisation to be operated exclusively for the exempt purposes. The Regulations, however, provide some flexibility to what is known as the operational test, when they make it clear that a charity may qualify if it is operated primarily for the exempt purpose and an "insubstantial" part of the charity's activities are devoted to non-exempt purposes.

- There must be no inurement – that is no improper benefit to anyone in a position to control the charity or exert substantial influence over it. Section 501 (C) (3) requires that "no part of the net earnings of the organisation inures to the benefit of any private shareholder or individual"

- There must be no candidate activity – that is, no support or opposition to any candidate for public office.

- There must be no substantial lobbying activity – that is, no substantial support or opposition to legislation

4.2.3 Formation of a Charity

Forming a charity involves three elements, namely, pre-formation planning, formal incorporation and obtaining the tax-exempt status from Internal Service (IRS).

4.2.3.1 Pre-formation Planning

This early formation stage is the most critical for the success of the charity. The focus at this stage is how the charity hopes to accomplish its purposes and goals and on building the initial group of supporters.

4.2.3.2 Incorporating a non profit

The actual incorporation is quick and easy. The charity's founders select a name for the charity, prepare and sign articles of incorporation that set forth the charity's purpose in general terms and contains language that complies with Section 501 (C) (3)'s organizational test and any other requirements of the state law. They have to submit the signed articles to the Secretary of state in the state selected by the charity; along with the fee that the state charges. The corporation's existence as a legal entity begins when the Secretary of State accepts and files the articles of incorporation. If the articles of incorporation do not contain the required language, the Secretary of State will not accept the articles for filing.

To complete the formation process, the governing body of the new incorporation adopts the bye laws and sets forth its internal governance procedures; elects officers (president, chairman, secretary and treasurer) and makes basic financial management decisions such as where will the corporation open a bank account, who will be authorized to sign checks and withdraw funds; and who is authorized to sign contracts for the corporation, etc.

4.2.3.3 Applying for tax exempt status under section 501 (C) (3)

A charity that seeks recognition that is described in section 501 (C) (3) must complete and file an extensive application form known as Form 1023 with the IRS. The form is available from the IRS office or their website. Some charities complete the form themselves while others seek professional help of lawyers or accountants to assist them. The Form 1023 requires the charity to describe its purposes and proposed activities; to provide a balance sheet and a proposed budget for its first three years of operations; or if the charity has already commenced operations, a statement of actual revenue and expense; and a list of names and addresses of the officers and directors. The charity must also provide copies of the articles of incorporation and byelaws. Further the charity must respond to the numerous questions designed to elicit information on insider transactions, sources of funds and activities that concern the IRS due to potential abuses of the provisions.

The charity has to submit the exemption application and pay a filing fee. Exempt organisation specialists then review the application. If the application is complete and in order, the IRS issues a determination letter recognizing the Charity as a Section 501 (C) (3) organisation and classifying it as a private foundation or public charity. If more information is required the reviewer contacts the organisation for more information. Unless the organisation fails to provide the required information or reveals an intention not to comply with the provisions of section 501 (C) (3) the IRS generally grants the tax-exempt status. Most applications are processed within 90 days of receipt of the application. However, if an organisation believes that it was improperly denied tax-exempt status then it may appeal the decision within the IRS and if the IRS has exhausted all administrative remedies without success then it can ask the federal court to resolve the matter.

4.2.4 Legal and Institutional Framework for Charity Administration

A charity tax status is a question of the federal law, but its existence as a legal entity and its internal governance are matters of the state law.

4.2.4.1 State Law

In most states, the Attorney General is empowered to supervise and regulate charities. Charities are required to file annual reports regarding their activities and finances to the office of the Attorney General. In most states, the Attorney General has powers to inspect and review a charity's books and records to safeguard the interests in charitable assets. The public also may inspect any of these reports which are easily available on request.

The members of the charity's governing body owe a fiduciary duty to the charity. If a director breaches the duty, the state attorney general has powers to compel the director to repair any damage that the charity suffered as a result.

4.2.4.2 Federal Law

The Internal Revenue Service supervises the operations of charities in three ways:

- Through the information provided in the annual returns;
- Through its power to audit the finances and operations of charities; and
- Through its power to assess penalties and fines and in extreme cases to revoke a charity's exempt status for abuses and violations of the law.

Annual returns: Public charities other than churches, with an annual gross receipts over $ 25,000 must file an annual information return on IRS Form 990. Private foundations must file Form 990-PF, a longer version of the earlier form. If a charity has unrelated business taxable income it must file Form 990-T and pay tax.

Form 990 and its variations require detailed information about many aspects of a charity's finances and operations, including:

- Revenues and expenses for the year covered by the return, by specific categories;
- Compensation (both current and deferred) and benefits provided to directors, officers, key employees and the five most highly paid employees and independent contractors of the charity. Compensation paid to these people through related organisations (both for profit and not for profit) must also be reported.
- Financial transactions that involve insiders either directly or indirectly, focusing on Section 4841's self dealing role for private foundations and on section 4958's excess benefit ban for public charities but not limited to transactions that fall within the scope of these statutes.
- A schedule of grants and other charitable distribution, including any relationship between the grantee and an insider in the charity
- Deals of any loans between the charity and its officers, directors, trustees, and key employees.
- Fundraising expenses, accounting fees, legal fees, and similar payments to outside professionals.
- Information on taxable subsidiaries and transactions with related organisations.
- Description of charity's major programme areas.

IRS Audits: Federal tax law gives the IRS the authority to audit the books and records of charities and other non-profit organisations, subject to procedural protections designed to prevent government abuses. An audit may be triggered by information provided in form 990, by information from a disgruntled employee or former supporter, or by the press coverage of the apparent abuses by a charity or its managers. From time to time the IRS decides that it must audit a particular segment of the non-profit sector because of widespread concern about legal compliance. In recent years, the IRS has focused on audit of hospitals and health care systems and on large colleges and universities.

An organisation under audit has an opportunity to confer with the IRS auditor to provide information to support its position and to appeal the auditor's conclusions. If the auditor concludes that the charity has complied with the applicable laws, the IRS confirms the fact in a 'no change' letter. However, if the audit discloses problems the IRS assesses applicable taxes and penalties. If the charity pays a fine it has to be reported on Form 990 of the year in which the fine was paid.

Fines and Penalties: The ultimate penalty is the revocation of an organisations' tax exempt status. However, this sanction is rarely applied. More often the charity agrees to correct the problem and pay a fine. Section 4958's ban on excess benefit transaction of public charities, which is enforced by penalties imposed o the wrongdoer rather than the charity itself, gives the IRS an effective weapon against abuses.

4.2.5 Mechanisms for Appeal

In the United States, all applications to the Internal Revenue Service for tax-exempt status are handled centrally, in Cincinnati. An organization that receives an initial adverse determination of tax-exemption (or a letter proposing to revoke an existing exemption) may seek recourse from a separate branch of the Internal Revenue Service (the Appeals Office), by filing a protest within 30 days. The protest letter must include details such as the aspects of the original decision the organization disagrees with, the facts supporting its position, and the law or authority on which it is relying. If requested, a conference can be held, but otherwise the procedure can be conducted by correspondence or telephone. Appeals Office staff can only determine cases according to established precedents and policy. Where there are no established precedents and policy, the matter is referred to head office in Washington. The organization also has the option of having the file referred directly to Washington.

In addition, organizations can go directly to court, rather than using the Appeals Office, or they can go to court if they disagree with the decision of either the Appeals Office or head office. If the court finds the organization to be the "prevailing party," it can recover its administrative and litigation costs.

4.2.6 Mechanisms for Public Accountability

A charity is obliged by law to provide a copy of its tax exempt application and its three most recent tax returns, together with all attachments except the donor list to anyone requesting them, immediately if the request is made in person and within 30 days if the request is made in writing.

The organisational test of Section 501 (C) (3) requires a charity to state, in its governing document, that its assets are irrevocably dedicated to charitable purposes and that if the charity ceases to exist, its remaining assets (after payment of its debts) will be distributed for charitable purposes. In practice, the responsibility for ensuring that the charitable assets remain devoted to charitable purposes when a charity ceases to exist rests with the states, specifically with the office of the Attorney General.

4.3 Charity Administration in Canada

4.3.1 Registration

An organization that wants to become a registered charity must apply to the Charities Directorate of the Canada Customs and Revenue Agency (CCRA). The application needs to include the purposes for which the charity wishes to be registered. It should also contain information about how the charity will achieve these purposes. The application is reviewed by a Charities Directorate examiner. There is no legislated definition of charity, so the examiner has to compare the application against court cases that have helped explain what is considered to be charitable. Collectively, these cases form what is sometimes known as the common law of charity.

The courts have said there are four types or "heads" of charities. Charities can be created for:

- The relief of poverty;
- The advancement of religion;
- The advancement of education; or
- Other purposes beneficial to the public and analogous (or similar) to purposes, which the courts have found to be charitable.

The examiner who reviews an application may do one of several things. The examiner may:

- Approve the application, sending a letter telling an organization that it has been registered;
- Write or telephone the applicant, asking for more information; or
- Send a letter, called an "Administrative Fairness Letter," explaining why it appears the application cannot be approved. In cases where an Administrative Fairness Letter is sent, the organization can submit additional information or arguments. If the examiner is persuaded, then the organization will be registered. If not, the applicant will receive a final letter saying that the application has been denied.

About 4,000 organizations apply for charitable registration each year. Approximately 3,000 applications are approved, another 200 receive final letters denying registration and the remaining 800 fail to respond to either a request for more information or to the Administrative Fairness Letter. They are considered to have withdrawn their applications.

If an organization is registered as a charity, its name appears on the list of charities that is maintained on the CCRA website (www.ccra-adrc.gc.ca). Any member of the public has the right to ask the Charities Directorate for a copy of a registered charity's application for registration. However, if an organization is denied registration, or if it drops out of the process, no information about the application is made available to the public.

4.3.2 Monitoring

The Charities Directorate is responsible for ensuring that charities comply with the *Income Tax Act* and with the rules that have been established for charities.

All charities must file an annual information return with the Charities Directorate. This form contains information about what the charity has done in the previous year as well as financial information. A copy of this return can be made available to any member of the public on request. The charity must also include a copy of its full financial statements with its return, but those statements are only made available to the public if the charity agrees.

The Charities Directorate conducts between 500 and 600 audits each year. An auditor visits the charity and reviews its books and records to ensure that the organization still complies with the laws and procedures. Some organizations are selected at random for an audit; others are selected because of information the Charities Directorate has received or because it has decided to pay particular attention to a certain type of charity.

Some of these audits end with the Charities Directorate saying that no problems were uncovered. Most result in an education letter, telling the charity about problems that were found and identifying what should be done to correct them. In some cases, the Directorate will ask for an undertaking – a promise that the charity will correct the problems. In a very few cases, the Directorate looks to revoke a charity's registration for failing to comply with the law. In these cases, the Directorate writes the charity to give the reasons why it is proposing a revocation and invites the charity to address the concerns raised.

Under the law, the Charities Directorate cannot tell anyone other than the charity involved about an audit. It cannot even confirm whether an audit has taken place. However, if a charity's registration is revoked, the Directorate's letter setting out the reasons for the revocation is publicly available.

4.3.3 Sanctions

If a charity does not comply with the law, the Charities Directorate has only one penalty readily available to it – deregistration, removing the organization's status as a registered charity. About 2,500 charities are deregistered each year. About 66% of those de-registrations are because the charity has not filed its annual return with the Charities Directorate. Another 30% are made at the charity's request because it has decided to stop operating. In the last five years, very few have been deregistered "for cause" – for some serious violation of the rules governing charities.

4.3.4 Appeals

If an organization feels it has been unfairly denied charitable registration, or had its charitable registration revoked, it may ask the courts to overturn the decision. In that case, the organization takes an appeal to the Federal Court of Appeal. A panel of three judges hears arguments and considers the documents and information that the Charities Directorate used in coming to its decision. Some of this material comes from the application for registration, or from documents obtained during an audit. Other material is gathered by the Charities Directorate as a result of its own research. This is called an appeal "on the record." There is no testimony by witnesses at the appeal.

A further appeal can be taken to the Supreme Court of Canada, if that court grants permission. These appeals help clarify the law about what is charitable in Canada. Since there is no legislated definition of charity, it is these court decisions that must be used by the Charities Directorate in considering future applications. Over the last 25 years, there has been an average of only one court decision on charity law each year. Decisions from provincial courts and courts in other countries can sometimes be helpful, but are not binding on the Charities Directorate.

4.4 Conclusions

In our review of institutional arrangements, we examined the situation in other countries (UK - England and Wales, the United States, and Canada). The following are the main findings:

- In a majority of the countries that we examined, revenue officials initially make the decision as to whether an organization is charitable. This approach is based on the assertion that revenue officials are non-partisan in their determinations of charity registrations and that the tax authority is in the best position to administer the system of tax deductibility, including determining which organizations are eligible for tax exemption. At this time, the only jurisdiction that has delegated authority to determine registration and deregistration issues to a separate agency, is England and Wales.
- The Charity Commission for England and Wales administers the *Charities Act*, which is not the functional equivalent of the *Income Tax Act.* The Act gives the Charity Commission for England and Wales jurisdiction over all matters concerning charities including regulatory powers that in Canada and USA fall under provincial jurisdiction, such as providing support and advice to ensure charities have good administrative practices and are effectively organized.
- In all countries studied, registration is a state responsibility but regulation is through the Income tax, which is a federal one. The main difference between the UK and USA / Canada institutional arrangement is that while in UK registration is done by the Charity Commission which concerns itself not only with the financial aspects but also the administrative aspects, modernizing the process of charity to keep abreast of the new developments, in the USA / Canada model, it is the Income tax department which has the main regulatory responsibility. It also has a narrower perspective.
- In all cases there is easy public access to data about charities, both through a Public Register, of charities and making it mandatory on a charity to supply information on demand.
- There are well-recognized and functioning systems for having grievances, for appeals against decisions, and graded sanctions for violation of laws.

CHAPTER 5

FINDINGS – NPOs

This chapter presents the views of charities / non-profit organisations and knowledgeable individuals[14] associated with the sector on various issues related to charity administration in India. The participants covered by this review of charity administration in India were asked their views on the following:

- Whether the procedures for registration, annual reporting, compliance with reporting requirements under the law, and appeals to remedy grievances were simple, adequate and cost effective;
- Whether the facilities in the offices of charity administration authorities[15] were adequate and user friendly;
- Whether the staff in the charity administration authorities[16] were helpful and responsive to the needs of the organisations; and
- In addition their views were also solicited on the reform measures and alternate institutional arrangements / frameworks which would facilitate effective monitoring and development of the NPO sector.

The current chapter is based on the findings of a sample survey[17] of non-profit organizations across the country. This was substantiated with in depth interviews with NPO representatives; professional advisers such as chartered accountants and lawyers; and leaders of representative networks.

5.1 Profile of NPOs Interviewed

This section provides a profile of non–profit organizations covered under the study (130 responding NPOs). With regard to the law under which the non–profit organizations are registered, a majority of the organisations are registered as Societies. Among the trusts, a small percentage has registered under the Charitable and Religious Trusts Act while the majority have registered under the Trust Acts of various states and the Registration of Documents Act. Very few of the organisations covered under the current research have registered as Section 25 companies (Refer Figure 5.1). This is partly due to the fact that this form of legal incorporation is not widely known at present among the non profit sector and partly due to the fact that the procedures for registration are more complex and costly and require the help of professionals such as Chartered Accountants.

The organizations covered under this research are engaged in diverse sectors of development. The data reveals that the major sectors in which the responding non-profit organisations were engaged include education, health care, child welfare, women's empowerment, economic empowerment and livelihood promotion. It has also been observed that there is no distinction between trusts and societies in terms of their scope of work. This indicates that the decision to register an organization as a Trust or Society may not be based only on the intended sector

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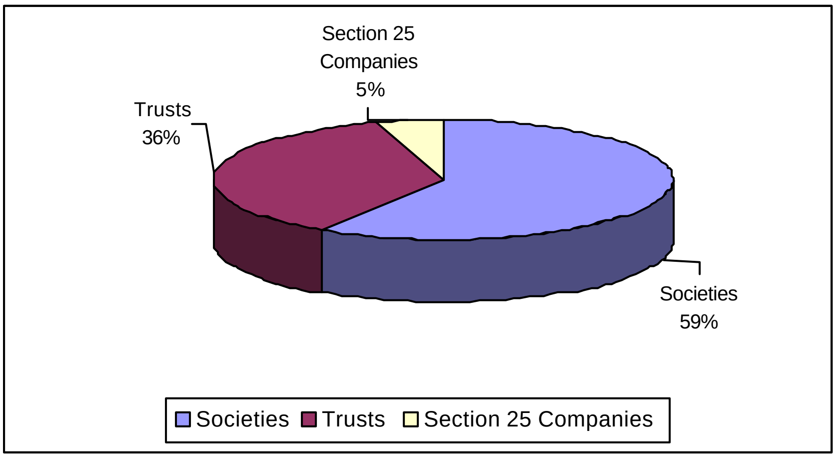
[14] Lawyers, Chartered Accountants and NPO leaders
[15] Registering Bodies (Registrar of Societies, Charity Commissioners, Registrar of Companies and Income tax departments
[16] ibid
[17] Survey was undertaken using a detailed questionnaire

of work. However, those registering under the companies Act are generally those who plan to engage in some form of production/income generation activity.

Figure 5.1 – Composition of Research Sample



With respect to the geographical scope of their work, a majority of the respondents are operating within the state in which they are registered. Mostly they work in a limited geographical area. More than one-third are working within a district and a still higher number are working in one city or a few blocks or a cluster of villages within a district. The data indicates that there is not much difference between Trusts and Societies in their geographical coverage. This once again implies that the decision to register an organization as a Trust or a Society may not rest entirely on the intended geographical coverage.

Almost all the organizations covered by the study are implementing agencies and only two organisations are donor agencies (one in West Bengal and one in Tamil Nadu). With regard to the self-classification of the organizations, more than half have termed themselves as medium size organizations. Comparatively more Trusts have classified themselves as belonging to the small category and none of them belong to the large category.

Given this profile of the responding organisations, as small to medium organisations, it can be taken that the problems faced by them would be fairly representative, since the bigger NPOs are, in any case, able to deal with the problems due to better resources, contacts and knowledge.

5.2 Findings - Sample Survey

This section presents the findings of the All India sample survey of NPOs. This section has been organised under the following four main headings, namely, Registration – Initial and Renewal; Compliance and Reporting; Appeals; and Suggestions for Reform.

5.2.1 Registration - Initial and Renewal

The process of registration is a crucial factor for encouraging non-profit organisations and charities. Delay or problems associated with registration could become potential de-motivators to the promoters of non-profit organizations. The data collected on this issue and presented in this section assumes importance due to the alleged hurdles posed for the non-profit organizations at the time of registration and at the time of their renewal.

5.2.1.1 Person undertaking registration:

The registration of non-profit organisation is usually taken up by people from within the organisation. However, of late, non-profit organisations have been seeking the help of professionals like Chartered Accountants for the registration process.

Societies:

- Tamil Nadu – Of the 29 societies covered under this study, 93 percent (27) have registered their organisation themselves. Only two have sought the services of professionals for registration.
- West Bengal – Of the 15 societies interviewed, a vast majority (14) have registered their organisation themselves. Only one NPO has sought professional help.
- Delhi – The registration of all societies (4) covered under this study has been done by the staff of the organisation.

In the states of Gujarat and Maharashtra, all societies that have a charitable purpose have to be registered with the Charity Commissioner. Although societies are registered by the Charity Commissioner's office as trusts, they are given two registration numbers: one under the Bombay Public Trust Act and another under the Registrar of Societies.

- Maharashtra – All the societies (15) interviewed in Maharashtra have been registered by their staff.
- Gujarat – Majority of the societies that were a part of the Focus Group meeting organised in Ahmedabad have registered their organisations by themselves.

Trusts:

- In Tamil Nadu - Of the 27 trusts covered under this study, 70 percent (19) have registered the trust themselves; while eight trusts have used the services of a professional.
- West Bengal – Of the 5 trusts interviewed in West Bengal, majority (3) have sought professional help for registration; one has been registered by the staff themselves and one hasn't been registered till date.
- Delhi – Of the two trusts covered in Delhi, while one was registered by its staff member, the other was registered by a professional.
- Maharashtra – Of the two trusts covered, while one was registered by the staff themselves, the other was registered by a professional.
- Gujarat – All the trusts (3) interviewed in Gujarat have been registered by the staff themselves.

Section 25 Companies:

- West Bengal – Of the 2 section 25 companies interviewed, while one had sought professional help for registration; the other, Bengal Rowing Club was registered by its promoters in the year 1929.
- Maharashtra – The Section 25 company interviewed in Maharshtra (Centre for Advancement of Philanthropy) has been registered with help from a professional CA.
- Gujarat – The Section 25 company interviewed in Gujarat (Indian Renal Society) has been registered with help from a professional CA.

More than eighty percent of organisations covered under this study have done the registration themselves, while only a few have sought the help of professionals such as Charted Accountants. This trend is observed in both trusts and societies in all the states covered under this research. Generally those that have sought help from the professionals have done so because they did not want to be involved with the paperwork and time commitments associated with the registration process. All Section 25 companies covered under this study have sought professional help from Chartered Accountants for registration, primarily because the registration process is lengthy and time consuming.

Professionals (Chartered Accountants) interviewed were of the view that the registration under the societies and trusts laws is not very difficult and cumbersome and can be attempted by an NPO without professional intermediation. On the other hand, the registration under Section 25 of the Indian Companies Act is a more complex and lengthy procedure and requires professional intermediation.

Registration, by itself does not appear to be a problem for those wishing to set up charities since most have registered their organisations themselves.

5.2.1.2 Experiences with respect to the Registration Process:

Majority (approximately 75 percent) of the non-profit organisations reported that they found the registration process to be fairly simple and straightforward. While 50 percent of the organisations interviewed in West Bengal were of the view that the registration process was simple, in Tamil Nadu this view was shared by as many as 85 percent of the respondent organisations. In Delhi, Maharshtra as well as Gujarat the view that the registration process is simple was shared by majority of the organisations interviewed.

Societies:

- Tamil Nadu – Of the 29 societies covered under this study, 80 percent (23) found the registration process to be simple and straightforward.
- West Bengal – Of the 15 societies interviewed, 8 (53%) had found the registration process to be simple. On the other hand, an almost equal proportion of respondents (47%) thought otherwise and recounted their experiences during the registration process which included a lot of paperwork, repeated visits to the offices of the Registrar of Societies and repeated requests

from the officers at the registrar's office for more documents, etc.

- Delhi – Of the 4 societies covered, majority (3) were of the view that the registration process is simple and straightforward. One society however, thought otherwise based on their experience of bureaucratic hurdles and delays as well as rampant corruption at the office of the Registrar of Societies. The visits of the research team to the offices of the Registrar of Societies at Delhi also brought to light the presence of middlemen and touts that roam the premises without any fear or inhibitions. The researcher who visited the office of the Registrar of Societies was approached by a tout who was curious to know whether she was interested in getting her organization registered and gave his visiting card when she answered in the affirmative.

- Maharashtra – Of the 15 societies covered in Maharshtra, majority were of the opinion that the registration process is simple and straightforward.

- Gujarat – All the five societies covered under the study shared that they had found the registration process simple.

Trusts:

- Tamil Nadu – Of the 27 trusts interviewed, 93 percent (25) told that they found the process of registration simple. Only two trusts were of the opinion that the registration process was very lengthy and complex.

- West Bengal - Of the 5 trusts interviewed, majority (3) said that they had found the registration process simple.

- Delhi – Of the 2 trusts interviewed in Delhi, while one had found the registration process to be simple, the other thought otherwise based on their experience of bureaucratic hurdles and delays at the office of the Charity Commissioner.

- Maharashtra and Gujarat – All trusts interviewed in Maharashtra and Gujarat were of the view that the registration process was simple.

A comparison between the response from societies and trust reveals that more respondents from societies have indicated that the process was not easy. The respondents who mentioned that the registration process was not easy have cited the following as reasons that make the process difficult - lengthy procedure, bureaucratic delays, need for repeated visits to the registering authorities, etc.

Professionals (lawyers and Chartered Accountants) associated with the non-profit sector have corroborated this view. A Senior Advocate in Madras High Court told us that in Tamil Nadu, based on the perception that registration of societies is lengthy and complex, there is a trend to register NPOs under the Trust Act rather than the Societies Registration Act. Further the NPOs prefer to register as a trust because they perceive more interference from the Government in the functioning of societies with the latest amendment in the Tamil Nadu Societies Registration Act, 1975 which provides for the appointment of "special officers" to manage the affairs of the society if the society is found not to be functioning properly.

Section 25 Companies:

- West Bengal – Of the two Section 25 companies interviewed, while one was of the opinion that the registration process was easy and straightforward, the other had found the registration process to be long, tedious and difficult.
- Maharashtra – The Section 25 Company interviewed (Centre for Advancement of Philanthropy) was of the view that the registration process though straightforward is very lengthy and time consuming.
- Gujarat – The Section 25 Company interviewed (Indian Renal Society) was of the view that the registration process is tedious.

The interviews with professionals revealed that there is very limited knowledge among the non-profit sector about the provision of registration under Section 25 of the Indian Companies Act. They also stated that many NPOs don't register under this enactment because they are unaware of both the possibility and the advantages. The professionals brought to light that the registration process for a Section 25 company is lengthy, complex and time consuming, as it involves two separate processes, namely, granting of license and registration of the company. They were of the opinion that due to the fact that the registration takes a lot of time and resources, it becomes a more suitable form of incorporation only for larger organizations and a majority of the NPOs choosing this form of registration take the help of professionals.

"The process of registration wasn't easy. It took us quite long to get the registration of our organisation. There are various factors responsible for the delay including lengthy procedure, bureaucracy, red tapism and corruption"

- Chief Functionary of a Society in Delhi

"The process of registration was fairly simple and was completed without any major delays. The situation is much worse in the states which require periodic re-registration as they are always at the mercy of the registering official"

- Chief Functionary of a Society in Delhi

Registration:
We conclude that, on the whole, the registration procedures under the Societies and Trust acts are not too troublesome through the experience varies from state to state and the promoters can themselves manage it. However, under the Indian Companies Act the registration process is more lengthy and complicated and thus NPOs choosing this form of registration need professional help.

5.2.1.3 Sources of Information with respect to Registration:

Respondents who have registered the organization by themselves have received information about the registration process from various sources. More than one-third of the organisations have obtained information from the registering office (Registrar of Society, Charity Commissioner, or Registrar of Companies) itself. Other sources of information include professionals, books and publications, and other non-profit organisations. No one from trusts and societies mentioned websites as their source of information.This points to the fact that the registering authorities are yet to use the Internet as a medium for disseminating information about the procedures and requirements.

The visits by the research team to registering authorities in various states revealed that there were no initiatives for public education about the legal provisions and requirements for registration, reporting, compliance and appeals. Of the various agencies reviewed, only the Charity Commissioner's Office in Gujarat has published an information booklet on procedures in the local language (Gujarati). However, even in Gujarat, not many NPOs are aware of the booklet since no proactive dissemination has been undertaken by the agencies.

> *"There is an absence of proper information dissemination on the process of registration. There is a small information board displaying information but this is not adequate. "*
> *– An NPO in West Bengal.*

Societies:

- Tamil Nadu – Of the 29 societies covered, 66 percent (19) have received information on the process of registration from the office of the Registrar of Societies itself. Other sources of information mentioned by respondents include professionals, books and publications, and other non-profit organisations.
- West Bengal - Of the 15 societies interviewed, a vast majority had received the information on the process of registration from the office of the Registrar of Societies. Many of them, however, mentioned that even for accessing simple information they had to make numerous visits to the Registrar's office.
- Delhi – All the societies interviewed had received the information on the process of registration from the office of the Registrar of Societies. It was mentioned that to obtain information they had to make numerous visits and had to wait for long hours at the Registrar's office. This was corroborated by the visit of the research team. When the researcher entered, Room No. 39 (where general inquires can be made) on the pretext of seeking information about how to register a society, she had to wait for almost half an hour before the concerned official was available and others did not seem to have any information about the same. Later she was also given a copy of the guidelines (in Hindi) and told that for further information she could log on to their website, which we did later but to no avail as the link was not working.
- Maharshtra – Of the 15 societies covered, majority have received information on the process of registration from the offices of the Charity Commissioner.
- Gujarat – All the societies (5) covered under this study have received information on the process of registration from the offices of the Charity Commissioner.

Trusts:

- Tamil Nadu - Of the 27 trusts covered under this study, the largest proportion of trusts, 30 percent (8) have received information on registration from consultants / professionals like CAs. The organisations that have received information from the office of the Charity Commissioner are very few (only 6).
- West Bengal – Majority of the trusts interviewed in West Bengal have received information on registration from professionals such as CAs who have

also undertaken the registration process for them.

- Delhi - Of the two trusts interviewed in Delhi while one shared that they had received information on registration from the office of the Charity Commissioner (situated in the Lower Registry Court), the other had received the same information from their Chartered Accountant who had also undertaken the registration for them.

- Maharshtra – Majority of the trusts interviewed in Maharshtra have received information on registration from the office of the Charity Commissioner.

- Gujarat – All the trusts interviewed in Gujarat have received information on registration from the office of the Charity Commissioner. The visits by the research team to the office of the Charity Commissioner revealed the presence of a published leaflet, available free of charge, which explains the provisions of Bombay Public Trust Act and procedures for registration and compliance with charity law. The booklet is in Gujarati, fairly comprehensive and simple. However, there have been no attempts made to proactively disseminate the same apart from an obscure notice in the reception area.

A comparison between the response from societies and trusts across the various states reveals that more respondents from societies have indicated the source of information regarding registration to be the office of the registering authority (Registrar of Societies). In the case of trusts, professionals such as CAs are also a major source of information. The mechanisms for public information and education are poor in the registering authorities for both trusts and societies.

Section 25 Companies:

- West Bengal – The respondents have quoted the office of Registrar of Companies and professionals as sources of information about registration.

- Maharshtra - The Section 25 company interviewed in Maharshtra has shared that they received all information regarding registration, reporting and compliance from the office of Registrar of Companies and their consultant professionals (CA).

- Gujarat – The Section 25 company interviewed in Gujarat shared that they received all information from their consultant professionals (CA).

The offices of the Registrar of Companies have effective mechanisms for public information and education; they are effectively using the Internet for information dissemination to the public. Their website (www.dca.nic.in) provides all information, procedures and forms required for formation and registration of a Section 25 company, online submission of applications is also possible. The ROC is also working towards a complete online filing of annual returns.

Public Information:

The mechanisms for public information and education are poor in registering authorities for both trusts and societies. While many of the respondents have said that they got the information from the offices of the agencies, by this they mean oral information. This also meant that they had to make repeated visits to collect the right information. There are very limited instances where the registering authorities have published information booklets on provisions and procedures (the exceptions are Office of the Registrar of Companies and 35 AC, CBDT). Wherever such initiatives have been taken (by publishing booklets) they have not been adequately supplemented by proactive dissemination strategies. The result is that NPOs have very limited information on legal provisions and procedures related to registration, reporting, compliance and grievance redressal. There is clearly a need to address this issue in any reform process for Charity administration.

Physical Facilities in Offices

Majority of the respondent organisations reported the appalling conditions in the offices of the registering agencies. Majority of the offices lack basic facilities like drinking water coolers, benches and toilets. Further, very few offices are equipped with modern office technology like photocopying machines, e-mail and fax facilities, which are the minimum in office technology required.

A Case of Office of Registrar of Societies in a city covered by this research study

The office of the Registrar of Societies in one of the cities covered under this study is located in one corner of the city, making it difficult to be accessed by public and non-profit organizations. It of Societies is housed in an old dilapidated building with many other offices sharing the premises. The numbering of the rooms is haphazard and confusing; add to this the fact that a majority of the staff themselves are not very clear about the exact portfolios of the officials. So anyone who is looking for any kind of information would have to spend a lot of time just to identify the right official. A cursory look around the offices clearly reveals the apathy towards official records – there are numerous steel cupboards from which, files which had turned yellow with age, are ready to fall out. None of the general staff had any computers and thus there appears to be no attempts to scientifically maintain and manage data and records. The public conveniences and facilities are inadequate and poorly maintained.

5.2.1.4 Response & Attitude of Registering Officials

A large proportion, though not a majority, of the respondent organisations have indicated that registering officials were not very helpful. Many organisations have said that they had to visit the offices of the registering authorities a number of times before they could get information regarding registration, for submitting applications or following up with concerned officials about the registration of their organisation. Many of the respondents mentioned shared that officials are not easily contactable or approachable and not very helpful and try to create unnecessary hurdles rather than facilitate the process of registration. This view was corroborated by professionals (Chartered Accountants and lawyers) that were interviewed as a part of this study. The research has also brought to light certain cases where the officials of registering authorities have expected favours / bribes for speeding up the registration process.

At the same time we would also like to mention that there were also instances where the respondents have mentioned about the helpful attitude of the registering officials. This was especially so in the states of Maharshtra and Tamil Nadu, where many respondents said that they shared a positive working relationship with the registering officials.

Societies:

- Tamil Nadu – Sixty Six percent (19) of the 29 societies covered under this study, were of the view that registration officers were helpful and cooperative. It is important to point out here that a significant proportion of the respondents have not answered (31%) this question. One respondent brought to light demand for bribes during the registration of their society.
- West Bengal – Majority of the respondents were of the view that the registering officials are not helpful, infact they seem to be trying their best to create delays and administrative hurdles.
- Delhi – Of the 4 societies covered, majority (3) were of the view that the registration officers were very helpful and cooperative. One society however, told us that about the harassment that they faced at the hands of the registering officials. They also said that there is rampant corruption at the office of the Registrar of Societies.
- Maharashtra – Of the societies (15) interviewed, a little over 50 percent (8) were of the view that registration officers were helpful and cooperative. The remaining seven societies shared their not so pleasant experiences of interacting with the registering officials.
- Gujarat – Majority of the societies interviewed were of the opinion that the registering officials are unhelpful, impolite and cause unnecessary delays and cause harassment. They attributed this to the fact that the position of the Charity Commissioner has remained vacant for several years.

Trusts:

- Tamil Nadu – Of the 27 trusts covered under this study, only 37 percent (10) were of the view that registration officers were helpful and cooperative. One trust shared that they were approached by registering officers for bribes with a promise to speed up the registration process.
- West Bengal – Many of the respondent trusts mentioned that the officials at the Registrar of Assurances are unapproachable and unhelpful.
- Delhi - Of the 2 trusts interviewed, while one was of the view that the wregistration officers were helpful and cooperative, the other thought otherwise.
- Maharashtra – All the trusts (2) covered in Maharshtra were of the opinion

that they found registration officers to be helpful and cooperative.

- Gujarat – Majority of the trusts interviewed were of the opinion that the registering officials are unhelpful, impolite, cause unnecessary delays and harassment. The respondents from trusts shared that in the initial years the Charity Commissioner's office was well administered, but in the last 15 years conditions have deteriorated due to the position of the Charity commissioner lying vacant for several years and understaffing.

A Case of Office of Registrar of Societies in a city covered by this research study

On the pretext of seeking information about how to register a society the researcher entered Room No. 39 where general inquires can be made. She had to wait for almost half an hour before the concerned official was available and others did not seem to have any information about the same. Later she was also given a copy of the guidelines (in Hindi) and told that for further information she could log on to their website, which we did later but to no avail as the link was not working.

Presence of middlemen is rampant, touts roam the premises of the registrar of societies without any fear or inhibitions. The researcher who visited the office of the registrar of

societies was approached by a tout who was curious to know whether she was interested in getting her organization registered and gave his visiting card when she answered in the affirmative

Section 25 Companies:

The registering officials at the Registrar of Companies across all states covered under this study were found to be helpful and cooperative by the respondents.

Some NPOs have brought to light the incidence of corruption and bribery in the registering authorities. Some activists however, hold fraudulent NPOs squarely responsible for the corruption. They believe that the actions of NPOs increased incidence of corruption.

Attitude of Registering Officials:

The unhelpful attitude of officials at the registering authorities has come to light as a major reason for delays in registration and harassment of NPOs. Majority of the officials have received no orientation about the non-profit sector and do not understand their activities and operations. Also much of the staff of these agencies is de-motivated. Only a very few are there because they want to be there; majority have been deputed from other departments.

Any attempt to reform charity administration in India would need to sensitize the officials about the role and functions of non-profit sector and the differences in their operations from those of the commercial sector, there is a need to build capacities of the staff and officers in the various agencies to adequately respond to the needs of the NPOs and facilitate development of the non-profit sector.

5.2.1.5 Time Taken for Registration

Many experts associated with the non-profit sector believe that though the process of registering of a non – profit organisation is not difficult it takes a long time. However, **the present study brings to light that this is not really true. Approximately 50 percent of the respondents shared that their registration was completed well within three months.** The time taken for registration was less in the states of Tamil Nadu, Maharshtra and Gujarat with majority of the organisations being able to complete registration in well under three months.

Societies:

- Tamil Nadu - Of the 29 societies covered, almost all societies (27) shared that it had taken them less than three months to complete the registration process. Only in case of two societies the registration process has taken more than three months to complete. In fact, four societies that were interviewed were able to get the organisation registered in less than 15 days and for another two it took between 15 days to a month to complete the registration process.

- West Bengal – Of the 15 societies covered under this study, for majority of the organisations (60%) it took them more than three months to get themselves registered. The other six organisations were able to get themselves registered in less than three months time.

- Delhi – Of the four societies interviewed in Delhi, while two had been able to get their society registered within three months, for the other two it took much longer (upto six months). The societies shared that they were not given any clear reasons for the delay in registration and had to spend a lot of time in following up their case with the registering authorities.

- In Maharashtra and Gujarat majority of the societies interviewed were able to complete the registration process in well under three months. In fact in Gujarat there were several cases where the registration process had been completed within 15 days. The respondents however, brought to light that in cases of delay it can even take upto one year to register.

Trusts:

- Tamil Nadu – Of the 27 trusts covered, 25 shared that it took them less than three months to complete the registration process. Only in the case of two trusts the process has taken more than three months to complete. For as many as ten trusts (37%) it took less than 15 days to complete the registration process.

- West Bengal – For majority of the trusts interviewed in West Bengal it took them more than three months to get themselves registered. This included numerous visits to the office of the Registrar of Assurances, repeated follow-ups with the registering officials, and supplying additional documentation as and when called for.

- In Delhi, Maharshtra and Gujarat all the trusts interviewed were able to complete the registration process fairly fast, in well under the stipulated time limit of one month from the publication of the advertisement in the newspapers (as told to us by the present Charities Commissioner, Mumbai).

A comparison of the response from societies and trusts reveals that trusts have been able to complete the registration process much faster than societies. In fact, almost all the trusts, interviewed as a part of this research, were able to complete the registration process in well under the stipulated time limit of three months. The only deviation was observed in the case of West Bengal, where for majority of the trusts it took more than three months to complete the registration process. In West Bengal, the trusts have to be registered with the Registrar of Assurances, many of the respondent organisations shared that the delays are primarily due to the inefficient functioning of the office of the Registrar of Assurances that causes unnecessary delays.

The fact that registration for trusts is simpler and takes lesser time along with the fact that there is hardly any monitoring or control by regulating authorities once the trusts are registered, makes it a favoured form of registration. However, this brings to light certain issues related to mechanisms for checking misuse and mismanagement of public funds available with trusts. Since there is hardly any scrutiny of trusts at the time of registration and no monitoring after a trust has been registered, it offers opportunities for misuse, mismanagement and misappropriation of funds.

Interviews with key functionaries of non-profit sector and professionals (CAs and Lawyers) has revealed that the process of registration for societies is delayed due to the following reasons:

- Some registering authorities find faults with the existing Memorandum of Association, which is the basic charter of a society and sets out its constitution. Its main purpose is to enable the members who deal with the society to know what its permitted range of enterprise is. To avoid delays on this count it should be made obligatory that whatever faults the authorities find and raise with the Memorandum of Association should be challenged formally.

- Another difficulty arises in clearing the "name of the society". The sponsors are asked to give affidavits that the name proposed by them does not already exist. In the absence of such an affidavit, the registering authority takes its own time to write to various officers. This process can be simplified through computerisation of records and fixing a time limit within which, objections, if any, should be reported.

- Administrative backlogs, red tapism and corruption among registering officials ensures that the registration process takes a long time.

Section 25 Companies

- West Bengal – While it took a little less than three months to complete the registration of one organisation, the Bengal Rowing Club, presumably because it was registered way back in 1929, for the other Section 25 company interviewed it took much longer than the stipulated time frame of three months.

- In Maharshatra and Gujarat, the section 25 companies interviewed took more than three months to complete the registration process.

The registration process for a Section 25 company is lengthy, complex and time consuming, and has many more formalities for registering than those of societies or trusts. The professionals interviewed were of the view that the registration as a section 25 company takes long as the procedures are more difficult and time consuming, especially the procedure to ensure name availability.

Time taken for Registration:

- Contrary to popular belief time, the taken for registration of Trusts and Societies is not very long except in West Bengal and to some extent Delhi, As revealed in the section above in majority of the cases it has taken less than three months to complete the registration process.
- A comparison of societies and trusts reveals that trusts have been able to complete the registration process much faster than societies.
- However , for both trusts and societies the time taken for registration is directly linked to the efficiency of the registering authorities and the responsiveness of its staff. In Tamil Nadu, Gujarat and Maharshtra where the officials have been reported to be more responsive the registration gets done faster. Whereas in the case of Delhi and West Bengal, the unresponsive staff and inefficient functioning of the Registrar of Societies and Registrar of Assurances respectively were cited as main reasons for delays.
- The fact that registering authorities are taking very little time in registering NPOs also exposes the fact that this may be due to very limited or no scrutiny of applications and supporting documents at the time of registration. Coupled with little or no proactive monitoring and regulation of the NPOs this creates an ideal play ground for misuse and mismanagement.
- **Professionals have pointed out that in many cases the NPOs themselves are to blame for the delay as they do not take the documentation seriously and present a slipshod job with inadequate documents.**
- **The registration process for a Sec. 25 companies is however very lengthy and time consuming.**

5.2.1.6 Renewal of Registration

Though renewal of registration is not required under the Central Act, in some Indian States, it is necessary that operating societies seek fresh registration at the end of a specified period, and many of the respondents shared that this is a source of unnecessary harassment and expense for the societies. The states of Uttar Pradesh and Kerela, have added another section for “Renewal of Certificate of Registration” after Section 3, “Registration and Fees” of the original act. Under the Societies Registration (Uttar Pradesh) Act, 1974 there is a stipulation of renewal after a period of two years and in the Societies Registration (Kerela) Act, registration is valid for 18 months and thereafter the registration is to be renewed. In the state of Tamil Nadu, as per the provisions of the Tamil Nadu Societies Registration Act, 1975 societies have to renew their registration every five years.

Since authorities can take action against any organisation that engages in malpractices, it should not be imperative for organisations to provide and furnish bonafides at the end of a specified period of time, like one year or five years. The renewal process, just like registration, involves a lot of paperwork and time commitments from non – profit organisations. Majority of the respondent organizations mention it as an irritant. It also offers a handle for arbitrary use of power by the officials, in some cases due to political pressures.

While the Trusts in states which do not have offices of the Charity Commissioners, do not have to renew their registration, the societies have to do so, the time period for which varies from state to state. The fact that trusts, which are registered under the general registration of Documents Act, do not have to periodically renew their registration perhaps explains the increasing popularity of the Trusts Act as an instrument of registration.

Societies:

- Tamil Nadu - In Tamil Nadu, the process of renewal of registration has to be done every five years. Of the 29 societies covered under this study, 66 percent (19) have responded that they need to renew their registration. Most of these societies (20; 67%) have completed their renewal requirements. Majority of the Chartered Accountants interviewed in Chennai were of the view that in comparison to registration, the periodic renewal is more tedious and time consuming. It also exposes the NPOs to the risk of periodic harassment by the officials.

- West Bengal - In West Bengal the process of renewal of registration has to be done every year. It is also termed as Filing of Annual returns, which includes the filing of Annual returns documents along with Audited accounts, minutes of the last Annual General Meeting, and a list of the members of the Governing Board. Of the 15 societies interviewed in West Bengal, 14 responded that they need to renew their registration and majority of these have been regularly filing the annual returns and receiving the renewal of registration. There have however been six organisations who were refused renewal on earlier occasions without stating adequate reasons, these organisations had to resubmit the application along with all required documents and undertake rigorous follow up with the authorities to ensure their applications are processed.

- In Delhi, Maharshtra and Gujarat there is no need for the societies to renew their registration and thus the non-profit organisations registered in these states are spared the hassle. Majority of the organisations were in fact of the view that the process of renewal of registration should be scrapped in the states where it is operational at present.

Renewal of Registration:

- Renewal of societies is perceived as an irritant by majority of the respondent organisations.
- The process of renewal is more tedious when compared to initial registration.
- Since authorities can take action against any organisation that engages in malpractices, it should not be imperative for the organisations to renew registration at the end of a specified period of time. Only offending organisations can be denied renewal.

5.2.2 Compliance and Reporting

<u>Reporting requirements under the societies registration act</u>

- A Society has to file list of Managing Body once in every year to the ROS
- The list has to be filed on or before the fourteenth day succeeding the day on which annual general meeting of the society is held. However, if the rules of the society do not provide for an annual general meeting, the list is to be filed in the month of January. The list should contain the names, addresses and occupations of the members of governing council or other governing body entrusted with the management of the affairs of the society.

<u>Reporting requirements under the Public Trust Act</u>

- Annual report and annual return of income have to be filed with the authorities having jurisdiction over the region where trust is registered.

<u>Reporting requirements under the Bombay Public Trust Act</u>

- Changes in moveable or immovable property or names of trustees: Under section 22 of the BPTA, whenever a change in any movable or immovable property or names of trustees etc, takes place or is desired, such changes or proposed change must be reported to the deputy or assistant charity commissioner in charge of the regional office where the register is kept. Where the change to be reported relates to any immovable property, the trustee shall, along with the report furnish a memorandum in the prescribed form containing the particulars relating to the change in the immovable property of such public trust, for forwarding it to the sub-registrar. In all such cases change must be reported to the regional office, within 90 days from the date of occurrence of such change. Failure to do so is an offence under section 66 of the Act incurring a penalty.
- Lease of Land / Building: under BPTA no lease for a period exceeding ten years in the case of agricultural land and for a period of three years in the case of non-agricultural land or a building, belonging to a public trust, shall be valid without the previous sanction of Charity Commissioner.

- Acquiring Immovable Property: When acquiring immovable property, prior permission of charity commissioner is necessary.

Reporting requirements under the Indian Companies Act

- The audited accounts, annual report and annual return of income have to be filed compulsorily with the Registrar of Companies (ROC).
- If there is any change in directors or office address, the ROC has to be informed.
- Any important resolutions passed by the company also need to be filed.

Alteration of Memorandum:

- A company registered under section 25 can alter the provisions of its memorandum with respect to its objects only with the prior approval of Central government obtained in writing.
- The Central Government may revoke the license of such body if alteration is made without its approval.

5.2.2.1 Enforcement of reporting requirements

Non-profit organizations are expected to file annual reports with the registering authority at regular intervals. However, there is very limited enforcement of these requirements. A majority of the respondent organisations mentioned that the reporting requirements are not effectively enforced by registering authorities. There were hardly ever any reminders from the registering authorities on non-compliance of reporting requirements.

Societies:

- Tamil Nadu - Of the 29 societies covered under this study, 76 percent (22) were of the opinion that the reporting requirements are effectively enforced. Five of the societies were however of the view that the enforcement is not adequate.
- Delhi – Of the four societies interviewed in Delhi only one was of the opinion that reporting requirements are effectively enforced. The other three societies were of the view that the enforcement is not adequate and they have never received any reminders or notices from the Registrar of Societies.
- In Maharashtra and Gujarat the societies have to submit annual reports to the office of the Charity Commissioner. All the societies were unanimous in the view that the enforcement of reporting requirements is very poor.

Trusts:

- Tamil Nadu – Of the 27 trusts covered under this study, majority were of the opinion that the reporting requirements are not enforced in their true spirit. Only three (11%) of the trusts interviewed shared that there is effective enforcement.
- Delhi – All the trusts were of the opinion that the enforcement of reporting

requirements is very poor.

- In Maharashtra and Gujarat majority of the trusts shared that the enforcement of reporting requirements is strict and properly enforced.

Interviews with key Chartered Accountants in Tamil Nadu revealed that for societies annual reporting requirements delayed submission of huge penalties are levied and if the penalty is not paid and the delay is not condoned then the registration can be cancelled or the government can appoint an Officer on Special Duty to administer the society. The professionals shared that the deadline for submission of annual returns has increased the scope for corruption; often money is demanded for making a record of the annual returns and if not paid then harassment is resorted to. In one case as many as 2,000 copies of vouchers were asked from an organisations.

Under the provisions of the Bombay Public Trust Act the reporting requirements are quite extensive.

Interviews with NPO leaders and functionaries in Gujarat and Maharashtra brought to light their resentment with these requirements. We were told that prior permission was required for doing almost anything, whether for sale of land, change of name, change of purpose, change of office, change of trustees, investment of funds, etc. They also said the procedures are cumbersome, an affidavit has to be filed for each and every application, and the presence of the chief functionary of the organization is mandatory. They were of the opinion that these requirements lead to unnecessary delays. We were told that of all the requirements the biggest problem encountered by NPOs was in relation to alienation of property, whether sale or transfer. A notice regarding the intent for sale or transfer of property is to be sent to the Charity Commissioner seeking his permission. Once the permission is obtained, the intention for sale has to be advertised and bids invited which are scrutinized by the Charity Commissioner and he recommends which bid is to be accepted. We were told that it takes up to 8 to 9 months for the Charity Commissioner to approve the draft sale deed. After the draft sale deed is drawn up, the buyer is asked by the Charity Commissioner to deposit upfront only 10 % of the price decided upon and 50 % after 6 months. Often the buyers back out when they get a better offer, and the trust loses either a good buyer or a good price. The NPO functionaries suggested that on signing the draft sale deed the buyer should pay at least 25% and another 25% after 6 months and the balance at time of final deed.

The NPO functionaries in Gujarat cited the case of the Dalpatbhai Trust. The trust gave land to an NGO, on a nominal lease rent of Rs 1 for 60 years. Another donor, Raja Ram Mohan Roy Trust wanted to donate funds to the NGO for construction of a library block on this land but they were keen that the NGO should have a title to the land. When the NGO approached Dalpatbhai Trust for transfer of land to their name the Trust agreed. But when permission of Charity Commissioner was sought the matter was held up with irrelevant questions being asked such as who was the original owner of the land from whom the Trust had originally bought the land more than 60 years ago, to file the original sale deed, and for what purpose the land had been originally bought and so on. All this is not only causing delays and affecting the work of the NGO but also causing harassment to all agencies involved. (See also case study in annexure 7)

Section 25 Company:

Section 25 companies interviewed across all states covered under this study shared that the enforcement of reporting requirements is strict and properly enforced and on non compliance notices are issued and penalties levied.

The response from non-profit organisations brings to light the difference in enforcement of reporting requirements by registering authorities for societies, trusts, and companies. A majority of the organisations who have affirmed reporting requirements are societies reporting to the respective Registrar of Societies. This indicates that reporting requirements are more stringent for Societies than for trusts, except in Maharshtra and Gujarat.

Some of the professionals interviewed feel that due to ineffective monitoring of the reporting requirements by the registering authorities, there is also a tendency among non-profit organizations to concentrate only on accounts and yearly reports and less on issues of legal compliance and internal governance. Many of them do not even attach their amended by-laws along with other reports. Although this might be due to lack of human resources to deal with regulatory requirements, professionals were of the view that non-compliance could not be condoned on this account.

5.2.2.2 Feedback from authorities

Regarding feedback from authorities on the reports, only a handful of organisations mentioned that they receive any feedback from the registering authorities. Feedback is received by organisations only in cases where there is a problem in reporting. Only a very few respondents have mentioned that penalties are levied if there is a delay in the submission of reports. This indicates that scrutiny of document filed by NPOs is tax.

Societies:

- Tamil Nadu - Of the 29 societies covered under this study, 45 percent (13) shared that they receive feedback on the annual reporting from the Registrar of Societies. While nine organisations have mentioned that they have never received any feedback from the Registrar of Societies, seven have not responded to this question. Only 7 societies (24%) shared that penalties are levied in case of non-submission and delay of annual reports.
- Delhi – All the societies (4) interviewed shared that have never received any feedback from the Registrar of Societies nor have any penalties been levied for non-compliance.
- Societies in Maharshtra and Gujarat have to report to the Charity Commissioner, majority of the societies in these states have shared that the enforcement of the reporting requirements is very poor and they hardly ever receive any notices for non-compliance or any feedback on the reports submitted. There also shared that penalties were hardly ever levied for non-compliance.

***Trusts*:**

- Tamil Nadu – Of the 27 trusts covered under this study, only one trust shared that they have received feedback on the annual reporting from the Charity commissioner. Majority of the trusts mentioned that they have never received any feedback from the Registrar of Documents's office. The same trust shared that penalties are levied in case of non-submission and delay of annual reports. Majority of the trust have not answered the questions on reporting and compliance.

- Delhi – All the trusts mentioned that they have never received any feedback from the Charity Commissioner's office.
- In Maharshtra and Gujarat, the trusts interviewed shared that they have never received notices for non-compliance or any feedback on the reports submitted. There also shared that penalties were hardly ever levied for non-compliance.

Section 25 Company:

Section 25 companies interviewed across all states covered under this study shared that the enforcement of reporting requirements is strict and properly enforced and on non-compliance notices are issued and penalties levied.

A Chartered Accountant interviewed in Madurai, Tamil Nadu was of the view that none of the enactments for incorporation ensure good governance and accountability of organizations, not even a Section 25 enactment because one can form a Section 25 company with even two members, who can be members of one family and can use the company for their own gain. Moreover, even the audit reports required to be submitted are seldom scrutinized, and Section 25 companies are in fact exempted from the application of many stringent provisions of sections in the main companies act meant to ensure good governance of commercial organizations.

5.2.2.3 <u>Adequacy of Reporting Requirements for Trusts</u>

When asked about the adequacy of reporting requirements exclusively for Trusts, the answers varied according to whether the trusts were registered under the Documents Registration Act or Assurances Act or the Bombay Public Trust Act. Majority of the trusts registered under the general act mentioned that the reporting is adequate. The reporting requirements for trusts are quite lenient and trusts themselves are also not in favour of getting into the reporting routines. One of the reasons for the lack of enthusiasm for reporting among Trusts is that they generally would prefer to keep to themselves the source of income and expenditure.

- Tamil Nadu – In Tamil Nadu, of the 27 trusts interviewed, 18 (67%) were of the view that the reporting requirements are adequate. Interestingly, majority of the trusts were of the view that reporting promotes accountability. A little over half of the respondent trusts were of the opinion that at present there is adequate monitoring of trusts.
- In Delhi majority of the trusts were of the view that the reporting requirements are adequate
- In Gujarat and Maharashtra majority of the trusts were of the view that the reporting requirements are adequate to check misuse and mismanagement and many felt that they were onerous.

Reporting Requirements and their Enforcement:

- Non-profit organizations are expected to file annual reports with the registering authority at regular intervals. There is limited enforcement of these requirements.
- While reporting requirements under Societies Act and the Companies Act are well defined, this is not the case for trusts.
- For trusts registered under the Bombay Public Trust Act the reporting requirements and their enforcement is quite strict.
- There is a need for effective and proactive monitoring mechanisms to check misuse and mismanagement of funds, especially for trusts.

5.2.3 Grievance Redressal

A responsive charity administration should have provision for redressing grievances, whether they related to registration or any subsequent stage.

In our study found that only a small percentage of respondents were refused registration / renewal of registration. Respondents have also mentioned that whenever the registration or renewal of registration was refused, in a majority of the cases they were adequately informed about the reasons for the refusal. In majority of the cases the reasons for refusal was the lack of necessary documents with the application. In West Bengal, of the 22 organisations interviewed, 2 had been refused registration and 4 had been refused a renewal of registration. In Tamil Nadu, only one organisation was refused registration. In Delhi, no such cases are revealed by the data. However, in such cases when they appealed to the registrar, their applications were processed without much delay, only one organisation in Tamil Nadu shared that it took one year for the registrar's office to process his appeal. It was also found that none of the respondent organisations have resorted to the courts of law with regard to registration or renewal. Almost all mentioned that there was no need to approach the courts.

Majority of the respondent organisations were satisfied with the existing grievance redressing mechanisms. However when asked whether they would prefer a non-judicial grievance redressal system, a majority replied in the affirmative There was not much difference between Trusts and Societies in this regard. The preference for a non-judicial system is not surprising given the record for delaying in obtaining justice through the courts.

Societies:

- Tamil Nadu - Of the 29 societies covered under this study, approximately 50 percent (14) were of the opinion that grievance redressal system is adequate. Approximately 48% (14) of the respondents voiced their opinion in favour of a non judicial grievance redressal system.
- Delhi – Of the four societies interviewed, three were of the opinion that grievance redressal system is adequate. However, all were in favour of a non judicial grievance redressal system.
- Maharshtra - Of the 15 societies interviewed, 13 were of the opinion that

grievance redressal system is adequate. However, all were in favour of a non judicial grievance redressal system.

- Gujarat - Of the 5 societies interviewed, 3 were of the opinion that grievance redressal system is adequate. However, all were in favour of a non judicial grievance redressal system.

Trusts:

- Tamil Nadu – Of the 27 trusts covered under this study, only 13 % (5) were of the opinion that grievance redressal system is adequate. Approximately 37% (10) of the respondents voiced their opinion in favour of a non-judicial grievance redressal system.

- Delhi – Of the 2 trusts covered under this study, while one was of the opinion that grievance redressal system is adequate, the other felt otherwise. Both were in favour of a non-judicial grievance redressal system.

- Mumbai – Both the trusts covered under this study, were of the opinion that grievance redressal system is inadequate and were in favour of a non judicial grievance redressal system.

- Gujarat - All the trusts covered under this study, were of the opinion that grievance redressal system is inadequate and were in favour of a non judicial grievance redressal system.

In India, legislation on registration of societies or regulation of trusts confers extensive powers on the registering authorities under which they call upon the societies to submit reports, records, furnish details of accounts and seek unlimited information on operational details. Sometimes the information called for is irrelevant and unnecessary and part of the delaying tactics, such behaviour subjects the organisations to unnecessary harassment. It is absolutely imperative "that only such information which is relevant for government purposes and necessary for the authorities to perform their entrusted to them under the Acts are called for from non-profit organizations.

Though most responding NPOs have stated that they are satisfied for provisions for redressal of grievances, our own observation on this aspect is that in reality hardly anyone uses or wants to use the grievance cells either because of apathy or because of fear of reprisals. It should not be interpreted to mean full satisfaction with the way the agencies operate.

The Societies Registration Act and the Public Trust Act contains certain provisions to deal with extreme cases. The nature and severity of these provisions vary from State to State. But, there are some aspects on which a common national policy is clearly required. For instance, in Tamil Nadu, in the Societies Act, a registered society can be taken over by the State Government through a designated officer who is not necessarily a public servant. While there can be no objection to a State Government taking over a society in extreme cases of misuse, such provision can, unfortunately, be misused for political purposes. Experience has shown that such provisions in legislation applicable to local bodies and cooperatives has not yielded satisfactory results.

5.2.4 Income Tax Exemption

Important sources of funds for non-profit organisations are donations that allow the donor to claim exemption from income tax. Hence almost all the organizations routinely apply for certificates from the income tax department that will enable them to offer exemptions to their donors. Frequently one hears complaints that it is difficult to get these certificates and that there is undue delay. Hence it is important to look at exemption procedure from the point of view of the non-profit organisations.

5.2.4.1 Time taken for Registration under Section 12 A & 80G

The stipulated time limit prescribed by law, within which the applicants have to be informed about their registrations under 12A, 80G, etc. is six months.

Registration under Section 12A

- Tamil Nadu - Majority (57%) of the organisations have obtained the exemptions under 12A within 6 months; of these 24 (43%) have obtained the exemption under three months and 11 (20%) within one month of application.
- West Bengal – In West Bengal, of the 23 NPOs interviewed, 15 have obtained exemptions under 12A. For majority of the NPOs that have obtained exemptions under Section 12A, the time taken to obtain the exemptions ranges from three to six months.
- Delhi - Majority of the organisations have obtained the exemptions under 12A within 6 months. There are however certain aberrations where it has taken a society more than a year to receive the exemptions under Section 12A.
- In Maharashtra and Gujarat majority of the NPOs interviewed have obtained the exemptions under 12A within the stipulated time limit of 6 months.

Registration under Section 80G

- Tamil Nadu - 39 (70%) NPOs received the exemptions under Section 80G within six months, of these 28 received the same within three months.
- West Bengal – In West Bengal, of the 23 NPOs interviewed, 10 have obtained exemptions under 80G, all of them have obtained exemptions under Section 80 G within six months.
- Delhi - Majority of the organisations have obtained the exemptions under 80G within 6 months.
- In Maharashtra and Gujarat majority of the NPOs interviewed have obtained the exemptions under 12A within the stipulated time limit of 6 months.

A Senior Advocate, Madras High Court mentioned that in recent years a majority of the organisations that are denied registration under Section 80 G are those that are catering to the minority groups. He also told us that he had come across several NPOS that circumvent this issue by registering under a secular name and continue to work with minority groups. **We**

regret this politicizing of the charities provisions.

5.2.4.2 Experiences related to obtaining exemptions under Section 12 A & 80G

A majority of the organisations were of the view that the process of obtaining exemption certificates has been easy for both 12A and 80G exemptions and that there is no problem in obtaining exemptions. There have been hardly any cases where registration for exemptions or renewal of exemption has been denied. In cases where either was refused the NPO has been informed about the grounds on which the application has been refused. **Though there are not many problems, applying for the different types of exemptions involves lot of paperwork and time commitments. Hence the respondents feel that the process of registration under 12A and securing 80G exemption should be integrated.**

> The IT department is generally considerate and does not unduly harass organizations. But if there are lapses, they penalize heavily. The actions are usually taken if records are not maintained properly or if fraudulent activities are detected
>
> - Chartered Accountant, Chennai

5.2.4.3 Exemptions under Section 35AC

With regard to 35AC exemption, it was found that very few organizations have obtained the same (two in Tamil Nadu, 3 in West Bengal). Interviews with NPOs and professionals revealed that non profit organisations have little or no knowledge about the provisions under Section 35 AC. In fact through the medium of the questionnaire many non profit organisations have requested for more information on the provisions and application procedures of the same.

The main problem cited by respondents was one of delay since it takes a long time for one national committee (National Committee for Economic and Social Welfare) to meet and decide on all applications. There is no time limit prescribed by law for granting the exemptions under 35 AC and there is no process of appeals.

> `With regard to 35AC, the whole process is found to be complicated. Because of these complications the interest of the organization becomes reduced'
>
> - NPO Functionary

We have also come across cases of abuse of 35 AC certification by unscrupulous members of the public who try to find out who has 35 AC certificate and then offer them donations for money laundering purposes. SICP has itself received several such requests just before the end of a financial year.

5.2.4.4 Renewal of Exemptions Certificates

Majority of the organizations have indicated that they have to renew the exemption certificates periodically. All mentioned that 80G has to be renewed once in 3 years. Majority of the organisations have had the opportunity to renew their exemption certificates. NPOs who have exemptions under 80 G told us that they do not receive renewals even after the 80G has lapsed, though they have applied for the renewal in time. They are generally requested to wait for applying till the certificate actually expires, and then the renewal takes several months. This handicaps NPOs in receiving donations.

5.2.4.5 Sources of Information for Registration and Renewals

For fulfilling the requirements of both fresh application for exemptions and their renewal, adequate and correct information on exemption is essential. Majority of the respondents (75%) shared that they have access to information on 80G. The source of information is largely professionals such as auditors and chartered accountants, books and income tax officials. As far as the Income Tax departments are concerned there is a paucity of public information and education mechanisms. Of all the offices that we contacted and interviewed only one the office of the national committee for 35 AC had published a small booklet and that too three years ago.

The Income Tax Department does not share information about the charities registered with them and with the public even for bonafide purposes. This should not be so since the information pertains to public, and not private trusts and the public therefore has a right to know about such trusts.

5.2.4.6 Reporting Requirements and Compliance

Organisations that have an income of more than Rs.50,000 per annum have to file reports with the income tax department. A majority of the organizations, (approximately 90%) covered under this study fall in this category and a majority of them have stated that they file reports regularly. A majority of respondents (70 percent) feel that reporting requirements laid down by the income tax department is adequate and that such reporting requirements promote accountability. Majority of the respondent organisations were of the view that the reporting requirements are enforced by the income tax department. **The only area of difficulty seems to be the refund of tax, which some NPOs reported that they did not get in time and without some difficulty.**

An NPO professional felt that there is no regular and rigorous monitoring done by the IT departments. She has been heading an organisation in Tamil Nadu for the past 15 years and only twice had the income tax officials come for an inspection.

A Chartered Accountant interviewed in Madurai was of the view that there is no clear provision under the income tax act, as also other incorporation acts, for a reporting system which will go behind the figures of expenditure to ensure that the objectives of the organization are being met adequately. While the Income tax Act requires that 85% of the income of the organization in any reporting year should be spent on charitable purposes, in practice the figure is taken at face value and hardly ever is the expenditure analysed in terms of the programme to see that the criteria are met. He conceded that it was difficult for officials to get into such details with the current accounting procedures.

The law provides for a penalty of Rs. 5,000 for non-filing of income tax return. There is also a provision to levy interest for the delayed submission of return. In case a return of income is not furnished, even after a notice from the assessing officer, a penalty of Rs. 10,000 is levied. A wilful failure to file return can even attract prosecution. However, in practise the enforcement of this provision is very poor. The 1994 –95 PAC report to the 10th Lok Sabha indicates that of the 96,199 trusts registered, returns for the assessment year 1992-93 were filed only in 39,756 cases ie. by less than half. Even of the 4323 trusts registered during 1993-94 only 1953 filled their income tax returns

Income Tax

- While a majority of the NPOs are satisfied with the functioning of the Income tax directorate / departments, some have given the following suggestions to make the income tax departments more effective:
  - Single registration exemption certificate for 12 A, 80G, 35 AC
  - Make procedures clear and transparent; provide adequate mechanisms for public information and education.
  - Sensitization of Income tax officials and staff towards the working of Non profit organisations.
  - Making refund quicker.
  - The monitoring by Income Tax Departments should go beyond financial figures by making necessary amends in the accounting reporting systems.
- The Income Tax Act, as it stands today, has serious implications for the voluntary sector. Some of the major difficulties these organisations are facing in relation of the Act are:
  - The various sections of the Income Tax Act are very complicated and difficult for a layman to decipher the provisions. Further there have also been frequent changes in tax laws, which proves confusing.
- Funds are obtained through various sources by NPOs to pursue their activities. These funds are receipts of these organisations and not "Income" as classified under the Income Tax Act. Hence, to equate such funds as "income" as understood in the business context would do grave injustice to these organisations. At the end of every financial year, most of the NPOs are invariably left with some amount of money from the funds, which have been allotted to them for developmental purposes. At times, savings also arise out of efficient and effective financial management. These "surplus funds" needs to be distinguished from profit in the business sense since it is not a commercial.

5.3 Issues of Charity Administration

This section deals with broad issues related to the regulatory framework.

5.3.1. <u>Does the regulatory framework instill confidence of the Public</u>

A little over fifty percent of the respondent organisations are satisfied with the existing institutional arrangements and feel that the existing mechanisms of charity administration facilitate promotion of charity, check misuse and mismanagement of funds and inspire public confidence in charities. As opposed to this forty eight percent of the respondent organisations were of the view that the current arrangements are inadequate and discourage public confidence. The opinion of the respondents is both positive and negative, indicating that there is scope for improvement in the existing institutional arrangements to promote and strengthen charity.

While a majority of the professionals (lawyers and CAs) were of the opinion that the present legal provisions for regulation are adequate their actual enforcement is poor. Many of the professionals told us that the regulatory provisions for NPOs registered as Societies and

Section 25 companies are clear and help the regulatory authorities in monitoring and evaluating the organisations. However, this is not the case for trusts, as after registration there is hardly any monitoring and regulation of their activities and accounts. Majority of the professionals were of the view that there is room for better and more effective monitoring. They felt that the misuse of the law and its provisions by big hospitals, schools and colleges for profit making needed stringent regulation to check and prevent such practices.

Some NPO functionaries were of the view that the current regulatory framework vests too much power in the State to control the activities of NGOs. They also shared cases where the state and political power centres were using the current regulatory framework to quash the protests or opposition by NPO towards their policies / schemes.

Does the Regulatory Framework Instill Confidence in Charity

- The present mechanisms for regulation is adequate, the problem lies with its enforcement that is poor.
- Regulation provisions for NPOs registered, as Societies and Section 25 companies, are better defined and enforced, than those for trusts.
- There is divergence in the views of NPOs and CAs as to whether the sector needs more effective monitoring or not. While CAs, in general, feel that there is room for better and more effective monitoring to check misuse and to act as a deterrent for others, NPOs do not want more monitoring.

5.3.2 Mechanisms for safeguarding charity property

As to safeguarding charity property from abuses, we were told that a member of the public could file a complaint to the registrar directly with proper evidence if a particular charity was involved in fraudulent activity. The Registrar would look into the issue and if the charity was found guilty, the Registrar even had the authority to dissolve the charity, in the long term. The government could then take over the charity and run it.

5.3.3 Credibility of NPOs

With the mushrooming of voluntary organizations in the country one of the questions that arises in the mind of the general public is about the credibility of these organizations. The respondents were asked what credibility voluntary organizations have according to their opinion. Approximately 40 percent of respondents from trusts and a approximately 50 percent of respondents from societies have mentioned that voluntary organizations have low credibility. This has implications for the future ability of such organizations to fulfill the needs and aspirations of the community they intend to serve. It also indicates the need for some introspection by the organizations themselves to see how they can become more credible.

To improve their own capabilities and to interface with the Government for smooth functioning it may be worthwhile to think in terms of a permanent forum of voluntary organizations. Almost 90 percent of the respondents feel that such a forum is necessary. This indicates that there is a desire for more interaction among the organizations themselves and between them and the government. The respondents were also asked their preference about the nature of this forum. A majority of the respondents want the forum to be a private-public partnership, while 25 percent want it to be a completely independent of the State. Fifteen percent of the respondents suggested that it could be a forum that is funded by voluntary organizations themselves, which perhaps will be more independent.

5.3.4 An Alternate Framework

The respondents were provided a small outline of the role and functions of the British Charities Commission and asked whether they would prefer to have one such commission in India. The respondents overwhelmingly voted for such a commission. This, coupled with the earlier verdict on credibility, may indicate that the organizations themselves feel strongly that it is high time some form of systematic regulation is put in place to streamline the functioning of mushrooming voluntary organizations in the country. However, some of the respondents were skeptical about the commission. One respondent mentioned that it is not possible under the present political system in India.

The respondent organisations / professionals also made some suggestions for improving the existing institutional arrangements, the major suggestions are enumerated here:

- Creation of a Forum for regular Interaction of NPOs and Charity Administration Authorities at central and state level.
- Developing mechanisms for ensuring public access to information so that all the necessary information on registration, reporting, compliance and grievance redressal is available at the office of the regulating authorities (registrar of societies, charity commissioners, registrar of companies and Income tax directorates).
- Maintaining a database on NPOs functioning in India.
- Training and capacity building of officials and staff at the registering authorities and income tax departments regarding the working of NPOS.
- Checking of red-tapism and delays

Box 5.1: Case of CERC, Gujarat

We, Consumer Education and Research Centre (hereinafter referred to as "CERC") are a public charitable trust registered with them. Since 1991 we have been provided the permanent right to use free of charge 10,000 sq. mtrs. of land by Gujarat Institute of Chemical Technology, Ahmedabad (hereinafter referred to as "GICT"), a public charitable trust also registered with the same office of Charity Commissioner, Ahmedabad.

The aforesaid use is granted to us by them without any consideration and it is on permanent basis. The said GICT on 25th April 2001 passed a Resolution to execute a Lease for 60 years on payment of Rs. 100/- per year as lease rent. GICT has submitted an application to Charity Commissioner for permission on 11th April 2002. Similarly we have also requested Charity Commissioner for the said permission for our benefit. Till today the matter is not decided one way or the other and all that is happening is adjournment of hearing from time to time.

It is important to note here that it is not a commercial transaction. Neither the lessor nor the lessee is engaged in commercial activities much less business like consideration except Rs. 100/- per year which is only a token lease rent and the fact remains that CERC is not only in possession of the land but has already used the land for the last ten years, even to the extent of setting up construction on the land of approx 4000 sq. mtrs, of course technically and legally since the land belongs to GICT as the owner.

The latest development is that they want the title deeds of the parties from whom GICT had purchased the land during 1969-70, say before 35 years. We are unable to understand the need for this information. When the name of GICT appears as owner in the land records of the Mamlatdar of the concerned Taluka where does the question of title deeds and the validity of the transfer in favour of GICT become a relevant issue? If they were really not the owner and if the titles were not clear someone or the other would have initiated the proceedings against GICT for deleting their name from one or more plots of land and approached Charity Commissioner and Mamlatdar long time back. This is an irresponsible and insensitive demand that they are making on GICT and keeping application pending.

We can certainly understand that if it was for a commercial consideration, Charity Commissioner may be concerned as to whether there is reasonable consideration which is consistent with the market price or they are receiving lower consideration and hurting the interest of the public charitable trust which is transferring the land.

Charity Commissioner has not taken any action even though we had published report long time back where we found a large number of public charitable trusts which were enjoying tax exemption, utilizing only 30% of the annual income against the statutory requirement of spending at least 75% of their annual income. Is it not the role of the Charity Commissioner apart from the income tax authorities that the philanthropies, which did not spend money, which they collected and not utilized for the purpose for which they have received money, should be checked?

CHAPTER 6

PERSPECTIVES OF THE LAW ENFORCERS

6.1 Introduction

In order to ensure that the research is objective in its approach and not based entirely on the views of the non-profit / charities sector, the research also sought the views, experiences and perspectives of the charity law administrators. The research has attempted to cover central and state level government offices responsible for administering charity law, including Charities Commissioners and their equivalent in different states; Registrars of Societies; Registrars of Companies; Director General and Directors for Income Tax exemption.

The data from law enforcers has been collected primarily through personal interviews. The main issues on which information / views of officials were sought included the following:

- Their views on the present functioning of their departments – present workload, existing human resources and infrastructure support for effective discharge of duties and responsibilities.

- Their views about the efficacy of legal compliance and reporting by non – profit organizations as provided for in the laws governing charity.

- Whether the special provisions granted to non – profit organisations (tax exemptions, indirect benefits and government funds) are being utilised by them in a just and effective manner

- Whether the current monitoring mechanisms adopted by their offices are sufficient to identify and stop malpractices in the non-profit sector.

- What ails charities and how social development can be enhanced by proper utilization of charitable resources.

6.2 Coverage

While attempts were made to cover at least one each of all the different types of regulatory authorities, namely, Registrar of Societies, Charity Commissioners and Registrar of Companies in the states covered under this study, as well as officials of Income Tax Departments at the central and state levels, it was not possible to interview all the top officials due to their preoccupations, which made it difficult to get appointments with them. On numerous occasions the meetings were called off or postponed at the last minute. Despite these constraints we have tried to ensure that representative views from various incorporation agencies (Registrar of Societies, Charity Commissioners and Registrar of Companies) and income tax departments are incorporated in the study. The list of officials interviewed has been attached as Annexure 5.

Questionnaires seeking quantitative data on registration (number of applications received in a year, number of organizations that get registered, number of applications that are refused registration and the total number of NPOs registered at present); reporting and compliance (numbers and proportion of NPOs that comply with the reporting requirements and those that do not; number of cases where fines are levied for non compliance); and grievance redressal mechanisms (process of appeal, number of cases for appeals) were sent to all the offices and given to officials during interviews. While we were assured that data would be sent to us at a later date since it had to be collected and compiled from various sources, **no written data was received from any agency. It underlined the fact that data collection and management, as well as allowing public access to the data, is a weak link within these agencies.**

6.3 Registrar of Societies

6.3.1 Registrar of Societies, Delhi

The interviews with various officials at the offices of the Registrar of Societies at Delhi brought to light the following major issues / problems encountered by this office:

- ***Inadequate provisions for detailed scrutiny at the time of registration***: The officials felt that the law does not have adequate provisions to encourage and facilitate scrutiny at the time of registration of societies. At the time of registration, apart from making sure that a society has charitable objectives and that the required documentation has been enclosed with the application, the office of the Registrar of Societies has no powers to make any further inquiries.

- ***Non-adherence by NPOs to notices sent by Registrar of Societies***: In order to monitor whether a society is undertaking activities in consonance to its objects, the office of the Registrar of Societies sends notices to societies for updates. The officials informed us that NPOs rarely ever respond to these notices. While the officials considered regular monitoring vital to check and control misuse and mismanagement, they said that it is impossible to undertake visits to organizations with the manpower available, given the large number of societies (approximately 49,000) in Delhi.

- ***Delay in registration is primarily due to NPOs not adhering to prerequisite requirements:*** The officials were of the opinion that the registration process is very simple and in case all the documents are in order it does not take more than one week. They opined that that in a majority of cases, delay is either due to non-submission of required documents or due to non-submission of an affidavit stating that the name does not already exist which then needs to be checked with other concerned authorities.

- ***Immense workload and inadequate staff:*** In the opinion of the officials a large proportion of their workload is related to registration of societies due to the large inflow of applications. They felt that with limited staff the department is unable to effectively discharge its duties and there is a lot of backlog. Further, the shortage of quality staff is also an impediment for them to take on a more proactive monitoring role.

- ***Lack of modernization and computerization of the office:*** The officials told us that till date there have been no attempts at modernizing and computerizing the office which make data management and retrieval very difficult.

6.4 Charity Commissioner

6.4.1 Charity Commissioner, Gujarat

In Gujarat, as also in Maharashtra, all trusts and societies that have a charitable purpose have to be registered with the Charity Commissioner. The key issues and findings that came up during the interviews with officials at Charity Commissioner's office in Gujarat are mentioned below:

- ***Multiple Roles of the Charity Commissioner:*** The officials said that the charity commissioner has multiple roles, judicial as well as administrative, and each draws on his time and energies. In the state of Gujarat (as also in Maharshtra), the Charity Commissioner is also the Registrar of Societies and the Administrator General under the Administrator Generals Act. Under the latter he has to certify wills and succession documents.

- ***The position of the Charity Commissioner has been vacant for several years:*** We were told that in Gujarat, the position of the Charities Commissioner has been vacant for several years with only an officiating Charities Commissioner. The present incumbent, took charge on 1st July 2004, and is yet to become fully familiar with the operations of the office and charity law. For the present Charity Commissioner, being an officer of the judicial service, this is the first exposure to charity and NPO sector.

- ***Poor Physical infrastructure facilities:*** The physical facilities and infrastructure in the office are inadequate, poorly maintained and stressed beyond capacities. While the officials shared that the process towards computerization of the offices has been initiated, there was no visible evidence of the same.

- ***Funds accumulated under the Public Trusts Administration Fund are lying unutilized:*** As per the provisions of the Bombay Public Trust Act (applicable in Gujarat and Maharashtra), the office of the Charity Commissioner charges a cess @ 2% of the annual income of the trust or society which is to be paid into the Public Trusts Administration Fund. This fund is to be used to meet all the administrative costs of the office of the Charity Commissioner and for providing facilities for promotion work. According to the information given, the approximate collection per year from cess is Rs. 2 crores, and interest accrued on the accumulated fund is an additional Rs. 4 crores per annum. We were told that at present, the accumulated balance in the Fund is Rs. 40 crores, which has not been used in spite of the fact that the office desperately needs more staff, better equipment and facilities. The discussions revealed that a large proportion of the money spent from the fund is for payment of salaries rather than any development work.

- ***Poor mechanisms for public education and information:*** A very obscure notice in the Charity commissioner's office is the only mention of a leaflet available free of charge which explains the provisions of Bombay Public Trust Act and procedures for registration and compliance with charity law. The booklet is in Gujarati, fairly comprehensive and simple. While there have been no attempts made till date for dissemination of this booklet, the present Charity Commissioner was open to the idea of disseminating the information booklet through NGOs and NPO networks in the state. The office of the Charity Commissioner doesn't publish an annual report. There have also not been any recent attempts to maintain a database or information on trusts and societies, the last such initiative was a directory in 1965, which of course is completely outdated in the present context.

- ***Inadequate Staff (Numbers and skills):*** The Charity Commissioner in Gujarat has under him 26 sub offices, one for each district, headed by a Deputy or Assistant Charity Commissioner. The office of the Charity Commissioner consists of four Deputy and Four Joint Charity Commissioners, assistants and clerks. According to the present Charity Commissioner, more than half of the sanctioned posts have been lying vacant for the last 10 years. If and when they are filled there is no direct recruitment and a majority of the posts are filled by promotion of lower level officers who lack relevant expertise and experience in charity administration. This leads to poor quality of staff. He felt that inadequate and poor quality of staff were the main impediments for his office to effectively discharge its duties.

- ***Immense Work load:*** With respect to the work load of the office of the Charity Commissioner we were told that apart from registration of the trusts / societies which itself is immense due to large number of applications (according to the officials, approximately 5,000 applications are received per annum for registration of trusts, and 3000 per annum for societies; in 2003-04 1460 and 800 societies were registered). A lot of the work relates to alienation of immovable property especially sale of land, for which permission is required from the Charity Commissioner. The staff also spends a lot of time in litigation cases related to change of status reports under sec 22 of the Bombay Public Trust Act whereby all changes in the name of trustees either due to death or resignation, or appointment of new trustees have to be updated. According to the officials there is a huge backlog (of approximately 4,000 cases) under this section alone. Other cases relate to litigation and appeals with respect to the determination of the income for purposes of the calculation of cess.

- ***No emphasis on proactive Monitoring:*** The officials said that while the Charity Commissioner's office is required to do an annual inspection of at least two trusts every year, even this does not get done due to immense workload on other counts as stated above Even the reports filed by NPOs are not scrutinized unless there is a complaint of misuse or bad governance. The officials were of the view that since a lot of time and energies are directed towards completions of other tasks they hardly have time to focus on proactive steps to encourage or monitor charities and NPOs.

- ***NPOs (especially trusts) do not adhere to reporting requirements:*** The officials brought to our notice that many trusts do not adhere to the reporting requirements. They were, however, unable to provide figures of how many trusts file their annual returns and how many do not. The officials were of the view that several trusts in the state have stopped functioning and the trust funds are lying idle. But again there are no definitive figures. Discussions revealed that amalgamation of trusts is possible under the provisions of Section 50A (2), however, in their experience such cases were rare.

- ***Penalty for non compliance is too low to be a deterrent:*** Organizations with income above Rs. 1500 per annum have to submit audited accounts and organizations with annual income below Rs. 1500 have to submit only income and expenditure statements within 6 months of closing of accounts to the Charity Commissioner's office. Penalty for non-compliance on this count is a fine of Rs. 1000. The officials interviewed in Gujarat were of the view that the fine is a very small amount and in no way is a deterrent for non-compliance or misdeeds. Further, we were told that the amounts expended by the office of the charity commission to bring the case to justice are much higher then the penalties levied.

- ***Limited powers to deal with non compliance and malpractices:*** In Gujarat, in cases of mismanagement of funds or other malpractices, the Charity commissioner has powers only to issue directions for compliance, in case of continued non-compliance he / she has powers to refer the case to the civil court.

- **No Autonomy:** The CC's Office is part of the Law Department and The CC has to report to the Law Secretary. There is thus no independence of action and every possibility of being pressured for political reasons.

6.4.2 Charity Commissioner, Maharashtra

In the state of Maharashtra, the provisions of the Bombay Public Trust Act 1950 are applicable. The act was amended when Gujarat was bifurcated from Bombay state, and even subsequently. The key issues which emerged are:

- ***Multiple Roles of the Charity Commissioner:*** The Charity Commissioner, Maharshtra State is the regulatory head of Charity organizations in the state. The officials said that the charity commissioner has multiple roles, one as a head of the administrative machinery for superintendence over trusts and the second as the authority who is vested with quasi-judicial powers of deciding cases under Bombay Public Trust Act. These multiple roles draw on his time and energies. Moreover, since the Charities Commissioner is from the judicial service, he lacks the outlook and appreciation necessary to deal with charities. Only a few exceptional individuals have had the aptitude to be Friend, Philosopher and Guide to charities. Most look at the problem from a purely legal point of view.

- ***Poor Physical infrastructure facilities:*** The physical facilities and infrastructure in the office are very poor. At present all records are maintained manually, the process towards computerization of the records is underway and the officials were hopeful that the office would be fully computerized by 2005.

- ***Poor mechanisms for public education and information:*** The mechanisms for public education and information are very poor. The office of the charity commissioner doesn't publish an annual report. The only information available through the office of the Charity Commissioner was the performance budget for the financial year 2003-04 which was published by the Law and Judiciary Department of the Government of Maharashtra. There have also not been any recent attempts to maintain a database or information on trusts and societies, the last such initiative was taken by preparing a directory of charitable organizations in Greater Mumbai Region in 1979, which of course is completely outdated in the present context. The officials were of the view that it was impossible to take any initiatives towards ensuring public access to information as they were extremely short staffed and were finding it difficult to take care of their other duties and responsibilities.

- ***Immense Wok load:*** Much of the workload of the Charity Commissioner's office is for registration of trusts and societies. The officials shared that they received 2,960 applications for registration in 2002 and 2,667 in 2003. As on 31st December 2003, there were 54,942 trusts registered with the Charity Commissioner. Apart from registration the office of the Charity Commissioner is involved in cases of litigation and appeals with respect to the determination of the income for purposes of the calculation of cess. The alienation of immovable property, especially sale of land, for which permission is required from the Charity Commissioner, are very time consuming. There is also litigation related to change of status reports under sec 22 of the Bombay Public Trust Act whereby all changes in the name of trustees either due to death or resignation, or appointment of new trustees have to be updated.

- ***Inadequate Staff (Numbers and skills):*** The officials feel that the office of the Charity Commissioner is severely understaffed, with only 850 staff members throughout the state of Maharshtra. We were told that at present many of the posts are vacant. The officials were of the opinion that inadequate and poor quality of staff with respect to skills, perspective and experience was a major deterrent for effective discharge of their duties.

- ***No formal cell for complaints and grievance redressal***: There is no formal cell for complaints and grievance redressal and the officials said they try their best to address the complaints at a personal level.

- The Charities Commissioners, past and present, also felt that while most charitable organizations were well intentioned and kept within the law, at least in spirit, **there was a growing tendency on the part of well endowed trusts to use their land to make profits.** There was also a growing trend on the part of educational and health institutions to use the charity route to evade taxes and corner benefits, even though they intend to and operate as profit making organizations.

- On the other hand they also pointed out that **there was a cynical political use of charitable trusts to control vast funds**, esp. those of large religious trusts by appointing government trustees to the boards.

6.5 Registrar of Companies (RoC)

The Registrar of Companies, which is the regulatory authority for Section 25 companies, has offices in all states. The information given below is based on the information given and views expressed by officials of the Registrar of Companies office, Maharashtra.

- ***Efficient Physical Infrastructure:*** The offices of the Registrar of companies when compared to the offices of the Registrar of Societies and Charity Commissioners, fare much better with respect to provision and maintenance of physical infrastructure. Offices are located in newer buildings with planned layout. The offices of the Registrar of Companies is fully computerized.

- ***Effective mechanisms for public education and information:*** The officials told us that the Registrar of Companies was effectively using the Internet for information dissemination to the public. Their website (www.dca.nic.in) provides all information, procedures and forms required for formation and registration of a Section 25 company, online submission of applications is also possible. The officials stated that the office of the ROC is also working towards a complete online filing of annual returns. We were told that at present there **are no mechanisms for public to access information about various section 25 companies**.

- ***Strict and Comprehensive Scrutiny at the time of registration:*** The office of the Registrar of Companies undertakes a very strict scrutiny of the Memorandum and

Articles of Association (MOA and AOA) to establish charitable activity. The officials were of the view that the process of incorporation though lengthy is simple, non-duplicative and cost effective as all information is provided upfront.

- ***Efficient mechanisms for monitoring to control mismanagement:*** All section 25 companies have to submit a balance sheet at the end of every year. The same is scrutinized and reveals mismanagement of funds if any. Since the ROC also has the power to call for information from any organization and also to cancel the registration on grounds of misuse and mismanagement of funds, monitoring is more effective. However, the officials shared that not much can be done despite the legal provisions if the political will to take the erring organizations to task is missing.

6.6 Directorate of Income Tax Exemptions

The Director General heads the Directorate of Income Tax Exemptions for the whole of India, while the Directors of Income Tax Exemptions have regional responsibilities for issuing, monitoring and regulating exemptions under Section 12 A and 80G of the Income Tax Act to Non-profit organizations. The responsibility for issuing exemptions under Section 35 AC rests with a member of Central Board of Direct Taxes (CBDT). The following is based on the information offered and views expressed by the Director General and Directors Income tax exemptions; as well as Member CBDT responsible for issuing exemptions under 35 AC.

- ***Inadequate Staff:*** The interviews with Director of Income Tax at New Delhi and Chennai brought to light the fact that the income tax departments are currently understaffed and staff with the requisite skills and aptitudes are also few. This is one of the major deterrents for the effective discharge of duties. The office of the Director General Income Tax which has been shifted to Delhi a couple of months back from Calcutta, has sanctioned staff strength of 55 but is presently short staffed as many of the staff did not wish to move to Delhi from Calcutta. Member, CDBDT responsible for exemptions under section 35 AC also said that the department is grossly understaffed and that a proposal has been submitted to the ministry for recruiting two more section officers to ease the work pressure.

- ***Attitude of the Staff:*** *A part of the reason for the non responsiveness of staff or their unhelpful or over zealous* attitudes can be attributed to the fact that few of the officers included, want to get posted to this non-revenue generating department, as there is no scope for getting any recognition for increasing revenue as is the case in other income tax departments. Many of the senior officials were of the view that there is a need to encourage dialogue between Income tax officials and NGOs to make both sensitive and responsive to each others' needs and constraints.

- ***Lack / Inadequate Computerization and Data Management Systems:*** We were told that till a couple of years back, income tax departments at all levels were without computers. While the process of computerization is now underway it is far from complete. At present, there is no mechanism to record and manage data at a national or state level vis-à-vis number of applications received for registration per year, number that are approved and those that are rejected; the number of non-profit organizations which have received exemptions under the different sections (12A, 80G and 35 AC); number that adhere to annual compliance and reporting requirements, etc. It is for this reason that we could not get any quantitative information from any of the income tax offices.

- ***Poor mechanisms for public education and information:*** At present there are no mechanisms to share information with the public. Discussions with the officials revealed that they do not perceive dissemination of information to the public as a major need. None of the income tax departments have made any sustained attempts to publish booklets providing information about registration, reporting, compliance, etc. While three years back pamphlets were printed by CBDT providing information about the provisions and process for seeking exemptions under 35 AC these were not proactively disseminated. The Income tax departments (both at central and state levels) do not publish annual reports. Regarding public access to information for research or other bonafide purposes, the officials were of the view that private trusts have a right to confidentiality; however, this cannot apply to public trusts as public monies are involved and information needs to be readily available to ensure accountability. They were of the view that trusts themselves also are not in favour of sharing information. The publication of their accounts would reveal information regarding their assets and this is not welcome as they feel it will be used by members of the public to either stymie their operations or to go to courts and claim certain imaginary relief. About five years ago when the law made it obligatory on the part of Trusts to publish in local newspapers a copy of their accounts, it attracted significant opposition from the Trusts resulting in the Government giving up the amendment.

> "The public is not allowed access to information that tax payers file with the income tax department. The department also does not share the information contained in Trust deeds. The relationship which the IT department has with the non profit organizations is highly tenuous. Apart from the activities that get triggered at the time of the initial registration followed by the applicant's periodic renewals, the department has no information of what happens with the Trusts. The department also does not know whether such recognized Trusts carry on continuous activities or have been set up only as tax saving devices by particular organizations. Occasionally, when complaints are received by the IT Department, it takes action to see cognition of the Trusts."
>
> - Advisor, Finance Department, Govt. of Andhra Pradesh

- ***Granting Exemptions under various Sections of Income Tax Act:***

  - **For exemptions under Section 80G** there is very little scrutiny since in most cases the activities have not started. The officials shared that it is for this reason that exemptions under 80G are granted freely and for only one year and it is only after rigorous scrutiny of accounts at the time of the renewal that the certificate is renewed for 3-4 years.

  - **For exemptions granted under Section 12 A**, the initial scrutiny is very limited. Only a very few cases are refused 12 A registration, and they can appeal to the IT Tribunal against the decision of the IT Commissioner. **No renewal is necessary for 12 A registration, which was also irrevocable.**

  - This year's Budget, introduced a clause that 12A registration can be withdrawn if the trust engages in mismanagement or misuse of trust funds, and does not carry out charitable activities as stated in its Trust deed.

  - The **exemptions under Section 35 AC** were introduced in 1992, as a special provision for projects and is usually given to organizations / institutions of proven capacities and caliber. There is only one national committee - "National Committee for Economic and Social Welfare" which is responsible for granting 35 AC certification. Due to centralization of this function and a significant number of proposals, there is a huge backlog. In order to make the process more quick and effective there is a need for decentralization.

- However, the official in-charge of exemptions under section 35 AC was of the opinion that decentralization would lead to further abuse of the provisions and cutbacks. He felt that the exemptions should be made very selective and should be granted to the organizations which have been in existence for five years.

- ***Time limit for granting exemptions under various Sections of Income Tax Act:***

  - The legal time limit within which the applicants have to be informed about their registrations **under Section 12A and 80G**, is **six months**. The officials were of the view that despite all their efforts to process applications on a priority basis a time period of six months is essential as they have enormous workload and inadequate staff. The officials felt that in the present context it was impossible to reduce the processing time to 90 days as recommended by Chelliah committee and Task force on Laws relating to the Voluntary Sector set up by the Planning Commission. Further, they were opposed to the proposals made by different committees that have reviewed charity administration law that if permission is not granted during the stipulated time period it should result in automatic permission been given.

  - There is no time limit stated by law for granting approval under **Section 35 AC**. The officials told us that the time taken to grant exemptions varies from case to case, from two to six months.

- ***Compliance by NPOs: The officials stated that by and large NPOS are filing*** returns. We were told that of the organizations that file annual returns, a large majority are complying with the 85 % spending requirement, and if they don't they apply in form 10A for accumulation for 5 years for specific purposes. The officials shared that in as many as 95% of the cases, the returns filed are accepted in a summary manner without further investigation, and therefore there is very little enquiry into what goes into the 85% spending compliance. A spot check is done for 5% of the returns filed, and those selected for scrutiny are organizations with large incomes. Small ones are investigated only if there is a complaint against them about misuse of trust funds or property. There is no penalty for non-filing of returns, but notices are issued under Section 154 and Section 263 to remind non-profit organsiations to file returns. In cases of default the penalty is taxation of the income of the trust for that year. The trust can resume its tax-exempt status from next year if they again comply with the law.

- ***Monitoring by IT Department:*** With respect to the monitoring role of the income tax departments we were told that there is no fixed quota for audits every year and an inquiry is initiated only if there is a complaint or report. Regulation by the income tax department is rather passive in nature, except in the state of Maharashtra, where the Charity Commissioner has the power and authority to freeze the Bank account of charities that involve fraudulent activities. The Director general, Income Tax was of the view that there must be a strong political will for strict monitoring of abuses without which nothing can be done.

- ***Abuse of the provisions / exemptions by NPOs*:** Majority of the income tax officials were of the opinion that there is a lot of abuse of the exemption provisions for tax evasion, especially by large trusts and business houses. We were told that it was in light of such rampant abuse that the proportion of annual income required to be used within the same financial year was raised from 75% to 85%. The officials shared their experiences that in case unlimited accumulation is allowed, business trusts and industrial houses would use the provision to accumulate large surpluses and then move it into a newly created trust to get tax exemption for these funds, which are then used for the benefit of trustees. Member, CBDT responsible for exemptions under Section 35 AC was also of the opinion that there is a lot of abuse of provisions under Section 35 AC, he shared that innumerable cases of individuals giving donations under Section 35 AC for cutbacks have come to his notice. Almost all the officials interviewed felt that large private schools and hospitals which seek exemptions under various provisions of the income tax on the pretext of charitable purpose are hardly engaging in any charity at all and are running their operations as business enterprises. The officials shared that the government is losing a lot of revenue due to the exemptions granted to such organizations and were of the opinion that there should be no exemptions.

  In the absence of an analytical research to examine and bring to light how the provisions of the Income Tax Act have facilitated the growth of the non profit / charities sector and how they have been used or misused by the non profit organizations, majority of the views remain individual opinions and biases against the non-profit sector as there is no data to substantiate them. Advisor, Finance Department, Government of Andhra Pradesh, said that occasionally, the Income Tax Department does undertake a study of the functioning of the charitable institutions, the impulse for which comes from the Comptroller and Auditor General of India. The income tax officials were of the view that it would be advisable to commission such a study to review the current situation.

- ***Opinion on the recommendation of the Chelliah Committee:*** The officials provided us with information about the status related to various recommendations and their opinions on the same:

  - With respect to processing 12A and subs section (5) of 80 G together, Mr. Tripathi was of the opinion that this was being done.
  - While the Chelliah Committee had recommended granting certificates for 5 years this has not been implemented and has been retained at 3 years. The IT officials felt that the proposition was not practical, as it would encourage misuse.
  - The Chelliah Committee had recommended extending the audit deadline 31 December, however, this has not been implemented and it remains 31 August or extensions as announced from time to time.

- ***Opinion on the recommendation of the Task force on Laws relating to the Voluntary Sector set up by the Planning Commission:*** The officials provided us with information about the status related to various recommendations and their opinions on the same:

- The Task force had recommended that the income limit for exemption from income tax should be raised from the present Rs. 50,000. With effect from this financial year the limit for exemption would be Rs. 1 lakh. Non-profit organisations with income less than Rs. 1 Lakh would not need to file tax returns.

- The Task Force had recommended that the limits on donations in the hands of the donor for purposes of tax exemption should be abolished. This recommendation was not accepted and it remains at 10% of a donor's income that qualifies for tax exemption on donations.

- The Task Force had recommended that since many trusts do not know that they must register within 1 year of formation, the delay should not be punished and all those in default should be given a mass amnesty. It was indicated that such delays have always been condoned without levying penalty.

- The Task Force had recommended that the Income Tax Act should be modified so that income from income generation projects should not be treated as business income attracting the provisions of Section 44AB. This has not been implemented and the officials strongly voiced their opinion against this recommendation. According to them if this section is removed there will be no control on business income enjoying tax benefits illegally.

- The task force has recommended that the annual spending condition of 85% of the income in a year should be removed. The officials felt that if this provision is enacted then organizations will accumulate and transfer monies without doing any charitable activities.
- As for allowing investment income to be received without TDS, he felt that a blanket instruction couldn't be enacted because a trust may be tax exempt today but to morrow its tax assessment may change.

In sum, the impression left was that the charities sector is not very strictly regulated, but left to its own provided the few reporting requirements were met. Effective monitoring is not being done due to work overload and inadequate staff. Audit is an exception rather than the rule. Secondly most income tax officials were of the view that there was no call for increasing the rate of exemption or even having an exemption at all since the genuinely charitable will donate, and the concessions only fuel abuse.

CHAPTER 7

CONCLUSIONS

7.1 Specific Problems

7.1.1 Multiplicity of Laws and Agencies

There are a multiplicity of laws governing charity for different religions, for different types of organizations, and for different states, with no uniformity in the laws across states, and no consistency between laws. While the societies law is almost the same across states, though with some variations, because it is modeled on the Registration of Socieites Act of 1860, there is no common law for registration of trusts. In Bombay and Gujarat which have the Bombay Public Trusts Act and the office of the Charities Commissioner to administer it, trusts are quite rigorously administered. Andhra Pradesh, has a similar law. But many of the states have no state or central law applicable to states charged with ensuring good governance of trusts. While societies and companies are more strictly regulated in these states, (e.g. W. Bengal and Tamil Nadu) the trusts are not regulated at all. After the initial registration nothing further is required of them. Therefore several charities prefer to be registered in this manner.

The Companies Act on the other hand monitors and regulates charities more strictly. **The point being made is that due to multiplicity of laws and different standards in monitoring and regulation there is no common standard of good governance to be complied with.**

A second problem connected with different laws in operation in different states is that while societies and trusts pay an administrative cess from 2%-5% of annual income in Gujarat and Maharashtra, and 1% in Karnataka, similar organizations in other states do not have to do so. Thirdly, there is a dichotomy between section 35(1) of the BPT 1950, and section 11(5) and section 13(1)(d) of the IT Act 1961 regarding investment of trust funds. This implies having to understand a complex set of legal issues, especially if an organization works across several states in India. Multiple laws also mean multiple agencies to deal with.

7.1.2 Diffused Government Responsibility

All the agencies are embedded in some larger department. The Voluntary Action Cell for overall policy co-ordination is under the Planning Commission; the Income Tax agencies are under the Finance Ministry; the Registrar of Companies is under the Department of Company Affairs and Company Law; the Charities Commissioners in Gujarat and Maharashtra report to the Legal Department, and the Registrar of Societies are under the Co-operatives Department of various states or under the Home Department.

No agency is autonomous, with its own sources of revenue, its own staff, and its own rules and procedures. All are therefore vulnerable to political intervention.

7.1.3 Regulation but no Facilitation

The laws, and particularly the way they are interpreted and implemented by the agencies are basically regulatory in nature. Their concern is to see that the government does not forego revenue, and that the letter of the law is followed. Seldom is any effort made to understand the purpose or the people behind the organization, and the spirit behind the actions of an organization.

For instance, an organization might be doing good work on the ground but has a weak capacity for keeping accounts; another organization may be smart in presenting and dressing up accounts which hide the fact that they are doing little work. Then again some organizations may be doing neither good work nor keeping good accounts. A good regulatory agency would be able to spot the difference especially if they were familiar with the organizations, and would help the good but weak ones to reform.

The agencies do not see that their role should also be that of facilitators, who can help to promote charity or growth of civil society. No attempt is made therefore to educate the public about the NPO sector, or the NPO sector about legal compliance and good governance. At the most they ensure that the funds are used for charitable purposes. There is nothing to promote good internal governance of the organization. The legal incorporation laws do, to some extent incorporate provisions for better internal administration, but again compliance and compliance monitoring is either weak or a cause for harassment.

7.1.4 Inadequate Financial Resources

Not only do the agencies have insufficient resources to do a competent job, but as in the case of Maharashtra and Gujarat, even the surpluses that have accrued to the Charities Commissioner's offices through the levy of a 2-5 % cess for administrative purposes, remain unutilized, even though there is a crying need to augment staff, provide them training and a better working environment.

The physical condition of the offices is also appalling, even though these departments are public dealing departments, minimum facilities like drinking water coolers, benches and toilets are lacking, especially in the smaller offices.

7.1.5 Inadequate Staff

Almost without exception, (though the Office of the Registrar of Companies to a much lesser extent), all authorities pleaded inadequate staffing compared to need. Thanks to the rapid and phenomenal growth of the NPO sector, the workload on these offices has increased manifold. Though no quantitative figures were provided by any agency except some stray ones, to show how much the workload has increased, unquestionably the numbers of applications received for registration, annual returns and so on, have increased manifold, but the staff strength has remained either the same or declined, since many positions have not been filled up.

Even if the staff strength is small its productivity can be increased if staff are backed by proper technology and systems. Though computerization is said to have begun in most of the offices reviewed, in hardly any agency is it complete and most expect that it will take anything from 6 months to a year to complete it.

Few offices are equipped with modern office technology like photocopying machines, e-mail and fax facilities, which are the minimum in office technology required. Unless each agency is properly equipped, and proper data input and retrieval systems put in place, and the levels through which papers travel are cut, delays are inevitable.

7.1.6 Attitudes of the Officials and Staff

Again, even if the human resources are small in number, if they are well trained and motivated, and supported by proper facilities they can do wonders. Right from the top, much of the staff in these agencies is de-motivated. Only a very few are there because they want to be there; a majority have been deputed from other departments. At the middle level the positions have been filled in by promotions from the lower cadres or staff rendered surplus somewhere else. Barring a few exceptions, even the top functionaries see themselves as being sidelined from more important \ lucrative departments \ ministries, and are biding their time, waiting to move on and therefore either have no wish to develop expertise or are not allowed to, due to transfers.

Add to this the general attitude of apathy or aggression prevalent in most government departments. A legacy of the "inspection raj", the resultant attitude is one of suspicion and self righteousness, Everyone is held guilty unless proven to be innocent, and the onus of proving innocence is on the citizen.

However, here we must point out that though more people faced unhelpful attitudes, several respondents also mentioned that officials were helpful. This response was noticed more often in the south and Maharashtra than in the north or Bengal.

7.1.7 Corruption

The interviews with NPO functionaries and professionals (lawyers and CAs) associated with the non-profit sector have reported instances of corruption, where staff of the registering authorities and the Income tax departments have approached them expecting favours for speeding up the process. This was also brought to light by the Report of the Public Accounts Committee and in recent times has been a subject of newspaper reports as well. We acknowledge that such practices are present. However, we would also like to state that corruption endemic to all government offices / departments and not unique to the charity administration authorities.

7.1.8 Lack of Public Access to Information

Since we do not have one central agency responsible for charities, and different agencies are responsible for legal incorporation, there is no one Public Register of Charities, as is maintained by many countries. In UK the Charities Commission maintains a Public Register of Charities; in Canada, the Revenue Canada puts up a list of registered charities on its web site; and Hong Kong also has a Public Register of Charities. In the USA the portal Guide Star, a nonprofit organization, provides comprehensive information about the operations and finances of nonprofit organizations, received from the Revenue authorities or the charities themselves.

Since many organizations work across state boundaries, it is necessary to have one Public Register to which people can have access.

We would like to stress the importance of maintaining adequate data on charities, which is also accessible to the public. We faced the greatest difficulty in getting the basic information of numbers registered, their names and contact details etc. In such lists as were given to us the contact details were outdated and incomplete. With this how can the departments themselves do adequate monitoring, or formulate effective policy?

In offices of the Charities Commissioners or in ROS offices it is difficult to get copies of original documents since the record keeping systems are old and inadequate. Since the public have an interest in public charities, either as contributors or as taxpayers, they have a right to access information about such charities if they wish.

In U.K., USA, Canada and other countries, the public may inspect the annual returns filed by the charities either with the legal incorporation agency or with the Income Tax authorities. In India some of the laws also allow for public access to information, but not the Income Tax Act. In practice however, either due to poor record keeping, or desire to control information, this right can seldom be exercised. And the Income Tax offices, in addition, plead the need for confidentiality.

Overall, the Companies Department came out better than the other agencies in terms of the physical facilities, information made available, and attitudes of staff indicating the influence of a commercial culture. They also expected stricter compliance with the laws.

The point to note here is that if one agency finds it possible to be public friendly and efficient it should be possible to make the others reach at least this level, with better resources and changes in attitudes.

7.1.9 Policy based on impressions, not research.

Tax laws are changed periodically on the presumption that tax incentives are being misused. But there has been no systematic research on how many have done so and what is the extent of the loss to the state.

7.1.10 Delays

While the IT Act does provide for time bound action in certain cases, the time limit prescribed is too long (6 months). And for 35AC registration there is no time limit prescribed. Moreover, for renewals of 80 G the time taken is beyond the validity of the original exemption, even if the application for renewal was submitted well before expiry. This puts the organizations at a disadvantage for getting donor contributions. Similarly, under the Registration of Societies Act and the Indian Trusts Act, there is no stipulated time limit for completing the registration process. There is also no provision for automatic registration / approval in case the application is not processed within a particular time period.

7.1.11 Monitoring and Evaluation

Most agencies require registered NPOs to submit annual returns, but these annual returns are seldom put to their proper purpose – viz., ensuring compliance with law, and promoting sound governance and accountability, because of lack of adequate monitoring.
In spite of the law being quite comprehensive, and the procedure elaborate, actual implementation and enforcement are weak. There are provisions for inspections but they are rarely performed, and when they are performed the motives are not education for better performance but with ulterior motives.

The result is weak monitoring and on the one hand there is no deterrent to wrong action, and on the other, unnecessary paperwork and trouble for the honest ones who comply.

However, the real problem is that even if the inspection machinery is strengthened and sensitized, the enormous numbers our agencies have to cope with imposes limitations.

Most of the government agencies cited inadequate staff as ground for lack of scrutiny and follow up, except in a few cases where abuse has come to notice, or someone has complained about an organization.

But the need for systematic monitoring cannot be gainsaid. Some organizations such as trusts registered under the Registration of Document Law as in Chennai or with the Registrar of Assurances in West Bengal do not even have to file any reports once the initial registration is received.

On the other hand in W. Bengal and some of the other states, there is over zealous attention paid in the ROS office to annual returns, within a deadline, with penalties and even threat of deregistration or appointment of special officers to over see the affairs of the NPO.

What is worse, given the prevalent government attitudes, “monitoring” which should mean a two way interaction to discuss how to improve matters, becomes in reality” inspection”, its only aim being to find fault, and if possible to make some money out of the default, unintentional though it be.

7.1.12 Sanctions

Though some of the laws, such as the BPT, provide for penalty for non-submission of annual returns, as do the W. Bengal Societies Act, the maximum penalty is so low (Rs 1000 in case of BPT), and the CC has to approach a court to levy this penalty. The judge often awards a lower penalty, like Rs 25 or so. Hence the cost of litigation to ensure compliance works out more than the penalty.

7.1.13 Complaint and Review System

In theory most offices have a complaint and review system to deal with dissatisfaction. However, in practice this is seldom implemented.

7.1.14 NPO Education In Legal Compliance

None of the agencies are concerned with educating the sector about good governance or legal compliance, or with educating the public about the sector.

Of the various agencies reviewed, only two offices - the Income Tax Department in Chennai, and the Charity Commissioner’s Office, Gujarat - have published Information booklets on procedures. While the Income Tax Department’s booklet is in English, the Gujarat Charity Commissioner’s Office booklet is in Gujarati. Even in these cases, not many charities are aware of these booklets since no proactive dissemination has been undertaken by the agencies. Nor have NPO networks, associations, intermediary agencies filled this gap, and there is no one stop shop for getting all the information in simple language.

Most of the participants of the survey mentioned that they received information about procedures only by going to the offices concerned, and that too only by asking officials. It was not available in simple fact sheets or booklets in the local language. It also required several trips to the offices. This need not happen if information literature was widely available at different places, and also on the net, public libraries, with chambers of commerce, or other public places.

7.1.15 NPO Indifference

Very few NPOs, especially large and "elite" NPOs, have any idea of how the regulatory agencies work, or the legal compliances that are required, since they prefer to work only through their CAs. They feel that visits to such offices or keeping in touch with them is a waste of time, and to some extent their attitudes are justified, because of the abysmal conditions in these offices and the unhelpful attitudes of the staff.

On the other hand, since NPOs frequently see themselves as watchdogs in other areas, they should put charity reform also on their agenda. Unless there is a pressure from the clients for better service, things will go on as before. More frequent visits to the offices and efforts at personal interaction with the Officials would help to change attitudes. For instance the Director of the Blind Men's Association in Ahmedabad, daimed that he had no problems with the Charity Commissioner's office and that the staff were always sympathetic, and their work was done without any trouble. But, he emphasized his organisation they also took trouble to understand what the legal requirements were and to see that all the documentation was complete.

Even some CAs pointed out that the fault for the delays sometimes lay with the charities themselves. They do not submit all the documents required and unnecessary correspondence ensues. For this it is necessary not only for the government agencies, but also voluntary sector associations, networks, and umbrella organizations to educate the public and NPOs about all the formalities to be completed for initial registration, renewals, annual returns, change in status etc.

7.1.16 No Forum for Interaction of NPOs and Charity Administration Authorities

There is no forum, which provides a common platform for effective dialogue between NPOs, professionals such as lawyers and CAs, and the government agencies. There is no interaction between the various stakeholders and no attempts to understand each other's perception on what ails charity administration. If there was such a forum, and regular interactions, much could be changed.

7.2 Additional Problems Specific to Various authorities

7.2.1 Registrar of Societies

- **Lack of adequate provisions in the law that encourage and facilitate scrutiny at the time of registration of societies –** At the time of registration, apart from making sure that a society has charitable objectives and that the required documentation has been enclosed with the application, the registrar of societies has no powers to make any further inquiries.

- **Renewal of Registration –** In some Indian States, it is necessary that operating societies seek fresh registration at the end of a specified period. This piece of legislation is not provided for in the Central Legislation and is a source of unnecessary harassment and expense for the societies. In the states of West Bengal, Kerala and Uttar Pradesh societies have to register each year, every eighteen months and every two years respectively. In the state of Tamil Nadu societies have to register every five years. Since authorities can take action against any organization that engages in malpractices, it should not be imperative for organizations to provide and furnish bonafides at the end of a specified period of time, like one year or five years. The renewal process, just like registration, involves a lot of paperwork and time commitments from non – profit organizations. Organizations mention it as an irritant.

- **Provision for appointment of special officers –** The Registration of Societies Act of Tamil Nadu and some other states contains a clause allowing for the appointment of "special officers" to manage the affairs of the society for a specified period of not exceeding one year. This has the potential of being misused for political purposes, and has been known to be used for this purpose.

7.2.2 Charity Commissioner

- **Need for Societies to also register with the Office of the Charity Commissioner:** In Gujarat, as also in Maharashtra, all societies that have a charitable purpose (development has been included in the definition of charitable purpose) have to be registered with the Charity Commissioner. This implies that they have to pay a cess @ 2% of the annual income of the society to the Public Trusts Administration Fund. The Karnataka Societies Act Also levies administrative cess of 1%. No other agency providing a public service charges for the service. Societies in other states do not have to do so, and no clause in the Registration of Societies Act makes a mention of such a cess. This is resented as an unnecessary imposition by the societies in these states.

- **Charging of Cess and its non- utilization:** As per the provisions of the Bombay Public Trust Act (applicable in Gujarat and Maharashtra), the Charity Commissioner charges a cess @ 2% of the annual income of the trust or society which is to be paid into the Public Trusts Administration Fund. This fund is to be used to meet all the administrative costs of the office of the Charity Commissioner and for providing facilities or promotion work. We found that in Gujarat, the approximate collection per year from the cess is Rs. 2 crores, and interest accrued on the accumulated fund is an additional Rs. 4 crores per annum. The accumulated balance in the Fund is currently Rs. 40 crores. This sum is lying unutilized in spite of the fact that the office desperately needs more staff, better equipment and facilities!

- **Multiple Roles of the Charity Commissioner:** The Charity Commissioner has multiple roles, judicial as well as administrative, each drawing on his time and energies. In the state of Gujarat (as also in Maharshtra), the Charity Commissioner is also the Registrar of Societies and the Administrator General under the Administrator Generals Act.

- **Limited / No experience and exposure of the Charity Commissioner to Non-profit sector:** Ideally, the Charity Commissioner should be a Friend, Philosopher and Guide to charitable organizations. But in reality, he is always an officer of the judicial service for whom this work is out of the mainstream. He has no previous exposure to the non-profit sector and may or may not have any interest in charities work. Therefore this office does not always attract the best talent.

- **Immense workload at the Charity Commissioner's office:** Much of the workload of the Charity Commissioner's office, and the most troublesome relates to litigation and appeals with respect to the determination of the income for purposes of the calculation of cess.

- **Alienation of immovable property** especially sale of land, for which permission is required from the Charity Commissioner. The permissions required, the number of affidavits to be filed, the time taken to fix \the acceptable price and the stipulation for deposit of part of the sale price, all have been cited as causes of problems of time, harassment, and corruption. We give in annexure 7 an example of the types of problems faced by an organization in this regard.

- **Change of Status Report:** Litigation associated with change of status reports under sec 22 of the Bombay Public Trust Act, whereby all changes in the name of trustees either due to death or resignation, or appointment of new trustees have to be updated is a major concern. We were told that there is a huge backlog, of approximately 4,000 cases, under this section alone in Gujarat.

7.2.3 Registrar of Companies (ROC)

- The registration process is very lengthy and complex. It involves two sets of procedures, namely granting of license and registration of the company. While the process of scrutiny is thorough, the fact that the registration information is complex and generally needs professional advice, and takes more time and resources, means that only a few, and generally the more well resourced organizations take recourse to it.

7.2.4 Income Tax Exemptions Directorate

- **Exemptions u/s 35 AC –**In income tax exemptions under 35 AC, the prime cause for delay is the centralization of the decision making process in a national committee of experts - "National Committee for Economic and Social Welfare" which is responsible for granting 35 AC certification. There is also no prescribed time limit for granting the exemptions. Further, there is no process of appeal if the application is rejected.

- **Exemptions u/s 80G –** NPOs who have exemptions under 80 G find that they do not receive renewals even after the 80G has lapsed, though they have applied for the renewal in time. They are generally requested to wait for applying till the certificate actually expires, and then the renewal takes several months. This handicaps NPOs in receiving donations.

- **Definition of "Income of Trusts"** – The definition of " income "of trusts poses some problem. Income from grants in aid is also computed as "income" for purposes of the spending criteria (85% of income) though grants are not net income or surplus but require the fulfillment of certain obligations. They are therefore, not equivalent to business "income".

- **Definition of "Income From Business"** – Similarly the definition of "income from business" is causing hardship to NPOs, since many have to engage in some amount of business activity in order to become self sustaining, and to cross subsidize the non business and charitable part of their work.

- **Provisions of the Act are complicated and difficult to understand –** The various sections of the Income Tax Act are very complicated and difficult for a layman to understand. The NPOs thus need professional help to be able to understand the provisions, reporting requirements and the compliance.

- **Frequent Changes in the Income tax Act –** One reason for non compliance by even organizations with effective governance mechanisms is that there is a very frequent changes in tax laws which is confusing.

In summary, the main areas of concern appear to be the following:

- Delays due to deficiencies in the laws, lack of systems and facilities.
- Lack of transparency in the process resulting in harassment and corruption.
- Lack of understanding of the voluntary sector on the part of the regulatory agencies, and attitudinal problems
- Ignorance and lack of understanding of the legal compliance requirements and procedures on the part of NPOs
- Lack of access on the part of the public to information and data with the agencies
- Multiplicity of agencies
- Lack of proper monitoring of NPOs and therefore lack of accountability on their part.
- Emphasis on financial issues to the extension of other good governance issues.

7.3 Conclusions

From the foregoing four overwhelming conclusions emerge:

1. Though it is not as efficient, user friendly and facilitative as it ought to be, the charities administration has not proved a barrier to the growth of charities. Compared to many other countries, the Indian legal framework has allowed space for civil society organizations to emerge without restrictions. The main problem has not been one of denial to legal existence or legal protection, or even of right of protest to redress a wrong decision. In spite of its many flaws, such as cumbersome procedures, delays and corruption the legal framework and the agencies responsible for its administration, there have not been major impediments in the way of functioning of charities. The income tax provisions to encourage charity are about as encouraging as in most progressive countries, and better than in others.

2. But this is not to say that there is reason to be complacent. If there are no major impediments, certainly there are several roadblocks, and several irritants in the agency\ charities interface. If the work of the agencies was streamlined, the time and money saved by charities on unnecessary paperwork, and trips to the agencies, could be more fruitfully spent on their substantive work. A number of short-term reform measures, to be discussed later, could enhance the performance of these agencies. But more important than the procedural and other irritants is the failure of the agencies in performing two major roles. One is that they have not been effective in regulating the sector and securing compliance with the laws to ensure fiscal and management discipline in the sector, which would enhance public confidence in the sector. Seldom are charities visited, their work properly understood, and notice taken of the returns filed. Soft state that we are, hardly ever are any sanctions applied for misdemeanor.

Firm regulation needs to go hand in hand with education, and facilitation to help charities to be legal compliant. This too has not happened at all.

3. A third conclusion that emerges is that all is not well with the charities sector. Even as it is being given an increasingly important role in national development, and hopes are being pinned on it being able to deliver what the government and the business sector cannot/have not, its higher profile has also thrown light on indiscipline, lack of professionalization and unethical behaviour within the sector. Even though it is willing to assist charities in their laudable work by supporting them with funds, the public is beginning to lose confidence in the integrity of the organizations and particularly in whether their contributions reach the beneficiaries for whom they are intended. A section of the charities sector has cynically manipulated the provisions of the law to their own personal ends. That the problem exists in other countries and they have also felt impelled to take stern action is borne out by the fact that the Financial Action Task Force in G8 countries mentioned that trusts are the ideal from of organization for money laundering and have been so used.

In the USA too the Revenue Service issued guidelines recently for stricter monitoring of 501(C)(3). (charities) organizations. But even if there is no overt misuse, charities are guilty of non-compliance either out of ignorance of the law, or sheer indifference knowing that there will be no consequences. At the same time it must be stated that if the attitudes of the law enforcers were more helpful, and less heavy handed than they are, compliance would improve.

4. Finally, an overarching cause of the present hopeless drift is the lack of political will. More than anything charity administration suffers from the fact that charity or voluntarism comes way down in the priority list of the government, both at the central and state level. Though the government expects a lot from the NPO sector for assisting it with nation building, it is yet to create commensurate conditions to enable it to play its proper role. As a result charity regulatory agencies suffer not only from poor budget allocations, but overall neglect. Not only that, charity is also being used for political reasons, both because of the huge pool of funds represented by some of the big trusts, and the potential the laws offer for political control. Influential people running schools and hospitals for profit are able to get politicians to waive action against them. Hence reform is possible only if the administration and the public perceives a will to act. As mentioned earlier, several committees and commissions and task forces have made recommendations, and very few have been adopted. Unless the charities sector is seen to be of importance in national life and resourced with funds and people accordingly, reforms will remain on paper.

In sum, action is required from both the charities sector and the Establishment. What this action should be is considered in the next chapter.

CHAPTER 8

RECOMMENDATIONS

8.1 Characteristics of Effective Regulation

Before we go on to suggest how some of the problems mentioned in the previous chapter can be overcome, we would like to take a look at what the role and functions of an ideal Regulator (i.e. the agency created under the laws to see to their compliance) should be, and the criteria for its effective operation.

The role of the Charities Regulator\s should be to:

1. Effectively secure compliance with the charity laws of the land.
2. Enhance public trust and confidence in both the regulator and the charities.
3. Ensure a fair and transparent application of the law and the connected decision making processes.
4. Make the regulatory process as simple, non-duplicative and cost effective as possible.

To enable it to be effective in fulfilling its role, there should be:

1. Clarity in the scope and mandate of the Regulator.
2. Integrity in its operation
3. A high public profile
4. Capacity to educate the public and the sector
5. The means to raise adequate resources for itself
6. The authority and the competence to review and interpret charity law to meet the needs of an evolving society.

The recommendations below have been made keeping in mind the problems voiced in our survey, and these characteristics of an ideal Regulator.

8.2 Recommendations

Some of the problems enumerated earlier can be addressed in the short term by procedural and organizational reform, largely taking the system and even the laws as given. Others need systemic change and more radical reform and will therefore take time to happen. Therefore our recommendations are grouped as Short term, and Medium \ Long term measures.

8.2.1 SHORT TERM MEASURES

Basically, the actions needed can be categorized into three:

1. Facilitating charities to comply with the laws for the sake of good governance. This essentially boils down to rationalizing the Charity Administration and simplifying the procedures.
2. Checking malpractice in the nonprofit sector by more effective monitoring and application of sanctions.
3. Self-regulation by the voluntary sector to complement legal regulation.

Though self-regulation is very necessary and a voluntary sector agency like the Credibility Alliance has an important role to play in educating the sector about good internal governance and legal compliance, it cannot substitute for government regulation. And therefore it is important to reform the existing system of state regulation and to ensure that it works in close alliance with the self-regulatory agency.

8.2.1.1 General Recommendations

These fall largely under the broad category of enhancing the efficiency of organizations, and apply across the board to all agencies and parts of the country, though perhaps not to the same degree. No structural change is envisaged. The recommendations are:

A. Strengthening the Infrastructure

- **Augmentation of resources of the agencies:** Resources, both financial and human, at the disposal of the charity administration need to be augmented significantly to facilitate the provision of better infrastructure for staff and public. The accumulated funds with the Charities Commissioners should be fully utilized for the improvement of the facilities in the office, for training of staff, and publication and dissemination of information material to educate charities and the public.

- **Modernization of offices:** Participant observation, as well as participants' responses showed that comparatively, offices of the Registrar of Companies are better appointed, and user friendly. Obviously they are better resourced and part of a commercial culture. But if they can be enhanced, it should not be impossible to change other offices also, if there is a will.

  Moreover, companies, including Sec 25 companies, can be registered on line and e-governance is becoming a reality in many government departments, including land records offices. It is recommended that not only should offices be modernized with modern communication technology, but that all registration and reporting requirements should also be allowed to be filed on line, as an option. This will not only save time and energies of the charities but also make-work easier for the staff of the agencies themselves.

- **Staff Augmentation**: Almost without exception all the agencies reported that they were short staffed compared to the workload, and that even the sanctioned staff strength has not been met. It therefore becomes impossible for them to do the audits and effective monitoring that is necessary.

  We recommend therefore that staffs are augmented and their productivity increased through computerization which appears to be proceeding very slowly. A further recommendation is that only those people who are interested in and willing to work on the interface with the charities sector should be recruited or seconded instead of posting those persons found unsuitable elsewhere. In addition a degree of stability in the posting of such personnel must be guaranteed.

  Another recommendation to reorient staff for charities work is to offer staff at different levels, deputation to some good NGOs so that they learn of Charities' operations at first hand. and acquire a more positive outlook.

- **Training and capacity building of all officers and staff:** In order to sensitize and build the capacities of the staff and officers in the various agencies it is recommended that they be given orientation training and attend sensitization programmes. The aim of the training should be to sensitize them to the role and functions of the non-profit sector and the difference in their operations from government and commercial organizations especially in regard to their income and accounting.

  The staff has to be motivated to think of their role as advisory and guiding, as well as that of a public watchdog. When scrutinizing the applications or returns, they must go beyond figures to understand the activities, the people and the finances and management of the organization, and learn to distinguish form from substance. An organization may be doing excellent work but may be poor in keeping accounts; or it may be keeping good accounts, but does no charities work.

  We recommend that:

  - For Income Tax Officers a module on non-profit laws, governance and operations should be introduced as a part of the training programme at the Staff College in Nagpur.

  - For officers / staff of other agencies, we recommend short intensive workshops, ideally organized by charity sector associations and intermediary organizations, and\or by the Agencies themselves.

  - Regular interactive forums bring together professional advisers (CAs), NPOs, and Agency personnel. Though the lead can be taken by NPO umbrella organizations, it is likely that the government personnel may not feel bound to attend. We therefore recommend that each government regulatory agency draw up a programme of such interactive meetings.

  - The ICAI and the CAG need to develop standardized auditing norms for charities in consultation with them and these need to be discussed with both the Income Tax Officers and widely disseminated to charities themselves so that both know the basis of accounting and audit.

B. Simplifying Procedures

- **Time bound procedures:** To cut down delays it is recommended that the time limit for registration should be put at 90 days or 3 months at the most, and should be specified in the rules of the Act. Once computerization is complete and modern office procedures are put in place, this should be more than possible. Even in the USA, despite the application form for exemptions under 501 (c) (3) being very long and much more complex, the time limit for notification is 90 days.

i. More Effective Monitoring

1. **Proactive Monitoring Mechanisms** to check and control misuse of provisions and malpractices: We recommend that a monitoring and evaluation system be put in place whose objective is to improve performance, and not mere inspection. We believe there must be more thorough monitoring, with a certain percentage of organizations being regularly visited and scrutinized.

   In Canada, Revenue Canada undertakes 500 to 600 audits a year. In USA, the US Internal Revenue System (IRS) has announced that it will monitor big NPOs more closely and perhaps introduce legislation to increase the responsibility of boards; stiffen penalties for conflict of interests, and other failure to comply with tax laws; and to enhance disclosure. The Council on Foundations, the biggest "chamber" for foundations has reportedly welcomed increased IRS scrutiny.[18]

   However, for India we make this recommendation with some trepidation because instead of monitoring, which means a two way dialogue to try and improve what is wrong and not just to punish the guilty, what happens in reality is "inspection" and is an occasion of harassment. Having said this, we still do believe that there is a need for more effective monitoring to check misuse and abuses of the provisions such as exemptions, etc. We also believe that if this is done simultaneously with the sensitization and training of the officers and staff of the agencies it would result in effective monitoring. In fact the Office of the Registrar of Companies is found to be quite successful in ensuring strict compliance and through it better governance. We recommend that the other regulatory agencies should pattern themselves on the ROC's procedures.

   A minimum number of audits, which could be determined as a proportion of the total filing returns, must be conducted in a year, both randomly and specifically selected.

   We recommend that for the purpose, NPOs could be put into two categories – big and small, depending on size of assets and annual income, with a third "sensitive" category, comprising the types of organizations which are held most guilty of abusing the charitable provisions – schools, colleges, and hospitals, charging high public fees. The level and intensity of audit for each of these categories could vary, with the small ones being less vigorously scrutinized.

   We also recommend that from time to time the monitoring must include a more intensive audit of a particular segment of the nonprofit sector such as audit of hospitals and healthcare systems, or large colleges and universities, or religious trusts, or relief organizations, based on public perception of their behaviour.

[18] New York Times, 23\6\04

The registration authorities and the IT Exemptions Depts. Should work closely and exchange information so that it is possible to know whether an organization has wound up or still exists.

D. **Sanctions:** Graded sanctions must be put in place and enforced: In case a scrutiny reveals that a charity is not providing public benefits on a scale significant enough to justify their charitable status they should, depending on the severity of the offence, receive an "education letter" for minor defaults; more serious offences could receive a reprimand with directions for reform, followed by punitive fines, and for very serious offences such as fraud and malpractice, the registration should be cancelled. Deregistration has seldom been resorted to either by the registering authorities, or by the IT department. This year's Finance Bill however has provided for deregistration. In cases of severe fraud this should be enforced to make an example.

- **Positive and Negative Sanctions:** Apart from fines other ways of securing compliance can be adopted. One such method is to make public the names of the NPOs not complying with the legal and reporting requirements. For organizations whose registration is to be revoked, the name of the organizations and the reasons for revoking the registration should be also be made public. In U.K. this strategy is called the "naming and shaming" strategy to ensure good governance, though there are no financial sanctions as in USA.

  An alternative method uses the reward system to secure compliance such as that followed by the USA. Reversing the U.K. pattern, compliance is rewarded in the USA by publishing the list of those charities that file returns on time and are considered legally compliant. This is public recognition of good governance of these charities and helps them build credibility and facilitates their access to funds from donors.

E. **Complaint Systems:** Simultaneously, there must be in place a formal complaint system such that it does not allow for victimization by the agency staff, and the complaints are reviewed by an Independent Complaints Reviewer. However, we are also aware that in the present context of short staffing it is unlikely that an officer will be spared for this; if he is, he may not have enough work. Therefore, how to implement this will need more thought but it is being put in to flag the need. Moreover, along with sanctions there should be provision for review or appeals in all cases.

F. **Information and Education**

- **Public Education in Legal Compliance:** It is recommended that all agencies should publish simple booklets about the laws and procedures relating to their agencies in local languages. This should be along the lines of the publications brought out by the Charities Commission, UK which has produced a series of guides on each major aspect of the charity operations, e.g. *Amending Charities Governing Documents: Orders and Schemes; Small Charities: Transfer of property*, *Alteration of Trusts, Expenditure of Capital*; *Disposing of Charity land*; *Responsibilities of Charity Trustees*, etc.

- **Proactive Dissemination:** Such information booklets should also be proactively disseminated through the Internet, by post to NGO associations and umbrella organizations, to and through Chartered accountants, legal aid societies, and other forums.

- **ICAI Role:** The ICAI should require affiliated CAs to advise their clients properly in submission of documents, since our findings also showed that not all CAs advise their clients adequately about the documentation required, or ensure that it is complete.

  Public Access to information: We recommend that data regarding charities should be available to the public on written request. The registration Acts specifically allow public access but in practice this is not followed, partly because record keeping is in such poor shape. However, the Income Tax department does not allow access to any information. Since tax information related to public charities is different by definition from the returns filed by private persons and companies, and since the public has a right to know about how public contributions are being used, an amendment needs to be made in the Act to allow for public access to information on NPOs.

  Charities on their part should be obligated by law, as in the USA, to provide a copy of their tax exemption application and their three most recent tax returns, together with all attachments except the donor list, to anyone requesting them within 30 days of receiving the written request. They may request for reasonable copying costs and mailing costs, if applicable. This would also promote greater accountability of the sector to the public.

  We recommend that along with the certificate of registration, each charity should be given a note setting out all the reporting requirements, and also pointing out their obligation to provide information about their organization on a written request by any member of the public.

- **Public Register of Charities:** We recommend that there should be a Public Register of Charities which is a central record of all registered organizations, such as exists in Hong Kong, U.K. and other countries, and which is open to the public.

  The Public Register of Charities:

  - is the only record of organisations which have been officially accepted as being for the public benefit and which, therefore, receive privileged tax treatment;
  - allows charities to give conclusive proof of their status to funders and others;
  - gives members of the public up to date information about charities, individually or in groups, and access to the people running them;
  - allows the regulator to monitor charities and their affairs on an annual basis;
  - allows people running charities, or thinking of starting new ones, to identify others carrying out similar work;
  - gives local authorities, umbrella bodies and special interest groups an overall view of the size and scope of charitable provision in their sphere of interest; and
  - provides policy-makers and researchers with evidence about the economic weight of the charitable sector and the distribution of wealth within it.

All the registering organizations, including the Income Tax department should be required by law to send the data to a central nodal department or ministry which collates this information.

- **Public Portal:** We also recommend that apart from a physical public register the Government should maintain the data in computerized from also. In fact the model of the US portal Guidestar can be adopted. It is the most comprehensive and authentic site for information on charities. Such a portal can be funded by government though outsourced to a private operator.

- **Anchor Ministry:** Though the new Ministry of Panchayats, would have been a good choice as a nodal ministry for matters of charity since both local self government and non profit organizations both have in common the aim of action through people's organizations, outside the ambit of government or business, this idea has not found favour with many of those canvassed. Therefore we recommend that the Voluntary Action Cell of the Planning Commission should continue to be the nodal agency and should be strengthened by the addition of staff and resources. This should be the agency to maintain the Public Register of Charities.

G. Action By Charities

- **NPO initiatives to understand legal requirements:** We believe that charities themselves have a responsibility to make efforts to understand legal requirements. NPO associations, mother NGOs, intermediary support organizations and umbrella groups must make efforts to distribute official information widely, or make its existence known, apart from producing and disseminating their own information. Credibility Alliance, the agency which has been formed for self regulation of the sector, should work closely with the state regulatory agencies. The same support bodies must educate the sector that compliance should not be opposed and that it is in their interest to comply.

- **Forum for Interaction of NPOs and Charity Administration Authorities:** In order to ensure more effective dialogue between the NPO sector, professionals such as lawyers and CAs, and the government agencies there is a need to establish a permanent forum which brings the two together periodically to discus pertinent issues. The government department authorized as the nodal department can anchor the same.

H. Recommendations for Specific Agencies

IT Exemption

- **Charities Directorate:** We recommend that all charity related matters in the IT department should come under a Charities Directorate, as in Canada, where the Charities Directorate functions as an autonomous unit under the Canada Customs and Revenue Agency (CCRA) a unified agency responsible for registration, and ensuring that charities comply with the IT Act and rules, by monitoring, public education, research, application of sanctions and appeals.

- **Income Tax Exemptions:** In Canada, all non-profits are exempted from income tax on their income but only **registered charities i.e. those serving a charitable purpose with public benefit as the criteria can offer tax benefits to donors.** We might profitably examine this to exclude organizations such as chambers, professional associations of all kinds. Only developmental and charitable organizations, including religious trusts that actually undertake social development work should be eligible for 80G and similar registrations. Schools and colleges and hospitals etc could be put in a separate category for purposes of rigorous monitoring to ensure they remain charitable. And if there is any contravention of the conditions they should be deregistered for income tax exemption.

- **Common Qualification for exemption of income and for tax deductibility for donor:** In the USA a certification by the IRS under sec 501(c) (3) automatically qualifies the registering charity for exemption of income and for tax deductibility for donors. We recommend that the same be applied in our context, instead of first the requirement of a 12 A registration and then a separate application for 80 G and / or 35AC. There could be a single scrutiny of the application which should also mention whether and under which section they are applying for deduction certificate for donors. If found satisfactory, the same certificate should entitle the applicant for exemptions under Section 12A, and 80G\ 35 AC or other sections.

  We believe that even the first scrutiny should be done very carefully to determine charitable purpose.

- **Decentralization of Decision Making / Approvals:** Pending the creation of a unified Charities Directorate, since the prime cause for delay under 35 AC is the centralization of the decision making process in a national committee of experts, we suggest that the function be decentralized and devolved onto the Regional Directors of Income Tax Exemption. There seems to be no advantage to having only 35 AC exemption segregated from other registrations for exemption. If it is desired to be done through a committee this committee could be constituted regionally, or the national committee could meet in the state capitals by rotation just as circuit judges do. It would have the added advantage of greater familiarity with regional needs and the applying NGOs.

- **Requirements for getting exemptions under 35 AC:** Since it is true that there is more malpractice and misuse in the 35Ac exemption, we recommend that organizations should get 35 AC only after they have been in existence for at least 5 years and have proved their charitable credentials. Till then they could avail of 80G.

  Alternatively, in view of the high income tax rates, the distinctions between the various sections should be done away with and there should be a single 100% tax deduction for donors to all charitable organizations, as in the US case where scrutiny of organizations to be included in 501(c) (3) category is very strict but once given the organization is entitled to 100% tax deduction.

  The Indian Government’s contention is that one needs to give extra incentive for private resources to go into certain socially desirable areas. However, most of the social sector areas currently defined as “ charitable purpose” are important. Moreover, there is no scientific proof that the extra incentives have moved resources in the desired direction.

- **Monitoring of Compliance:** We recommend that even the first registration for IT exemption be done carefully, on scrutiny of the papers to ensure that the objects are charitable, but that at the time of renewal it should be even more rigorous, to weed out spurious organizations.

- **We also recommend that the renewal should be after 5 years, instead of 3 as at present,** since it takes an organization a long time to establish itself, raise the required funds and establish a programme of charitable activities. Whether trusts have complied with legal requirements should be considered, and strict compliance should be obtained. However, strict compliance should be simultaneous with charity education to ensure that the non-compliance is not due to ignorance. Serious malpractices should be punished with deregistration after giving cause and a chance to appeal, as is proposed in the latest Finance Bill. Presently very few are deregistered.

- **Intermediate Sanctions:** Intermediate sanctions should be in place such as suspension of tax exempt status, and forcing the charity to pay at least 5% of the charity's previous year's revenue, before registration. The IT already has these powers but mostly they are not enforced. The money raised from suspension of tax-exempt status should be re applied to another charity as agreed upon by the regulator and the charity under suspension.

  Some intermediate sanctions existing in the US Revenue Service could also be considered to ensure compliance.

  - A fine for failure to file the return within a month of the deadline.
  - A tax on income from unrelated businesses **provided they are not for the sustainability of the organization. This last should use the criteria of destination of income for determination.**
  - Taxes of varying rates against private foundations engaging in self dealing, for not spending the minimum spending amount, for excess business holding, for making investments contrary to legal directions, and for making payments for non charitable purpose.

    De registration should remain the ultimate sanction.

- **Stability of Laws:** One reason for non-compliance, by even good organizations, is that there are very frequent changes in tax laws, which is confusing. Once the laws are reviewed thoroughly, there should be no tinkering year after year, and stability in the laws should be maintained for at least 5 years.

- **Renewals of 80G and 35AC:** Charities who have exemptions under 80 G find that they do not receive renewals even after the 80G has lapsed, though they have applied for the renewal in time. They are generally requested to wait for applying till the certificate actually expires, and then the renewal takes several months. This handicaps charities in receiving donations. We recommend that the Rules of the Act make it mandatory to apply for renewal three months before expiry of the date, and also mandatory for IT officers to renew the certificate within 90 days of receipt of the application.

- **Review of the IT ACT**: The It Act should be reviewed once, very thoroughly, with full consultation from the NPO sector. Some of the changes required are:

  - Definition of " income" of trusts should be reviewed. Income from grants in aid should be excluded from "income " since these require the fulfillment of certain obligations and are not equivalent to business " income".

- Criteria of " destination of income" should be applied to " business income of charities, and income generation projects undertaken to ensure sustainability of the organization should not be construed as business income.

- **Simplification of the Act:** The various sections of the IT Act are very complicated and difficult for even the educated to understand them. As recommended by earlier Task Forces, they should be simplified and stated in simple language and there should be a unified scheme of taxation for NPOs.

- **Creation of a data base of organizations registered with IT Exemptions:** We recommend that the Income Tax Exemptions Directorate should create a database of charitable organizations registered with it, according to size of assets, annual income, and whether the organization is receiving funds, or donating funds or both. The Annual return form could have columns to indicate this, as is being done in Canada and other countries. This can be managed very easily and effectively if the offices are computerized. This would not only facilitate monitoring foundations or donor trusts, receiving big tax shelters, and who could be more rigorously monitored than those who receive grants, but would also aid research and policy reform initiatives.

Charities Commissioners Offices

- **Scrapping of 2% cess in Gujarat and Maharashtra:** We recommend that the 2% cess that is levied in Gujarat and Maharashtra, Karnataka and elsewhere be scrapped, since it imposes an unfair burden on charities in these states. No other agency providing a public service charges for the service. Moreover, it has been found that this fund is not even utilized for providing the services for which it is levied. The services should be provided from public funds, though there should be scope to charge for discretionary services such as for forms, publications, training offered etc.

  Moreover, it leads to unnecessary litigation over determination of what is " income" and adds to the workload. If at all a cess or fee is considered absolutely essential, then it should be a fixed flat amount, instead of a percentage of income.

- **Raising limit for audit –** Presently trusts with income above Rs 1500 per annum have to submit audited accounts. This income limit is too low, since the cost of audit is likely to be more than the income. The limit for auditing the accounts should therefore be substantially raised, and brought in line with Income Tax limits.

- **Change of Status Report -** At present the section with which NPOs have the most trouble under the Bombay Public Trusts Acts is the one relating to the Change of status report, under sec 22. Every change in the trust deed, or change of trustees, and especially for alienation of any property, requires permission from the Charities Commissioner, and filing of several documents, affidavits and so on. This is not only a cause of costly delay, but also of harassment. It also requires reference by the Charities Commissioner to courts for permission. We recommend that this section as also section36, particularly related to sale of trust land, be reviewed more thoroughly in full consultation with Trust representatives to see how the many steps can be reduced, and the process made less irksome. (See Box 5.1 on page 93)

- **Enhancing the powers of the Charity Commissioners:** We believe that Charities Commissioners should have the powers to allow changes in the objects of the trust without going to court. This section needs to be simplified with a reduction in the number of documents required, the number of affidavits to be filed, etc.

The Maharashtra Government's Law Commission had recommended modifying certain sections of the BPT. While we are in agreement with most of the observations and recommendations, there were 2 recommendations in particular which we feel are not appropriate and should be reconsidered. These recommendations of the law commission are referred to hereunder:

- It is recommended that in addition to the instrument of trust, every public trust should have a constitution according to which the trust would be administered. This constitution should override the instrument of the trust.

- It is also recommended that though founders or settlers of the trust should be free to appoint trustees, their number should be limited so that they can not control the trust; and that a provision should be made in the constitution that trustees should both be nominated and elected, but that the nominated members should always be in minority. Further, it is also recommended that trusts should have fee paying members (like societies)**.(refer Page 13, Section 21.1.4).**

- The Commission recommends that as in the Andhra Pradesh Charitable and Religious Institutions and Endowment Act 1966, Govt. should appoint Executive Officers in important and wealthy trusts whose annual income is above Rs. 5 lakhs. These Executive Officers would be **Government Officers** and their duties would be defined. They would be answerable to the trustees but also to beneficiaries and the government. **(Refer Page 14, Section 21.2).**

Our recommendation regarding these are as below:

- The idea of a constitution or bylaws may be desirable where the trust deeds are poorly drafted and is silent on key issues of the trust's administration and governance- but this is in rare case(s) as usually trust's deeds are drafted by knowledgeable experts in the field. However, be such a case, the authorities (Charity administration office) can always advise the applicant (seeking registration) about such gaps and ensure the documents are suitably revised / modified, prior to according registration.

- In cases where the trust deed is properly drafted, having an additional constitution would be meaningless and superfluous. It will add to unnecessary bureaucratization of religious and charitable trusts, making them subservient to Government administration(political interference).

- Further, the Commission's recommendation for appointment of elected trustees in a majority position in order to dilute the control of the founders – leaves out of account a large number of small public trusts which may not be availing of any Government grant or public donations. Many a time a family creates a trust to commemorate a dead member and family resources are constituted into a corpus and some charitable activities like education and health are carried out in the neighborhood, or for the general community. To force outside members on such a trust would serve no public purpose and only dry up charity work. It is also not likely to make any difference to the management of the trust because membership principles will be decided by the trustees themselves as per the model constitution and this will not ensure that any objective outsider would necessarily become a member and he/she would elect useful trustees.

- The surviving trustees should have the right to appoint new trustees (without limiting their numbers)-whether through election or nomination; and whether their term should be for a fixed duration, allowing for periodic rotation and facilitating infusion of new (fresh) blood etc.- these decisions may be left on the trustees and not imposed.

- Having any scheme of membership should be voluntary and, once again, not be imposed on trusts.

- The proposal to appoint an Executive Officer, who would be a Government Officer, in important and wealthy trusts (having annual income of 5 lakhs and more), is not required and would lead to unnecessary infringement or encroachment on trust's autonomy and hamper charitable cause(s). It would also have a distinct adverse impact on growth of charitable institutions in the country for all time to come.

- Taking over the administration of such trusts, first, through model constitution and then Government appointed Executive officers will only facilitate bureaucracy taking over the control of such institutions having taken shape out of a few or group of people's concern for charity and human welfare. Over time it may (could) become a tool for harassment and political control.

- Such action(s) will also appear in direct contrast with stated Government Policy acknowledging the need and encouraging involvement of the Third Sector in development paradigm. Also, it (such action/s) will find itself in isolation, completely out of tune with increasing advocacy and policy measures (being) taken by the Government of India towards liberalization in recent times.

- One cannot imagine bureaucracy in charge of trusts will be able to effectively serve the needs and aspirations of the beneficiaries and meet the laudable objectives laid down by the settlers of such trusts.

<u>Registration of Societies</u>

➢ **Scrapping of renewal of registration -** In some states there is a provision for renewal, though the period after which there is to be renewal varies from state to state. The original act does not mention renewal at all. This leads to unnecessary paperwork and fees, and should not be necessary, if the original scrutiny is done well. Thereafter, registration should be revoked only if annual returns indicate something wrong, or there are no annual returns, or if there are complaints about the organization. Even then, there should be room for appeal against the order of the Registrar to dissolve the society.

➢ **Monitoring to enhance performance of organizations:** The annual returns should be scrutinized to monitor the performance of the organization, or to know whether it is defunct. In the case of the latter, it should be removed from the register, after giving a chance for appeal. The annual returns should be simplified for small societies and more detailed for those above a certain size in terms of income.

- **Limiting Political Control on Societies:** We recommend that the provision in ROS Act of Tamil Nadu, and any other state which contains a similar clause, of allowing appointment of "special officers" to manage the affairs of the society for a specified period of not exceeding one year be removed, since this has the potential of misuse for political purposes, and has been known to be so misused. It should be left to other members of the society or to a citizen's public interest organization to take recourse to a court or a tribunal for charities (as recommended below) to settle matters.

8.2.2 MEDIUM / LONG TERM RECOMMENDATIONS

While the above recommendations may, if they are adopted, enhance the efficiency of individual agencies, they will not overcome some of the basic problems, such as those below, which are systemic. To deal with these issues a systemic change is required, involving new legislation, and new organizational set up and approaches. Our recommendations for these are as below:

A. New Legislation

- Section 25 companies have a central law governing them; societies are governed by variations of one central law. Trusts however, have no uniform law, nor one agency to see to compliance and problems. To overcome this plethora of laws and agencies, and lack of uniformity in treatment, we recommend the enactment of **a comprehensive central law for legal incorporation of nonprofit organizations** which would review, integrate and include the best provisions of the various laws now in force, and apply to trusts, registered societies and section 25 companies alike.. It would be possible to register any nonprofit organization under this law. It could be on the lines of the Charities Act of U.K and could be called the Incorporation Law for Non-Profit Public Benefit Organizations. Because charity is a concurrent subject, Parliament is competent to make laws with respect to charities and charitable institutions under entry 28 of the concurrent list in the Seventh Schedule of the Constitution of India. The Centre could formulate a model law for enactment by the states. The States could, enact the same law using the central law as a model, for their jurisdictions.

- Since there are distinct advantages to each of the three main forms of incorporation, at present, and many have argued for retaining the flexibility offered by the present three registration laws for different types of organizations such as trusts where a settlor endows an organization, a society which is an association of people, and a company which is more business oriented, we propose that the new uniform law should retain the flexibility and could offer registration for different types under different sections, just as Sec 25 of the Companies Act deals with a particular type of company

- There could be a section also to distinguish development organizations from chambers, and other such professional membership bodies., as has been often demanded by the NGO sector.

- This Act would be in addition to the Income Tax Act which would continue suitably amended as recommended above, and which would be responsible for the Tax exemptions.

- While the NPO Act would emphasize governance and management of trusts, the IT Act would be concerned with financial compliance.

B. Institutional changes

For institutional arrangements we present three options:

- **Model 1. – Maintain Status Quo, keeping the existing institutional arrangements as is** but enhancing their performance by adopting the recommendations made above for a more facilitative interface with the public, greater transparency of the regulatory process, measures for securing better compliance, and a better appeals process.

- **Model 2 – Create an enhanced Charities Directorate in the IT department, plus state level registering agencies, plus a NPO Sector Agency. The Charities Directorate** would be the main regulatory agency, looking after monitoring and compliance, as in Canada and USA at present, while the other state level registering agencies would exist only for the purely original registration function. In addition there should be an **NPO Advisory Agency Group** to advise the Charities Directorate, comprising representatives of the NPO sector and professionals such as lawyers and CAs, to provide policy guidance, give feedback from the sector, review mechanisms for achieving compliance, issues for consultation and so on.

  In addition to receiving advice from the NPO Advisory Group the Charities Directorate staff would visit different regions of the country and meet informally with NPOs and umbrella groups to discuss concerns, issues and answer questions.

  If a national NPO incorporation law is enacted, then an enhanced Charities Directorate could also be entrusted with the legal registration work, so that it becomes a single agency responsible for all matters pertaining to NPOs. Given the size of India and therefore the need for decentralization, we envisage that the Charities Directorate would have state level offices.

  Instead of forming a separate NPO Advisory Group, we recommend using the newly established organization Credibility Alliance, for the purpose, and working in close co-ordination with them.

  The advantages of this model are as follows:

  - It would use the agency, which is considered at the moment to be the most efficient, amongst the various agencies that now exist, to be the central monitoring agency.
  - It would be the least costly and complex to implement, at least until a new central law covering all NPOs is enacted, and state level registration agencies become unnecessary. It would need additional resources, however, to be able to fulfill its expanded role.
  - Since the Credibility Alliance expects to play the role that has been outlined for the Voluntary Advisory Group, no new agency needs to be created.

  The disadvantage of this model is the fact that the Tax Department staff (including officers) are more preoccupied with tax considerations, NPO's financial status and statements and accounting practices, and lack the broad philosophical understanding of the NPO sector. A great deal of reorientation would be required.

- **Model 2A: Charities Directorate and a mandatory NPO Sector Agency**

Here the difference between this model and the one above would be that the voluntary sector agency would be **created by the government**, though as an autonomous body, and would have mandated and not purely advisory functions. It would have its own governing body, and its own professional staff, and would have the general function of promoting the effective use of charitable resources by encouraging better management of organizations, and improving governance by providing trustees with information and advice on any matter affecting NPOs. It would also be responsible for compliance education function. It would be the permanent forum for dialogue that NPOs have been demanding and would be the interface between government and the sector and represent the sector to government.

However, we feel that since the Credibility Alliance is already in existence and can perform many of the functions outlined above, it, along with the various intermediary groups that exist can meet the need and there is no need to create another organization.

- **Model 3: State level Charity Commissions \ NPO Regulatory Authorities + Charities Directorate, + An Appeals Tribunal.**

We believe that though the Credibility Alliance is an excellent model for self regulation, there will still be a need for legal compliance, esp. for defaulters, and that application of sanctions, judicial appeals etc, can only be done by a government agency.

We believe that it would be beneficial to have a Charities Commission on the lines of that in U.K., which would be concerned not only with financial regulation but also with the promotion of the charitable sector. Most of the respondents canvassed for this review also felt that such a body would be beneficial.

However, several experts felt that since charity is a state subject, and since the volume of work involved is far greater than in the UK, it would be difficult and unwieldy to centralize all work in a national level organization, even with state set ups. Instead, state level commissions were favoured whose function would be not only to regulate but also support the sector. The mandate would include modernizing the purposes, governance and administrative arrangements in charities constitutions, advising on legal and regulatory requirements, and authorizing actions and transactions which charities would not otherwise have the legal power to carry out.

Such bodies would parallel the Regulatory bodies which are being formed for various sectors such as telecom, power, etc. A majority of respondents in our survey have favoured a single window for charity through some such organization.

The Charities Commissions or the NPO Regulatory Authorities, would be autonomous bodies created by legislation with their own statute and regulations, and resources. They would report directly to Parliament or the Assemblies though through a nodal minister on their annual performance.

The role of the Commissions would be to protect the public interest and provide effective support and regulatory system for charities. It would be required to enhance public trust and confidence in both the regulator and in charities in a transparent and fair way, and to see that the regulatory process is as simple, non-duplicative and cost effective as possible.

The functions of the Charities Commissions would include:

- Legal registration, under a new uniform law or under the present laws,
- Maintaining a public register of NPOs;
- Receiving reports from NPOs,
- Audit and monitoring, to check abuses;
- Educating the sector about legal compliances, as well as development of better methods for management;
- Educating the public about the charities sector
- Holding public consultations;
- Bringing out simple publications to educate the sector about legal compliances and best practices, and the public about NPOs.
- Taking a wider view of charitable objects and the beneficiaries served, i.e. review periodically the social and economic environment of the charities and not only the internal functioning.
- Acting as a permanent forum for a dialogue with the sector on issues of policy and regulation.
- Administering sanctions and penalties for non-compliance.
- Resolving grievances. An independent unit should be established within the regulator to provide internal reconsideration both of applications for registration that have been denied and of sanctions the Commission proposes to impose.

In short it would act as a one-stop shop for the legislative requirements of charities

The Charities Commission should recruit its own staff like any other non-profit corporation and train them, and pay remuneration according to non-profit practice. This will ensure stability as well as staff sympathetic to, and well versed with nonprofit work.

We do not recommend the merger of the income tax work, presently handled by the Exemptions Directorate, since the income tax work is of a very specialized nature, and expertise has been built up over the years. However, we recommend that all the IT work related to NPOs should be put in charge of one NPO Directorate (Charities Directorate), which would work in close co-ordination with the Charities Commission and come together periodically to discuss issues of mutual concern and interest.

Overall, the CD in the IT department would be concerned only with tax compliance and the Charities Commission would be the supervisory agency for the CD as well.

While it is not recommended that the Charities Directorate of the IT department merge with the Charities Commission, it would help the NPO sector greatly if they were physically housed within the same premises so as to be a one stop shop for charities.

The advantages of the Commission plus a Charities Directorate in the IT is that in the former staff could be recruited from the open market and could build up expertise in non-profit work over the years. The Government should similarly post only those officers to the CD who are interested in being in the NPO sector and keep them for long tenures so as to build up expertise in them. It would also be possible to reorient their attitudes through training without losing the advantage through frequent transfers.

We also recommend close co-ordination of the Charities Commissions and the Charities Directorate with the Credibility Alliance, which would be doing the self-regulation and education of non-profits, but would not be able to do the legal compliance and regulation.

Appeals Tribunal

For legal interpretations of the law, and appeals from the Commissions' decisions there should be an independent Tribunal, so that recourse does not have to be taken to the civil courts each and every time.

The three models are described in the matrix below:

These formulations are at present only tentative and would need broader discussion and deeper thought.

A Comparative Overview of the three models for Regulatory Functions

Functions	**Model 1 Status Quo All agencies Enhanced**	**Model 2 Enhanced Charities Directorate (CD)plus state agencies+ Voluntary Sector Advisory Group - VSAG (Credibility Alliance)**	**Model 2A Enhanced Charities Directorate (CD) plus Voluntary Sector Agency (VSA) + Appeals Tribunal**	**Model 3 Charity Commission + Charities Directorate +Credibility Alliance + Appeals Tribunal**
Registration/ Sanctions (including deregistration)	CD + Existing state agencies	CD, with advice from VSAG (or Credibility Alliance)	Same as in model 2	Charities Commission (de-registration on application from CD)
Compliance monitoring (T3010s)	CD + State agencies	CD	CD	Commission +CD
Audit	CD	CD	CD	CD
Administrative policy	As at present	CD with advice from VSAG (or Credibility Alliance)	CD with Advice from VSA	Commission with advice from CD+ Credibility Alliance
Education and training on registration & compliance under the Income Tax Act	As is + Credibility Alliance	VSAG (+ Credibility Alliance)	VSA+ Credibility Alliance	Commission + Credibility Alliance
Education and training on issues beyond registration and compliance under the Income Tax Act (such as	Administrative policy	As at present	CD with advice from VSAG (or Credibility Alliance)	CD with Advice from VSA

Functions	Model 1 Status Quo All agencies Enhanced	Model 2 Enhanced Charities Directorate (CD)plus state agencies+ Voluntary Sector Advisory Group - VSAG (Credibility Alliance)	Model 2A Enhanced Charities Directorate (CD) plus Voluntary Sector Agency (VSA) + Appeals Tribunal	Model 3 Charity Commission + Charities Directorate +Credibility Alliance + Appeals Tribunal
board governance)				
Public information	AS is+ Credibility Alliance	CD+ VSAG (or Credibility Alliance)	CD+VA+CA	Commission
Advisory committee	Yes, to Minister for Panchayats (nodal ministry for NPOs)	AD. Group performs role	VA performs role	Yes, to Ch. Commission
Reports to:	Planning Commission	CD = Finance Ministry	CD=Finance Ministry	Parliament\Assemblies+ Finance Ministry for CD

List of Annexure

Annexure 1

Research Proposal Submitted To the Planning Commission

Title of the proposal:

A Review of the Charities Administration in India with a view to suggest institutional improvements

Focus and Orientation of the Research Study Proposal

SICP proposes to undertake research on the institutional framework, which administers charity law in India with a view to suggesting improvements in the existing framework as well as alternative/ additional arrangements necessary to improve the situation.
By charity administration is meant the offices of the Charities Commissioners and their equivalent in different states, offices of the Registrar of Societies, the offices of the Commissioners for Income Tax exemption and FCRA administration.

The research would be confined to official agencies concerned with charitable contributions by the public within India and the difficulties faced by the donors and / or Civil Society Organizations (CSOs) with these agencies. It would also look at the role these state agencies are mandated to play for ensuring proper utilization of charitable resources.

Its main focus would be on institutional reform to promote an enabling and supportive environment in terms of the Govt.-CVO interface, and promoting good governance for proper utilization of charitable resources.

The laws themselves would not be the focus of the enquiry since the Task Force set up by the Planning Commission to Review Laws Pertaining to the Voluntary Sector has already reviewed them.

It would not consider the FCRA administration because it is complex and special situation and other research groups such as VANI have focused on the problems with the FCRA administration. Nor will it go into other problems faced by the Charitable Sector such as funding of the sector by government or other donor organizations, sustainability issues, capacity building of CSOs and so on.

The Objective

The objective of this research is to improve charities administration and to suggest institutional as well as policy improvements so that charitable contributions by the public are well utilized, and at the same time the voluntary sector is enabled to play its proper role in nation building.

Accordingly, it would help to identify the procedural and other problems faced by civil society organizations, whether it is with respect to registration, or reporting and compliance with laws which prevent the sector from realizing its full potential. At the same time since it is important that the task of regulation of organizations dealing with charitable public monies is performed efficiently, it would suggest measures, which could help in this.

More specifically, the research would:

1. Identify and list the present institutional arrangements for supervising, regulating and classifying charitable institutions, institutional mechanisms for purposes of proper receipt and accounting of charitable contributions; for providing tax incentives to encourage such flow; and for good governance of donating or receiving organizations such as trusts and societies.

2. Look into the problems faced by CSOs in relation to these institutional arrangements.

3. It would also consider the picture from the perspective of the law enforcers, and would thus take into account the views of the Charities Commissioners and the Directors of Income Tax exemption to find out what ails charities and how social development can be enhanced by proper utilization of charitable resources. For instance, it is well known that many trusts exist only on paper and have become defunct. In other cases several small trusts make only very small grants which do not justify their administrative expenditure. They can benefit from amalgamation to make their charitable contributions more effective. What legal and policy changes are necessary to ensure that charitable funds are not locked up in defunct or ineffective trusts.

4. Finally, it would, on the basis of the findings of this preliminary research, consider what policy changes or institutional measures would improve the situation.

5. For this last the research will consider what has been done in other countries in this respect, and whether and how this can be adapted for India.

Hypothesis to be tested:

The hypothesis to be tested is that the existing services / mechanisms for promoting good governance in the voluntary sector, represented by the offices of the Charities Commissioners and their equivalents in different states; the Registrar of Societies; the Commissioners for Income tax Exemption and FCRA administration, are inadequate to deal with the needs and demands of the voluntary sector. In particular, there is a need for an institutional mechanism to promote good governance and to redress grievances outside the judicial system. There is scope to improve the existing framework and to adopt alternative / additional arrangements for better monitoring and development of this sector.

Type and Method:

The proposed study is both reflective and empirical. It intends to utilize data already available and also collect primary data. Some of the secondary data to be used may be from published sources, but will also use unpublished material. Relevant sources of data will be annual reports of Charities Commissioners, Income Tax Exemption Departments and their other publications. Due acknowledgement will definitely be given to the source of data supply.

The secondary data will be supplemented by primary data collected from these offices where available, and from a sample of non-profit organizations. Primary data collection will include both questionnaires and a few case studies.

Secondary research would involve desk top work related to

- Available reports on the Voluntary sector - Government interface, related to laws and regulations.
- Existing institutional infrastructure for encouraging charity and overseeing charitable organizations.
- Reports of the Public Accounts Committees on Charity Administration
- Annual Reports of Charities Commissioners and Department of Religious and Charitable Endowments in Maharashtra, Gujarat, and Tamil Nadu respectively.
- Reports of the Office of the Director General of Tax Exemptions, Kolkata
- Other unpublished relevant material viz., memos submitted to the Finance Ministry for Income Tax provisions, Report of Task Force set up by Planning Commission
- Scanning the Internet to download published / unpublished reports of research and studies done in this field globally.
- Visiting the libraries / resource centres to study and refer to the documents, if any regarding international experience and initiatives taken to help suggest alternative arrangements.

Primary research would be done as below:

- A sample survey of 500 voluntary organizations using questionnaires would be done. The organizations would include varied Trusts, Societies and Companies registered under section 25 from all across India.
- ***The survey would focus on the functioning of charity administration. It would be conducted through e-mail, fax, and general post and by personal visits to organizations.***
- Visiting the offices of Charities Commissioners, Departments of Income Tax Exemption, Registrar of Societies in different cities to discuss the present status with the officials and participant observation
- Through dialogue with select CSO leaders, representative organizations viz. SOSVA, VANI, AVARD, FEVORD, CAP and certain key government functionaries.

Relevance of the Study:

In order that civil society may flourish in any society, it is important that the environment in which it operates is conducive and encouraging. This implies having freedom to associate and carry on one's work without hindrance; encouragement and incentive to ensure popular support including financial support, and oversight or correction when civil society organizations step outside the law or engage in activities which are morally reprehensible. In each of these three requirements: allowing civil society space to exist; to flourish; and to make an optimum contribution to society, the state plays an important role. Therefore government-civil society relationships become crucial.

In the past five decades not only has there been a rapid expansion in the numbers of civil society organizations (CSOs) in India but the sector has matured in terms of outreach, sophistication of approach, diversity in types of organizational forms, the amounts invested in the sector and the employment it offers to large numbers of people at all skill levels. It has flourished and grown within a basic legislative framework, which set out the parameters within which it could operate, but beyond which it was left to fend for itself. During a hundred plus years of growth, under conditions of rapid economic and social change, the basic legislative provisions and institutional arrangements have become inadequate to deal with new needs. On the one hand, both state and society expect it to take on much more than was initially expected, and for which it is not well prepared either in terms of financial, human or organizational resources. On the other, the state has either put obstacles in its way with cumbersome procedures and regulations, or does not make provision for more resources, either directly from itself or raised from the public.

The Task Force on Laws Regulating the Voluntary Sector, set up by the Planning Commission, came to the conclusion that though there is some need to change parts of certain laws, the problem is not so much with the formulations of the laws as in their administration.

There are a number of issues of concern related to the administration of the laws, as well as in other areas of the government-civil society relationship. In the main they are:

- A need to review and redefine accepted definitions of popularly used concepts – "charity", "non-profit", "voluntary", "civil society", "development organizations" and so on, especially as interpreted in the laws and regulations governing the sector;
- Lack of authentic official statistics pertaining to the sector;
- Securing a more enabling and supportive legal, fiscal and administrative framework;
- Finding a voice in policy making;
- Funding practices of government;
- Good governance of civil society organizations to reflect transparency and accountability;
- The lack of a mechanism for redressing grievances without recourse to the courts;
- Lack of a permanent forum for ongoing interaction between civil society and government so as to maintain a professional relationship with governments.
- A need to increase the capacity of the voluntary sector to raise its own resources by encouraging people to give time and financial resources;

Charity being a state subject there are a number of enactments and corresponding administrative structures at the state level to administer charity laws which are meant to oversee the functioning of CSOs. For instance Maharashtra and Gujarat have offices of the Charities Commissioner to oversee charities in these states; Tamil Nadu has a department of Religious and Charitable Endowments, and others have something similar for charitable trusts, and Registrar of Societies to deal with organizations registered under the Societies Act.

Only the Income Tax Act and FCRA are applicable all over India. The IT law regulates the utilization of charitable funds, as also provides incentives to encourage private

contributions to charity. The FCRA was essentially meant to control external funds which could be used to threaten national security. However, in practice it has come to regulate the receipt and spending of foreign funds irrespective of security concerns.

Charitable organizations have several problems in the practical administration of the Acts, whether it is in getting tax exemptions or FCRA registration.

In any case, the legal and administrative framework and infrastructure concerned with charitable organizations in India is mostly for regulating activities and does little to encourage and promote healthy development. For instance, the Charities Commissioners of Maharashtra and Gujarat levy a cess for charities administration but no development work is undertaken with this fund. There is no forum for redressal of grievances, the only recourse being to regular courts, and in the current state of things, this is hardly an option.
Finally, there is no forum for regular ongoing dialogue between the state and charitable organizations on macro issues of concern to all and which can be reflected in policymaking.

The recently established Voluntary Action Cell of the Planning Commission has a different role to play.

Recently there has been a move for self-regulation of the voluntary sector to ensure good governance and accountability. In this connection there has been mention of the need to establish an independent body to validate or rate charitable organizations which is outside government purview.

Many countries across the world are facing a similar situation. Because of this many civil society leaders worldwide have lobbied for a review of the govt.- civil society relationship, and institutional mechanisms for the same. In response, several governments have initiated review of, and dialogue with the voluntary sector in their countries. Such a review of the mechanisms for implementation of the laws, as well as a consideration of the measures needed to play a promotional role are needed in India too.

This in essence is the relevance of this proposal.

Major variable for data collection:

The major variable for data collection would be the legal provision for ensuring accountability of civil society organizations under the law. This would be studied in the context of adequacy, problems encountered by both sides to the equation, viz. state agencies, and civil society organizations, and what additions and alterations are required in the institutional arrangements to make the legal provisions more effective in achieving their objectives.

Statistical Design:

Primary research

This would consist of three parts:

- A sample survey, using questionnaires, of 500 voluntary organizations including trusts, societies and section 25 companies, from different parts of India regarding functioning of charities administration, by e mail and post.
- Visits to offices of charities commissioners, departments of Income Tax Exemption, Registrar of Societies for discussion with officials and participant observation
- Discussions with select CVO leaders and representative organizations such as SOSVA, VANI, AVARD, FEVORD, CAP etc, and key government functionaries.

Focus Group Feedback

It is also proposed, at the end of the research to convene a focus group in Delhi to present to them the tentative findings and recommendations, the objective being to get a feedback on the report before finalisation. This will be particularly important in relation to the recommendations for institutional reform.

The schedules and questionnaires are yet to be worked out, but basically **the questions will cover:**

- The basic enactment under which the civil society organizations are registered..
- Other legislations which they have to follow.
- The experience of the CSOs in getting these registrations, in terms of time taken, monetary outlay, logistical problems etc.
- Do the existing arrangements help promote accountability in CSOs.
- Do they help to promote the development of CSOs.
- Do they feel the need for a non judicial redressal mechanism?
- Do they feel the need for a permanent forum for regular interaction with government?
- Their suggestions for improvement of existing arrangements
- Their suggestions for alternative arrangements
- Other questions based on preliminary discussions with a small sample of CSOs.

Tabulation arrangement:

Please refer section (x) on Project Duration

For Case Study: The number of units proposed to be studied and the method and justification for their selection may be indicated.

Since it will not be possible to cover all the offices in each state in this vast land, it is proposed to limit the survey of institutional arrangements to the following:

- The Charities Commissioner's Office, Mumbai and or / Ahmedabad
- The Office of Charitable and Religious Endowment, Chennai,
- The Office of the Director General of Income Tax Exemptions, Kolkata
- The Registrar of Societies, Delhi
- The office of the Director of Income Tax Exemptions, Delhi.
- In addition, 5 major national intermediary organizations of NGOs will be personally contacted for discussion, 3 regional level intermediary organizations, 2 major foundations each in Delhi, Mumbai, and Bangalor/ Chennai, and funds permitting Calcutta.

Synopsis:

It will be difficult to formulate the synopsis of the chapter plan at this stage

Project Duration:

We estimate that the above research will take one year inclusive of data collection from various states mentioned earlier, compilation and organizing workshops etc.
Please refer annexure Time Budget for details.

Literature Review:

Very little work has been done in this subject area. Only a few PAC reports and Inquiry Commission reports are available which deal with the subject partly. Some literature is available on the Internet regarding the existing international practices e.g. that of the Charities Commission of U. K., and the Round Table Process initiated in Canada for NGO - Govt Dialogue.

Staffing pattern:

The budget has been worked out indicating hiring of one full-time Research officer to co-ordinate the research under the supervision and guidance of the Project Director
Ad hoc research assistance would be needed to collect the information in five cities viz., Delhi, Mumbai, Chennai, Kolkata, and Ahmedabad. These field research personnel would be recruited locally for two months each to assist in data collection, discussion with various agencies, compilation of data, preparation of reports and providing feedback as required.

Budget:

Please refer the Budget annexure for details. This budget has been prepared keeping the following in view

- The expenses of primary and secondary research include buying of reports, books and documents; postage, courier, e-mail; telephone and fax charges; photocopying, stationery and printing of questionnaires, data processing including computation work, photography, hiring and purchase of equipment e.g., OHP etc.
- Hiring of a full time Research Assistant and Ad-hoc research personnel will incur paying of remuneration.
- The research will require travel to the cities mentioned earlier by either the Project Director or the Research Assistant or both to supervise data collection, hold personal discussions with local key authorities. The travel expenses for the Director is budgeted for travel by Air and for the Research Coordinator by AC II tier or Rajdhani as it may apply.
- TA / DA has been budgeted as per SICP's travel allowances.
- Local conveyance expense will incur for the purpose of visiting, data collection and thus these have been budgeted.
- The cost of convening a focus group of around 25-30 personnel in Delhi has been included.
- A contribution towards SICP's overhead costs has also been included at 15% of the entire project cost.

Bio-Data of the Project Director:

The Director has several researched publications to her credit. Among them are: Patrons and Philistines: Arts and the State in British India, OUP, A historical study of the development of cultural policy during the British Period, Beyond Business: From merchant Charity to Corporate Citizenship, Tata Mc Graw Hill, a historical study of Indian business contributions to society, situated in the context of socio-political and economic development of India; For God's Sake," 12 case studies on religious philanthropy in India, written and edited by the Director, and Giving and Fund Raising in India, which includes the findings of a national survey of charitable giving directed by SICP but undertaken by a marketing firm and 18 case studies of fund raising by NGOs in India.

Brief of the Institute:

An Organizational Profile of Sampradaan

India's development needs are vast; the resources to meet them are not. Most of them come from government and foreign donors. Promoting other sources of funds to supplement these two, and also to provide choice is an urgent necessity. However, inspite of a long and distinguished tradition of philanthropy, the present private contribution to development and welfare is inadequate. The impact of what is being contributed is also sub optimal. This is due partly to limited public knowledge of the need for and potential of public philanthropy as well as of different ways of contributing; partly to the lack of a professional approach to giving; and partly to the absence of a representative body or a "chamber", for the charitable sector.

Sampradaan- Indian Centre for Philanthropy (SICP) represents an effort to meet these needs for information, professional advice and support, and representation. Established in 1996 it is a national non-profit registered society whose vision is a compassionate and caring culture in which resources are shred willingly and on a regular basis to create a socially responsible and just society. Its two main goals are summed up in its slogan, “Give, Give Wisely.”

The first main goal is to motivate all sections of society to go beyond giving of alms in charity to the giving of money, time, talent, skills and other resources for bringing about social change and progress. This is the essence of philanthropy, as distinct from charity. Both charity and philanthropy used to be a way of life in Indian society. We want to see this tradition re- established.

At the same time we want to ensure that donors get value for their charitable rupee: that it goes to the right cause, at the right time, and is utilized well to make the maximum difference. Therefore our second main goal is to inform, advise, and assist donors to give wisely. We envision a philanthropy movement in the country, which encourages organized, informed, effective and regular giving of time, talent and other resources to meet important social needs.

For philanthropy to flourish it is necessary that the environment is conducive i.e. there is awareness and appreciation of its role by people, corporations, and the government. And this is our third objective.

SICP hopes to achieve these objectives through research, documentation and publications to disseminate the information so collected; workshops and conferences; advocacy with government; motivational campaigns; and the establishment of a resource center.

SICP sees its role as being that of an intermediary between donors and those who utilize resources, viz. NGOs; between government and charitable organizations. We work to support and facilitate the work of our constituents who include NGOs, Companies, charitable foundations, and individuals.

Guided by Governing Council of nine distinguished citizens from different walks of life, it has worked to foster co-operation between the state, corporate sector and civil society organisations for purposes of philanthropy, and to build up a network among institutional donors.

A unique clearinghouse of information on national and international philanthropy it has also acted as a catalyst for promotion of new ideas and concepts.

SICP carries out its activities from self generated funds, and grants from institutional and individual donors. The latter have included the Ford Foundation, the Asia Foundation, the Aga Khan Foundation, the Japan Foundation, the State Bank of India and HDFC.

Sampradaan- Indian Centre for Philanthropy is registered under the Societies Act of 1860, (Registration No. 29534 of 1996), Section 12 A of the Income Tax Act and under the Foreign Contributions Regulation Act (Reg. No 231650928). Donors to SICP can claim tax deduction under section 80 G of the IT Act of 1961.

SICP does not give funds nor collect funds for others.

Programs

In pursuit of a caring society, the organization has adopted a multi-pronged approach. Thus the programs include research and documentation, dissemination of information, advocacy and promotion of philanthropic efforts and innovative models.

Our research capability is well established and the quality of our work has been acknowledged. SICP has undertaken several research studies which include case studies of trusts and foundations, charitable organizations, NGOs and religious organizations etc. Most prominent of them are the two national surveys, one of donor agencies and the other on giving and fundraising in India, both of them pioneering efforts. The studies have culminated in publishing several monographs, occasional papers, a Directory of Donor Organizations, a community foundation reader, and a book on giving and fundraising in India, as well as on religious charity titled, "For God's Sake, Religious Charity and Social Development in India." The other publications are given in the catalogue enclosed alongside.

SICP brings out a bimonthly newsletter, 'Sampradaan' to inform its members, friends, and other subscribers of the philanthropic world, both global and domestic. It has set up a resource center for the benefit of members, friends, donors, researchers etc. Books and documents include titles on social issues and other information from the philanthropy world. The organization has been in the forefront of advocacy on behalf of the voluntary sector in India to tax reforms etc.

A donor-donee forum brought together various donor agencies and government department heads along with NGO representatives. It was a never before experience for the NGOs as well as the donors to have close range and open discussion on issues related to their relationship.
In an effort to develop a viable community foundation model, a workshop and a series of meetings were organized by SICP. A study of a grassroots experience too was studied and documented and shared with all concerned.

In addition SICP has been very concerned with promoting a healthy interface between the Govt. and the voluntary sector. In this connection we have been part of a Task Force set up by the Planning Commission to Review Laws Governing the Sector. We have also submitted several memoranda to the Finance Minister and the Finance ministry officials regarding the impact of income tax changes on charitable organizations. We have been equally concerned with proper utilisation of charitable resources by NGOs and have been part of a voluntary sector initiative to improve credibility.

It is in continuation of all these efforts that we would like to undertake the research proposed below. We give below a fuller justification for the research, but the above is to establish our credibility as an organization and our ability to do quality research.

<u>Annexure 2 a</u>

Questionnaire for Registered Societies

(Please complete, using ticks where appropriate)

I. BACKGROUND INFORMATION

1.1 Contact Details:
Name of the Organisation:
Contact Person:
Address:
Telephone:
E-mail:

1.2 Under what law(s) is your charitable organisation incorporated (registered)?

(a) The Societies Act 1860 ________
(b) The Indian Companies Act, 1956 ________
(c) The Charitable and Religious Trusts Act, 1920 ________
(d) The Bombay Public Trusts Act, 1950 ________
(f) The Indian Trusts Act ________

1.3 Mention briefly the areas / sector in which your organisation is working.

1.4 Whether your organization is a funding (donor) agency or an implementing agency (Donee)?

1.5 Mention the geographical coverage (and also population coverage, in case of implementing agency) of your organization.

1.6 Considering your organization's structure, activities and programme Coverage (geographic, demographic) etc. would you classify your organization as:

Big ☐ Medium ☐ Small ☐

II. REGISTRATION PROCESS INCLUDING RENEWAL

2.1 Where were you registered? (City & State) ________

2.2 Are you registered in more than one state?

a) YES____ b) NO____

2.3 Does the organization operate in

a) One state ____ b) Several _____

2.4 Registration Process

(a) Who got the registration of your organization done?

(i) Yourself_______
(ii) Somebody Else (e.g Chartered Accountant, Agent etc.) _________

If your answer is (ii), please specify why
____
____

(b) In your experience was the process of registration
Easy_______
Not Easy_______

If "Not Easy", was it because

The process is legally complex __________
Involves too much paperwork/bureaucracy__________
Involves lengthy procedure / time delays__________
Other problem(s)-please specify
____
____

(c) If you registered the organization yourself, where did you get information on the registration process?

- From the registrar's offices/government department responsible________
- From publications/books_________________
- Websites ____________ please specify_____________
- Consultancy Agency/ professionals____________
- Other (please specify)_____________

(d) If you consulted the registration officials, were they:

- Very helpful & explained the process fully and simply_______
- Not helpful_______
- Expected favours ________

2.5 How long did the Registrar take to get the organisation registered?

(From the time you filed application providing all necessary documents)

Less than 3 months (please specify)_______
More than 3 months ______
Was any reason given for the delay?

____
____

2.6 What can be done, in your views, to improve the registration process under the various enactments?

____
____

2.7 Can you suggest any alternative institutional arrangements for registration?

____
____

2.8 Renewal of Registration (Where Applicable)

(a) Is renewal of your organization's registration required?

Yes____ No______

If, yes at what time interval?

(b) Have you got the renewal done?
Yes___________ Not so far___________

If yes, was the process of renewing registration
- Easier _________
- More difficult _________
- Same as initial registration _________

III. GRIEVANCE REDRESSAL

3.1 (a) If registration or renewal was refused, were you informed of the reason for refusal?
Yes____ No______
(b) If yes, were you able to appeal? With what result?

____
____

3.2 Did you need to go to/have you resorted to the Courts at any time in relation to registering the organization or fulfilling any "unjustified' official requirements?
Yes_____ No_____

Have you had or do you have any cases pending in the courts related to charity administration?

Yes________ No_________

If yes, please specify what is the issue?
____
____

3.3 Are you satisfied with the current grievance redressal system? What problems have you encountered in this regard?
Yes______ No______

3.4 Would you prefer a non – judicial redressal system that individuals and organizations can approach for reviewing specific cases of government and voluntary sector abuse of regulations?
Yes______ No______

IV. REPORTING REQUIREMENTS:
TO THE REGISTERING AGENCY

4.1 a) Are the reporting requirements enforced by the Office of Registrar of Societies?
Yes________ No ________

b) Do the authority (ies) provide any feedback on the reports after scrutiny?
____
____

c) Are penalties levied in case of delay or failure in submission of report?
Yes_____ No _____

V. INCOME TAX EXEMPTION CERTIFICATES (Under Section 12 A, 80 G & 35 AC)

5.1 a) How long did it take to obtain the exemption status (Certificate) under Section u/s 12A? _______
b) Was the process
Easy______ Not easy _______

5.2 a) How long did it take to obtain the exemption status (Certificate) under Section 80 G? _______

b) Was this exemption certificate easy to get?
Yes_____ No ______

c) Was the 80G certificate issued in time after providing the department with all necessary information?
Yes_____ No______

5.3 a) How long did it take to obtain the exemption status (Certificate) under Section 35 AC? _______

b) Was the process easy?

Yes______ No _______

5.4 a) Did (Do) you need to renew such exemption certificates (IT u/s 12A & 80 G & 35 AC)?

Yes_____ No______

If yes, after what interval/ time gap?

12 A__________
80 G__________
35 AC_________

b) Have you renewed your exemption certificate(s)?

Yes___________ No___________ Not so far___________

If yes, how long did renewal of exemption take?

12 A__________
80 G__________
35 AC_________

5.5 Did you have access to information regarding 80G requirements?

Yes_____ No _____

If yes, from where did you access such information?

____
____

5.6 a) Did you have access to information regarding the procedure for exemption under 35 AC?

If yes, from where?

b) Was the process –

Easy_____ Not easy _____

5.7 a) Did you face any problems in obtaining such exemption certificate(s)?

Yes____ No______

If yes, please specify the nature of the problem:

b) Would you prefer a single exemption certificate instead of under 3 separate sections.

c) Do you have any suggestions in this regard?

____
____

5.8 a) If your organization was refused registration under any of the 3 sections, were the reasons for refusal made clear and substantiated?
Yes______ No _______

b) Were you satisfied with the explanations?
Yes_____ No ______

c) Do you think that the scrutiny process for granting or denial of such exemption certificates is transparent?
Yes_____ No _____

REPORTING REQUIREMENTS:
(INCOME TAX)

5.9 Organizations with annual income above Rs 50,000 are required to submit audited accounts, do you fall in the category?
Yes_____ No______

Do you file the reports?
Yes_____ No______

Are the reporting requirements enforced?
Yes_____ No______

If applicable, are any refunds given without major delays and difficulties?
Yes______ No _______

Did you have to file for an appeal to receive refunds?
Yes______ No______

5.10 Were you able to get your grievances heard?

(i) Delay / refusal of Exemption certificates (IT, FCRA etc.)
Yes______ No _______

(ii) Delay in obtaining renewal of
- Registration Yes______ No _______
-Exemption Certificate(s) Yes______ No _______

5.11 If "Yes" to (i, ii & iii) above, please mention to whom did you appeal?

(i) --------------------
(ii) --------------------
(iii) --------------------

How did you appeal? ---------------------
How long did it take to get justice?
(i) --------------------
(ii) --------------------
(iii) --------------------

IV. GENERAL QUESTIONS

6.1 a) Do you think reporting requirements under the various laws are necessary and adequate?
Yes____ No______

b) If "No", please explain stating what is NOT necessary and what additional Report(s) should also be called for/included?
____
____
____
____

c) Do you feel they promote accountability among voluntary organizations?
Yes______ No _______

6.2 Are you satisfied with the current institutional framework, which regulates the voluntary sector in India?
Yes________ No_________

6.3 Do you feel that the voluntary sector in India is perceived as having?
High credibility__________
Low credibility__________

6.4 Do you feel the need for a permanent forum for regular interaction and dialogue with government in relation to issues and problems faced by the voluntary sector?
Yes__________ No_____________

6.5 If so, can you suggest what from such forum should take?
a) Private-public partnership_______________
b) Totally independent of state__________
c) Funded by voluntary sector _________
d) Within Supreme Court jurisdiction______________
e) Other, please specify_______________________________________

6.6 Can you suggest ways to improve the existing institutional arrangements?
____
____
____
____

6.7 Described below in brief is the work of the British Charities Commission, a body concerned with good governance in the voluntary sector. Its mandate is to maintain public confidence in the charitable sector. It does this in 3 ways:

- By maintaining an effective framework for the sector;
- By encouraging best practice through guidance and advice on issues affecting charities; and
- By investigating alleged abuses.

The Commission provides regular advice and guidance on issues affecting charities, whether in response to individual queries or through various publications and pamphlets. It operates on a consultative basis, even seeking public input into controversial applications. Many of its noteworthy decisions are published in a report for all to read. And, finally, the Commission provides an open forum in dealing with accusations of abuse.

In sum it plays the role of a supportive friend as well as a monitor or overseer, with powers to launch formal investigations when necessary and take disciplinary action such as freezing the accounts of charities and removing or suspending trustees for misconduct.

Would you favour such a body for India, which would integrate the different agencies today governing the sector?

Yes ___________________No ___________________

Annexure 2 b
Questionnaire for Trusts

(Please complete, using ticks where appropriate)

I. BACKGROUND INFORMATION

1.1 Contact Details:
Name of the Organisation:
Contact Person:
Address:
Telephone:
E-mail:

1.2 Under what law(s) is your charitable organisation incorporated (registered)?

(a) The Societies Act 1860 ________
(b) The Indian Companies Act, 1956 ________
(c) The Charitable and Religious Trusts Act, 1920 ________
(d) The Bombay Public Trusts Act, 1950 ________
(f) The Indian Trusts Act ________

1.3 Mention briefly the areas / sector in which your organisation is working.

1.4 Whether your organization is a funding (donor) agency or an implementing agency (Donee)?

1.5 Mention the geographical coverage (and also population coverage, in case of implementing agency) of your organization.

1.6 Considering your organization's structure, activities and programme Coverage (geographic, demographic) etc. would you classify your organization as:

Big ☐ Medium ☐ Small ☐

II. REGISTRATION PROCESS INCLUDING RENEWAL

- **REGISTRATION**

2.1 Where were you registered? (City & State) ________

2.2 Are you registered in more than one state?

c) YES____ b) NO____

2.3 Does the organization operate in

c) One state ____ b) Several _____

2.4 With which agency did you register the trust deed?

Was the process of registration –
Easy_____ Not easy______

Registration Process

(a) Who got the registration of your organization done?

(i) Yourself_______
(ii) Somebody Else (e.g Chartered Accountant, Agent etc.) _________

If your answer is (ii), please specify why
____
____

(b) In your experience was the process of registration -

Easy_______
Not Easy_______

If "Not Easy", was it because

The process is legally complex __________
Involves too much paperwork/bureaucracy__________
Involves lengthy procedure / time delays__________
Other problem(s)-please specify
____
____

(c) If you registered the organization yourself, where did you get information on the registration process?

- From the registrar's offices/government department responsible________
- From publications/books_________________
- Websites ____________ please specify______________
- Consultancy Agency/ professionals____________
- Other (please specify)_____________

(d) If you consulted the registration officials, were they:

- Very helpful & explained the process fully and simply_______
- Not helpful_______
- Expected favours ________

2.5 How long did the Registrar take to get the organisation registered?

(From the time you filed application providing all necessary documents)

Less than 3 months (please specify)_______
More than 3 months ______

Was any reason given for the delay?

____
____

2.6 Do you feel that there is adequate guidance for incorporation or operation of trusts

Yes________ No_________

Do you feel that there is adequate monitoring of trusts?
Yes________ No_________

Should there be a body to monitor trusts?
Yes_______ No__________

2.7 Do you feel that the 2% administrative fee charged by the Charity Commissioners in Bombay and Gujarat justified?
Yes________ No_________

If No, why not?
____
____

RENEWAL OF REGISTRATION (WHERE APPLICABLE)

2.8 (a) Is renewal of your organization's registration required?
Yes____ No______

If, yes at what time interval?

(b) Have you got the renewal done?
Yes___________ Not so far___________

If yes, was the process of renewing registration
- Easier _________
- More difficult _________

- Same as initial registration _________

GRIEVANCE REDRESSAL

2.9 (a) If registration or renewal was refused, were you informed of the reason for refusal?
Yes____ No______
(b) If yes, were you able to appeal? With what result?
____
____

2.10 If "Yes" to above, please mention to whom did you appeal?

How did you appeal? ---------------------

How long did it take to get justice?

2.11 Did you need to go to/have you resorted to the Courts at any time in relation to registering the organization or fulfilling any "unjustified' official requirements?
Yes_____ No_____

Have you had or do you have any cases pending in the courts related to charity administration?
Yes________ No_________

If yes, please specify what is the issue?
____
____

2.12 Are you satisfied with the current grievance redressal system? What problems have you encountered in this regard?
Yes______ No______

2.13 Would you prefer a non – judicial redressal system that individuals and organizations can approach for reviewing specific cases of government and voluntary sector abuse of regulations?

Yes_______ No______

III. INCOME TAX EXEMPTION CERTIFICATES

(Under Section 12 A, 80 G & 35 AC)

3.1 a) How long did it take to obtain the exemption status (Certificate) under Section u/s 12A? _______

b) Was the process easy to get?
Yes______ No _______

3.2 **a) How long did it take to obtain the exemption status (Certificate) under Section u/s 80 G? _______**

b) Was this exemption certificate easy to get?
Yes_____ No ______

c) Was the 80G certificate issued in time after providing the department with all necessary information?
Yes_____ No______

3.3 **a) How long did it take to obtain the exemption status (Certificate) under Section u/s 35AC? _______**

b) Was the process easy to get?
Yes______ No _______

3.4 **Did (Do) you need to renew such exemption certificate (IT u/s 12A & 80 G & 35 AC)?**
Yes_____ No______

If yes after what interval/ time gap?
35 AC _________
u/s12 A _______
80 G __________

Have you renewed your exemption certificate(s)?
Yes___________ No___________ Not so far___________

If yes, how long did renewal of exemption take?

3.5 **Did you have access to information regarding 80G requirements?**
Yes_____ No _____

If yes, from where?
____
____

a. Did you have access to information regarding the procedure for exemption under 35 AC?

If yes, from where?

b. Was the process –

Easy_____ Not easy _____ Approx how long did it take to get 35 AC Certificate

3.6 a) Did you face any problems in obtaining such exemption certificate(s)?
Yes____ No______

If yes, please specify the nature of the problem:
____
____

b) Would you prefer a single exemption certificate instead of under 3 separate sections.

Yes____ No______

c) Do you have any suggestion to make for improvement?

____

____

3.7 If your organization was refused registration under any of the 3 sections, were the reasons for refusal made clear and substantiated?

Yes______ No _______

Were you satisfied with the explanations?

Yes_____ No ______

Do you think that the scrutiny process for granting or denial of such exemption certificates is transparent?

Yes_____ No _____

REPORTING REQUIREMENTS:
(INCOME TAX)

3.8 Organizations with annual income above Rs 50,000 are required to submit audited accounts, do you fall in the category?

Yes_____ No______

Do you file the reports?

Yes_____ No______

Are the reporting requirements enforced?

Yes_____ No______

If applicable, are any refund issued without major delays and difficulties?

Yes______ No _______

Did you have to file for an appeal to receive refunds?

Yes______ No______

IV. REPORTING REQUIREMENTS:
(TO THE REGSITERING AGENCY)

4.2 Are the reporting requirements enforced by the Office of Charity Commissioners?

Yes________ No ________

Do the authority (ies) provide any feedback on the reports after scrutiny?

____

____

Are penalties levied in case of delay or failure in submission of report?

Yes_____ No _____

V. GENERAL QUESTIONS

5.1 What can be done, in your views, to improve the registration process under the various enactments?

____
____

5.2 Can you suggest any alternative institutional arrangements for registration?

____
____

5.3 In your opinion, would you favour a single window clearance?
Yes_____ No______

5.4 Do you find any contradictions in central and state requirements?
Yes_____ No______

5.5 Do you think reporting requirements under the various laws are necessary and adequate?
Yes____ No______

If "No", please explain stating what is NOT necessary and what additional Report(s) should also be called for/included?

____
____

Do you feel they promote accountability among voluntary organizations?
Yes______ No _______

5.6 Any suggestion(s) for improvement?

____
____
____
____

5.7 Do you feel that the annual reports of the Charity Commissioner's should be made public?
Yes________ No_________

5.8 Are you satisfied with the current institutional framework, which regulates the voluntary sector in India?
Yes________ No_________

5.9 Do you feel that the current arrangements:
a) Are adequate and encourage public confidence in charity___________
b) Does not make any difference______________

c) Is highly inadequate and actually discourages public confidence in charity________________
d) Needs to be changed as soon as possible___________

5.10 Do you feel that the voluntary sector in India is perceived as having?
High credibility__________
Low credibility__________

5.11 Do you feel the need for a permanent forum for regular interaction and dialogue with government in relation to issues and problems faced by the voluntary sector?
Yes__________ No_____________

5.12 If so, can you suggest what from such forum should take?
a) Private-public partnership_______________
b) Totally independent of state__________
c) Funded by voluntary sector _________
d) Within Supreme Court jurisdiction______________
e) Other, please specify_______________________________________

5.13 Can you suggest ways to improve the existing institutional arrangements?
____
____
____
____

5.14 Described below in brief is the work of the British Charities Commission, a body concerned with good governance in the voluntary sector. Its mandate is to maintain public confidence in the charitable sector. It does this in 3 ways:

- By maintaining an effective framework for the sector;
- By encouraging best practice through guidance and advice on issues affecting charities; and
- By investigating alleged abuses.

The Commission provides regular advice and guidance on issues affecting charities, whether in response to individual queries or through various publications and pamphlets. It operates on a consultative basis, even seeking public input into controversial applications. Many of its noteworthy decisions are published in a report for all to read. And, finally, the Commission provides an open forum in dealing with accusations of abuse.

In sum it plays the role of a supportive friend as well as a monitor or overseer, with powers to launch formal investigations when necessary and take disciplinary action such as freezing the accounts of charities and removing or suspending trustees for misconduct.

Would you favour such a body for India, which would integrate the different agencies today governing the sector?

Yes ___________________No ___________________

Annexure 2 c

Questionnaire for Charitable Companies

(Please complete, using ticks where appropriate)

I. BACKGROUND INFORMATION

1.1 Contact Details:
Name of the Organisation:
Contact Person:
Address:
Telephone:
E-mail:

1.2 Under what law(s) is your charitable organisation incorporated (registered)?

(a) The Societies Act 1860 ________
(b) The Indian Companies Act, 1956 ________
(c) The Charitable and Religious Trusts Act, 1920 ________
(d) The Bombay Public Trusts Act, 1950 ________
(f) The Indian Trusts Act ________

1.3 Mention briefly the areas / sector in which your organisation is working.

1.4 Whether your organization is a funding (donor) agency or an implementing agency (Donee)?

1.5 Mention the geographical coverage (and also population coverage, in case of implementing agency) of your organization.

1.6 Considering your organization's structure, activities and programme Coverage (geographic, demographic) etc. would you classify your organization as:

Big ☐ Medium ☐ Small ☐

II. REGISTRATION PROCESS INCLUDING RENEWAL

2.1 Where were you registered? (City & State) ________

2.2 Are you registered in more than one state?

d) Yes____ b) No____

2.3 Does the organization operate in

d) One state ____ b) Several _____

2.4 Registration Process

(a) Who got the registration of your organization done?

(i) Yourself_______
(ii) Somebody Else (e.g Chartered Accountant, Agent etc.) _________

If your answer is (ii), please specify why
____
____

(b) In your experience was the process of registration

Easy_______
Not Easy_______

If "Not Easy", was it because:

The process is legally complex __________
Involves too much paperwork/bureaucracy__________
Involves lengthy procedure / time delays__________
Other problem(s)-please specify
____
____

(c) If you registered the organization yourself, where did you get information on the registration process?

- From the registrar's offices/government department responsible________
- From publications/books_________________
- Websites ____________ please specify______________
- Consultancy Agency/ professionals____________
- Other (please specify)_____________

(d) If you consulted the registration officials, were they:

- Very helpful & explained the process fully and simply_______
- Not helpful_______
- Expected favours ________

2.5 How long did the Registrar take to get the organisation registered?

(From the time you filed application providing all necessary documents)

Less than 3 months (please specify)_______
More than 3 months ______

Was any reason given for the delay?

____

____

2.6 Did you receive the name confirmation by the Registrar of Companies within the stipulated 7 days period?

Yes_____ No______

2.7 Presently one has to file various documents with both Regional Director and Registrar of Companies. In your experience has this caused any problem(s)?

Yes________ No_________

2.8 Do you find any contradiction in central and state requirements?

Would you favour a single window clearance?

Yes____ No______

Any suggestion(s) for improvement?

____

____

2.9 RENEWAL OF REGISTRATION (WHERE APPLICABLE)

(a) Is renewal of your organization's registration required?

Yes____ No______

If, yes at what time interval?

(b) Have you got the renewal done?

Yes___________ Not so far___________

If yes, was the process of renewing registration

- Easier __________
- More difficult __________
- Same as initial registration __________

GRIEVANCE REDRESSAL

2.10 In your opinion, would you favour a single window clearance?

Yes_____ No______

2.11 Do you find any contradictions in central and state requirements?

Yes_____ No______

2.12 (a) If registration or renewal was refused, were you informed of the reason for refusal?

Yes____ No______

(b) If yes, were you able to appeal? With what result?

____

____

III. INCOME TAX EXEMPTION CERTIFICATES

(Under Section 12 A, 80 G & 35 AC)

3.6 a) How long did it take to obtain the exemption status (Certificate) under Income Tax u/s 12A? _______

b) Was the process easy to get?
Yes______ No _______

3.7 a) How long did it take to obtain the exemption status (Certificate) under Income Tax u/s 80 G? _______

b) Was this exemption certificate easy to get?
Yes_____ No ______

c) Was the 80G certificate issued in time after providing the department with all necessary information?
Yes_____ No______

3.8 a) How long did it take to obtain the exemption status (Certificate) under Income Tax u/s 35 AC? _______

b) Was the process easy to get?
Yes______ No _______

3.9 Did (Do) you need to renew such exemption certificate (IT u/s 12A & 80 G & 35 AC)?
Yes_____ No______

If yes after what interval / time gap?
12 A __________
80 G __________
35 AC _________

Have you renewed your exemption certificate(s)?
Yes___________ No___________ Not so far___________

If yes, how long did renewal of exemption take?
12 A__________
80 G__________
35 AC_________

3.10 Did you have access to information regarding 80G requirements?
Yes_____ No _____

If yes, from where did you access such information?

____
____

3.11 a) Did you have access to information regarding the procedure for exemption under 35 AC?

If yes, from where?

e) Was the process –
Easy_____ Not easy _____ Approx how long it takes to get 35 AC Certificate

3.7 a) Did you face any problems in obtaining such exemption certificate(s)?
Yes____ No______

If yes, please specify the nature of the problem:

b) Would you prefer a single exemption certificate instead of under 3 separate sections.

c) Do you have any suggestion to make for improvement?
____
____

3.8 If your organization was refused registration under any of the 3 sections, were the reasons for refusal made clear and substantiated?
Yes______ No _______

Were you satisfied with the explanations?
Yes_____ No ______

Do you think that the scrutiny process for granting or denial of such exemption certificates is transparent?
Yes_____ No _____

REPORTING REQUIREMENTS:
(INCOME TAX)

3.9 Organizations with annual income above Rs 50,000 are required to submit audited accounts; do you fall in the category?
Yes_____ No______

Do you file the reports?
Yes_____ No______

Are the reporting requirements enforced?
Yes_____ No______

If applicable, are any refund issued without major delays and difficulties?
Yes______ No _______

Did you have to file for an appeal to receive refunds?
Yes______ No______

IV. REPORTING REQUIREMENTS:
(TO THE REGSITERING AGENCY)

4.3 Are the reporting requirements enforced by the Office of Registrar of Companies?
Yes________ No ________

Do the authority (ies) provide any feedback on the reports after scrutiny?
____
____

Are penalties levied in case of delay or failure in submission of report?
Yes_____ No _____

V. GRIEVANCES REDRESSAL

5.1 In case of the following situations, were you able to get your grievance heard?

(i) Delay / refusal of registration of your organization
Yes______ No _______

(ii) Delay / refusal of Exemption certificates (IT, FCRA etc.)
Yes______ No _______

(iii) Delay in obtaining renewal of
- Registration Yes______ No _______
- Exemption Certificate(s) Yes______ No _______

5.2 If "Yes" to (i, ii & iii) above, please mention to whom did you appeal?
(i) --------------------
(ii) --------------------
(iii) --------------------

How did you appeal? ---------------------

How long did it take to get justice?

(i) --------------------
(ii) --------------------
(iii) --------------------

5.3 Did you need to go to/have you resorted to the Courts at any time in relation to registering the organization or fulfilling any "unjustified' official requirements?
Yes_____ No_____

Have you had or do you have any cases pending in the courts?
Yes________ No_________

If yes, please specify what is the issue?
____

____

5.4 Are you satisfied with the current grievance redressal system? What problems have you encountered in this regard?
Yes______ No______

5.5 Would you prefer a non – judicial redressal system that individuals and organizations can approach for reviewing specific cases of government and voluntary sector abuse of regulations?
Yes______ No______

IV. GENERAL QUESTIONS

6.1 Do you think reporting requirements under the various laws are necessary and adequate?
Yes____ No______

If "No", please explain stating what is NOT necessary and what additional Report(s) should also be called for/included?
____
____
____
____

Do you feel they promote accountability among voluntary organizations?
Yes______ No _______

6.2 Are you satisfied with the current institutional framework, which regulates the voluntary sector in India?
Yes________ No_________

6.3 Do you feel that the current arrangements:
a) Are adequate and encourage public confidence in charity___________
b) Does not make any difference______________
c) Is highly inadequate and actually discourages public confidence in charity________________
d) Needs to be changed as soon as possible___________

6.4 Do you feel that the voluntary sector in India is perceived as having?
High credibility__________
Low credibility__________

6.5 Do you feel the need for a permanent forum for regular interaction and dialogue with government in relation to issues and problems faced by the voluntary sector?
Yes__________ No_____________

6.6 If so, can you suggest what from such forum should take?
a) Private-public partnership_______________
b) Totally independent of state__________
c) Funded by voluntary sector _________
d) Within Supreme Court jurisdiction______________
e) Other, please specify_______________________________________

6.7 Can you suggest ways to improve the existing institutional arrangements?
____
____
____
____

6.8 Described below in brief is the work of the British Charities Commission, a body concerned with good governance in the voluntary sector. Its mandate is to maintain public confidence in the charitable sector. It does this in 3 ways:

- By maintaining an effective framework for the sector;
- By encouraging best practice through guidance and advice on issues affecting charities; and
- By investigating alleged abuses.

The Commission provides regular advice and guidance on issues affecting charities, whether in response to individual queries or through various publications and pamphlets. It operates on a consultative basis, even seeking public input into controversial applications. Many of its noteworthy decisions are published in a report for all to read. And, finally, the Commission provides an open forum in dealing with accusations of abuse.

In sum it plays the role of a supportive friend as well as a monitor or overseer, with powers to launch formal investigations when necessary and take disciplinary action such as freezing the accounts of charities and removing or suspending trustees for misconduct.

Would you favour such a body for India, which would integrate the different agencies today governing the sector?

Yes ___________________No ___________________

Annexure 2 d

Questionnaires for Professionals and Government Officials

For professionals (Chartered Accountants; Lawyers etc) & Officials working at the Registrar of Societies, Companies, Charity Commissioners and Income Tax Exemption Offices.

1. Does the regulatory framework that governs charities facilitate public trust in the work of charities in India?
2. Does the framework ensure fair application of the law and transparency in regulatory decision-making processes?
3. Is the framework as simple, non-duplicative and cost effective as possible?
4. Does the public have access to information on the services and regulatory work done by the regulatory bodies or does it suffer from low public visibility?
5. Do the various government bodies responsible for the regulation of the voluntary sector have regular interaction with the legal and accounting profession who deal with the day to day problems of charity administration?
6. Can the public make a written request to charities to look at their governing instruments, accounts and tax exemption status?
7. Is there a mechanism for investigating and checking abuses and safeguarding charity property? For example, can the officials freeze bank accounts of charities undertaking fraudulent activities?
8. Do you feel that a permanent forum of government, voluntary sector and charity administration professionals needs to be set up in India?

To Officials working at the Registrar of Societies, Companies, Charity Commissioners and Income Tax Exemption Offices.

1. Does the department publish any annual reports that are made available to the public?
2. Does the public have access to the Register of Societies/Companies and the information that the societies, companies or trusts have to file annually?
3. Are there any penalties levied for not filing returns? If so, what is the penalty?
4. How many organizations in the last year were penalized for not filing annual returns?
5. How many societies/companies/trusts sought registration in the last year? Does the department maintain such records?
6. If so, How many were approved and how many rejected?
7. Was the reason for rejection of registration made clear to the organization seeking registration?
8. Are any societies/companies or trusts de-registered? How many in one year?

9. What is the reason for de-registration?

10. Is there any process for appeals? If so, is the reviewer different and independent from the initial decision-maker in the appeal?

11. Is there an internal mechanism to review the relevance of the current framework or handle any sensitive or new cases that may set a new precedent in charity administration?

12. Do the departments undertake their own research and publish studies into the relevance of various regulatory processes? Is this available to the public?

For Income Tax Exemption Officials/ Chartered Accountants

1. Does the Office for Income Tax Exemption solely handle exemption certification for the voluntary sector or does it handle exemptions for other types of organizations/sectors? If so what are these?

2. How many trusts are registered under section 12A (per year)?

3. How many of these trusts send their annual returns of income tax?

4. Are there any provisions made by the Tax Department for informing the public of the benefits of registering under the various sections, e.g., 12A, 35, 80G?

5. Does the department provide any information on the procedure to follow in order to secure 35A?

6. Is there a legal time limit within which an organisation should receive 35AC 80G and other sections? Is this time limit adhered to in practice?

7. What are the problems faced by the Income Tax department regarding the enforcement of taxation laws and the accountability and transparency of trusts?

8. Is there any way of distinguishing between grant making trusts and grant-receiving trusts or those that undertake both activities? Does the Tax department categorize them accordingly?

9. What is the procedure for dealing with defunct or non-functional trusts?

10. What are the procedures organisations can turn to for appeals and grievances?

11. What is the process of scrutiny and what is the criteria on which organisations are evaluated for the purpose of receiving tax exemption? If so, is this made public?

12. Are there any cases of Tax Exemption Certification being cancelled? In practice, what are the reasons for such cancellation? Are the reasons made known to the organisation concerned?

13. Has the CBDT conducted any studies about the effectiveness of Tax Exemption Incentives and whether they have actually made a difference in charitable giving?

Annexure 2 e

Quantitative questionnaire for Government Officials

1.1 Registration

Year	(Col. A) Applications received for registration (Total No.)		(Col. B) Registration granted(No.)		(Col. C) No. filing annual IT returns/ reports.	
	12A/80G	**35AC**	**12A/80G**	**35 AC**	**12A/80G**	**35AC**
2000-01						
2001-02						
2002-03						

1.1 **Legal time limit** (for granting registration / informing refusal)

Registration/refusal intimation under	Legal time limit
12 A	
80 G	
35 AC	

1.2 Failure to meet 85% annual spending criteria

Year	No. of organizations (**refer Col. B**)	Failing to meet 85% annual spending criteria	Actions* taken A1	A2	A3	A4	Any other
00-01							
01-02							
02-03							

- **Explain(in details) various actions taken such as A1, A2, A3, A4 and Any other.**

2. Monitoring & Control

(Col. D)	**(Col. E)** Type of Penalties levied(No. of

Year	Organizations levied penalties for non-filing of returns (non-compliance) (**referring to Col. C)**	Organizations)(**refer to Col. D**) **(Col. E –1)** tax exemption withdrawn (temporarily) for the year & tax /+ fine levied	**(Col. E-2)** tax exemption (80G cancelled)	**(Col. E-3)** de-registration (cancellation of 12A, 80G)	(**Col.E-4**) Any other action/ penalty levied
2000-01					
2001-02					
2002-03					

3. Appeals made

Year	No. of organizations filing appeals (**refer Col. D**)	Reasons* for filing appeals R1	R2	R3	R4	Any other	Outcome	Av. time taken in appeal disposal.
00-01								
01-02								
02-03								

- **Explain reasons giving details -R1,R2,R3,R4, Any other**

4. Renewal denied

Year	No. of Organizations denied renewal	Reasons for denial* (No. of Organization) D1	D2	D3	D4	Any Other
00-01						
01-02						
02-03						

* Explain in details reasons for denial – D1, D2, D3, D4, Any other.

Annexure 3

List of Organisations to whom Questionnaires were sent

S. No	Name of NPO to whom Questionnaire were sent
1	Abha Maity Foundation
2	Abhisarika
3	Actionaid
4	Adarsh Mahila Grih Udyog
5	ADR Arbitration
6	AFDORP
7	Aggarwal Seva Samaj
8	Aggarwal Seva Trust
9	Agrani Sangha
10	Agri Horticultural Society
11	Ahimsa Research Foundation
12	Ahmedabad Community Foundation
13	Ahmedabad Study Action Group
14	Ahmedabad Women's Action Group
15	AIDS Bhed Bhao Virodhi Andolan
16	AIESEC
17	Akanksha Foundation
18	Akkad mehta and Company
19	All India Coal Dealers and Consumers Association
20	All India Council for Mass Education and Development
21	All India Education Trust
22	All India Heart Foundation
23	AMBA
24	American India Foundation
25	Amity Humanity Foundation
26	Anand Foundation
27	Anand Welfare Trust
28	Anchorage Shelter
29	Angaja
30	Anisha Counselling Centre
31	Ankur Kala
32	Arunodoy Midway Home
33	Arvind Eye hospital
34	ASHA
35	Ashoka Foundation
36	Ashurali Gamonnayan Parishad
37	Asian Astrologers Congress
38	Asiatic Society
39	Association for Development of Bengal

S. No	Name of NPO to whom Questionnaire were sent
40	Association for Hospitals of eastern India
41	Association for Social and Environmental Development
42	Association for Social and Health Achievement
43	Association for Sustainable community development
44	Association for Voluntary Blood Donors
45	AVARD
46	B K. Birla Institution
47	B P Poddar Charitable Trust
48	Baikunthapur Sishu Sewa Kendra
49	Ballgunge Vikas Trust
50	Banarsidas Chandiwala Sewa Smarak Trust
51	Banyan
52	Bengal Bonded Warehouse Association
53	Bengal Brick Field Owner's Association
54	Bengal Bright Bars Association
55	Bengal Chemists and Druggists Association
56	Bengal Crome Chemical Manufacturer's Association
57	Bengal Rowing Club
58	Bharat Gyan Vigyan Samiti
59	Bhartiya Yuva Shakti Trust
60	Bholaram Choudhary Foundations
61	Bombay Chamber of Commerce
62	Bombay Community Public Trust
63	Bombay Natural History Society
64	Bureau for integrated rural development
65	Business and Community foundation
66	Butterflies
67	Calcutta Medical Health Research Trust
68	Calcutta Urban Service
69	CAPART
70	CARE foundation
71	Centre for Advancement of Philanthropy
72	Centre for Civil Society
73	Centre for Environment and Development
74	Centre for Environment Education
75	Centre for Rural Health and Social education
76	Centre for Science and Environment
77	Centre for Space Physics
78	Centre for Study of man and Environment (CSME)
79	Centre for Technology and Development
80	Centre for Women's development and Research
81	CERC
82	Charities Aid Foundation

S. No	Name of NPO to whom Questionnaire were sent
83	Charkha
84	Chetna
85	Child In Need Institute
86	Child In Need Institute
87	Childline
88	Childline India Foundation
89	Children Toy Foundation
90	Children's Welfare Home
91	Chitrabani Institute
92	Christ Faith Home for Children
93	Citizen development Centre
94	Coimbatore Multipurpose Social Service Society
95	COMFED
96	Common Cause
97	Comprehensive Area Development Service
98	Concern Action Now
99	Concern India Foundation
100	Confederation of West bengal Trade Association
101	COVA
102	Crafts Council of West Bengal
103	CRY
104	Customer Unity and Trust Society
105	Dalit Foundation
106	Dalmia Foundation
107	Dastakar
108	Deepalya
109	Delhi Brotherhood Society
110	Development Promotion Group
111	Developmental Activities Social Service and Research Trust
112	Dhan Foundation
113	DHUN Foundation
114	Dignity Foundation
115	Dindigul Multipurrpose Social Service Society
116	Disaster Mitigation Institute
117	DISHA Foundation
118	Don Bosco Aubilcam Social Service society
119	Doorstep
120	DRI Charitable Trust
121	Dum Dum Welfare Society
122	EFICOR
123	Eklayva Education Foundation
124	EKTA

S. No	Name of NPO to whom Questionnaire were sent
125	Ekta Trust
126	Eminent
127	ENDEV - Society for Environment and Development
128	Engineering Export Promotion Council
129	Ennamus Community Welfare Fund
130	Entally Tarun sangha
131	Eskon House
132	Eye Trust and Research Institute
133	FEVORD - K
134	FICCI Social Development Forum
135	Financial Management Services Foundation
136	Flora and Fauna India
137	Forum for Communities United in Service
138	Foundation for Arts
139	Foundation for Research in Community Health
140	Foundation for Social and Human Development
141	Foundation for Universal Responsibility
142	Foundation to Aid Industrial recovery
143	Francois Xavier Bagnound India
144	Friends of the needy
145	G D Foundation
146	Gagadhar Rath Foundation
147	Gana Unnayan Parshad
148	Gangotri
149	Ganpatrao Tapase Charitable Society
150	Genesis Foundation
151	Gian
152	GIVE Foundation
153	Gnanan Deepam
154	Goonj
155	Gram Vikas
156	Green Revolution Society of India
157	Gujarat Sammilini
158	H S Charitable Trust
159	Habitat Polytech
160	Hamdard National Foundation
161	Harijan Sewak sangh
162	Harry Charitable Society
163	Heifer Project India Trust
164	Him Drishti
165	Hinduja Foundation
166	HITOKI
167	Hooghly Chambers of Commerce and Industry
168	HPS Foundation

S. No	Name of NPO to whom Questionnaire were sent
169	I create Foundation
170	ICI India Management
171	Impact India Foundation
172	Indcare
173	India International Trade centre
174	Indian Cancer Society
175	Indian Chambers of Commerce Calcutta
176	Indian Council for Child Welfare
177	Indian Council for Mental Health
178	Indian Council of Rehabilitation and Sports for the Disabled
179	Indian Culture Circle
180	Indian foundation for the Arts
181	Indian Institute of Gems and Jewellery
182	Indian Institute of Health Management Research
183	Indian Institute of Metals
184	Indian Medical Association
185	Indian Merchants Chambers
186	Indian National Theatre
187	Indian Oil Foundation
188	Indian People's Welfare
189	Indian Quality Foundation
190	Indian Renal Foundation
191	Indian Society for Agribusiness professionals
192	Indian Society for Community Education
193	Indian Society for Community Education
194	Indian Sponsorship Committee
195	Indian Squash Professionals
196	Indian White Cross Society
197	Indo American Society
198	Indusind Foundation
199	Inead Foundation
200	Institute for Development Education and Action
201	Institute of International Social Development
202	Institute of Molecular Medicine
203	Institute of Orphan and Distressed welfare society
204	International Resources for Fair Trade
205	Jagori
206	Jai Shiv Welfare Society
207	Jan Mangal Charitable Society
208	Jeeva Jyothi
209	Jnana Parivar
210	Jyoti Heart Foundation

S. No	Name of NPO to whom Questionnaire were sent
211	Kaingkarya Social Welfare Society
212	Kala Bhawan
213	Kalyan Bharti
214	Karma Kutir
215	Katha
216	Kaveri Comprehensive Rural development Society
217	Khemka Charitable Trust
218	Kothari Institute for Integrated Rural development
219	Kripa Foundation
220	Lala Diwan Chand Trust
221	Laxminarayn Mandir Society
222	Legal Aid Services
223	Life Foundation
224	Lions Calcutta Greater Educational Trust
225	Literacy India
226	Literacy India
227	Little Angels School
228	Lok Kalyan trust
229	Loksatta
230	M P Birla Seva Trust
231	Mac Arthur Foundation
232	Mahalakshmi Foundation
233	Maharashtra Chamber of Commerce
234	Maheshpur Welfare Society
235	Maithee
236	Maitheri Educational and Charitable Trust
237	Make A Wish Foundation
238	Mamta
239	Manav Seva Trust
240	Mangal Murti
241	Manovikas Kendra Rehabilitation and Research Institute for the handicapped
242	MARG
243	Marigold Charitable Society
244	Matha Amritanamayi Math
245	Mayor Education Trust
246	Mayurbhunj Joint Citizen Centre
247	Mazdoor Kisan Shakti Sangathan
248	Mazerello Nagrika Nalhazhru Manjain
249	Mehta Family Trust
250	Meljol
251	Merchant's Chamber of Commerce
252	Mewat Social and Educational Society

S. No	Name of NPO to whom Questionnaire were sent
253	Mithra Rehabilitation Centre
254	Mitra Technology Foundation
255	Mobile Creches for Working Mothers
256	Mobility India
257	Modern Academy International
258	Modi Foundation
259	Mother's Care
260	Mukti Anand Tirtha
261	Mumbai Mazdoor Sabha
262	Muskaan
263	MYRADA
264	N. Bengal Mission for Weaker Society
265	N. M. Sadguru Water and Development Foundation
266	Nahata Charitable Trust
267	Nalanda Dance Research Centre
268	Narendra Seva Sanstha
269	Narendra Seva Trust
270	National Association for the Blind
271	National Centre for Performing Arts
272	National Centre for Promotion of Employment for Disabled people
273	National Documentation Centre on Literacy and Population Education
274	National Foundation For India
275	National Innovation Foundation
276	National Society for Equal Opportunities for Handicapped
277	Nature Environment and Wildlife Society
278	Nava Maharashtra Community Foundation
279	Navjyoti
280	Navnirmiti
281	Navrang
282	NAZ Foundation
283	Neo Education Social Awareness and management Society
284	Neotia Charity Trust
285	Nethrodaya
286	New Life Charitable Trust
287	Nirantar
288	Nishtha
289	North Bengal Mission for weaker Sections
290	Northern Avenue Health Care Society
291	Nutan Rachnatmak Vikas Sansthan
292	Om Sevashram
293	Outreach Foundation
294	Parivar Seva Sansthan
295	Participatory Resaerch in Asia

S. No	Name of NPO to whom Questionnaire were sent
296	Partners in Change
297	Patdaha Netaji Sangh
298	Path Finder International
299	People's Action
300	Peoples' Ethical Treatment towards Animals (PETA)
301	PHD Rural development Foundation
302	Planet Finance
303	Poddar Mandal Bhawani Samiti
304	Population Foundation of India
305	Prabha Foundation
306	PRADAN
307	Pragya
308	Pratham
309	Prathama
310	Pravah
311	Prayas
312	Prerna
313	Project and Welfare Society
314	Promise to act for Children Today
315	Public Affairs Centre
316	Punjab Bhawan
317	R D Birla Kalyannidhi Trust
318	R Manwar
319	Rahara - Abhikshan
320	Rajiv Gandhi Foundation
321	Ramakrishna Mission Lokasiksha Parishad
322	Reaching the Unreached
323	Right Track
324	Rukminidevi Kejriwal Memorial Charitable Trust
325	Rural Women's Development Society
326	S. M. Loyalka Medical Centre
327	S.K. S. Chakshu Foundation
328	Saathi
329	Sabitri Devi Bansal Charitable Trust
330	Sachetna
331	Sahara Welfare Foundation
332	Sakshi
333	Salt lake Chamber of Commerce and Industry
334	Samarthan Centre for Development Support
335	Sampradaya
336	Samuel Foundation Charitable Trust
337	Sane and Enthusiast Volunteers Association of Kolkatta
338	Sangeet Kala Mandir

S. No	Name of NPO to whom Questionnaire were sent
339	Saniti Seva Trust
340	Sanjay Gandhi Memorial Trust
341	Sanjibani Trust
342	Sankara Eye Hospital
343	Sanskriti Foundation
344	Sarnammal educational trust
345	Sarthi
346	Schizophrenia research Foundation
347	Seagul Foundation
348	Seba Sangh
349	Sen Majumdar and Company
350	Sense International
351	Shabari
352	Sharda Trust
353	Shikshan and Samaj Kalyan Kendra
354	Shikshan Ane Samaj Kalyan Kendra
355	Shivam Foundation
356	Shree Jain Sabha
357	Shree Ram Krishna Seva samiti
358	Shri Mahila Grih Udyog Lijjat papad
359	Shrimati Pushpawati Loomba Trust
360	Shyam Chari Trust
361	Sitaram Tibrewal Charitable Trust
362	Siva Sakthi Homes
363	SMILE
364	Smita Patil Foundation
365	Snegithan
366	SNEHA
367	SNS Foundation
368	Social Action for Rural and Tribal Habitants of India
369	Social Action Society
370	Society for Development Alternatives
371	Society for Direct initiative for Social and Health Action (DISHA)
372	Society for Economic and Social Studies
373	Society for Service to Voluntary Agencies
374	Socio Economic Development programme
375	Somaiya Trust
376	SOSVA
377	South Asian Federation for Resource Generation
378	South India Club Educational trust
379	Sree Onkarnath Seva Trust
380	Sri Aurobindo Society
381	Sri Ram Goburdhan Charitable Trust

S. No	Name of NPO to whom Questionnaire were sent
382	Sristhi
383	Survi Charitable Trust
384	SVADES
385	Swadhar Foundation
386	Swadhina
387	Swami Charitable Trust
388	Swami Vivekanand Cultural Foundation
389	Systematic Solutions
390	Tafa Palli Milani Sangha
391	Tagore Foundation
392	Tagore Society for Rural Development
393	Tamil Nadu Handi Federation
394	Taratala Webel Complex Entrepreneurs Association
395	Tata Trust
396	Thalasemia Foundation
397	The Baptist Church Trust Association
398	The Bridge Foundation
399	The Good Earth Foundation
400	The India Sponsor Foundation
401	The Leprosy Mission Trust of India
402	The Literacy Criterion Centre
403	The Mahindra United Colleges of India
404	The Rural Education Society
405	The Serve Centre
406	The Society for Comprehensive Rehabilitation Services
407	Tivoli Court Services
408	Tobacco Institute of India
409	Tomorrow's Foundation
410	Trust for Education and Rehabilitation of Disabled orphans
411	Tulisan welfare Trust
412	Twenty fifth Century Choupal
413	Udhanum Ullangal
414	Union Chapel Education Society
415	Unniti Foundation
416	Ushagram Trust
417	Vanasamvardhini Trust
418	VANI
419	Vasantham
420	Vijay Lakshmi Educational Public Charitable Trust
421	VIKAS
422	Vikas Sahyog Pratishthan
423	Vishranthi Charitable Trust

S. No	Name of NPO to whom Questionnaire were sent
424	Vishwa Bharathi Vidyodaya Trust
425	Vishwa Jyotish Vidyapith
426	Vision Age India
427	Vision Foundation
428	Vision Welfare Society
429	Viveka Nidhi
430	Vivekanand Education Society
431	Vividha - Women's Documentation and Resource Centre
432	VOICE
433	Welafre of Stray Dogs
434	West Bengal Trade promotiojn Organisation
435	William Carey Holy Society for Education and Health
436	William Carey Study and Research Centre
437	Williamson Megor Educational Trust
438	Women's collective
439	Women's Friendly Society
440	Women's Greviance Cell
441	Women's Health and Development Resource Centre
442	Women's Interlink Foundation
443	Women's Professional training Institute
444	World Education
445	World Trade Centre
446	Worth Trust
447	Youth Reach
448	YPO
449	YUVA
450	YUVA Consulting
451	YUVA Rural
452	YWCA
453	Zakat Foundation

Annexure 4

List of Organisations that have replied to the Questionnaire

		Societies	Trusts	Section 25 Companies
Delhi	**Delhi**	SESS	Angaja Foundation	
		Deepalaya	Centre for Civil Society	
		MARG		
	Gurgaon	Literacy India		
Gujarat	**Ahmedabad**	CERC	National Sanitation and Environment Improvement Foundation	India Renal Foundation
		Blind People's Association	Kakaba Kela Budh Charitable Trust	
		Chetna	Lalbhai Dalpatbhai Charity Trust	
		Consumer protection council		
		Development Support Centre		
Maharashtra	**Mumbai**	Dignity Foundation	Impact India Foundation	Centre for Advancement of philanthropy
		Society for Service to Voluntary Agencies	Indian Council for Mental Health	
		Indian Sponsorship Committee		
		National Society for Equal opportunities for Handicapped		
		Meljol		
		Youth for Unity and Voluntary Action		
	Pune	Kalavati Adarsh Mahila Vikas Kendra		
		National Institute for sustainable Development		
		Small Enterprise Welfare and development organisation		
		STAPI (SOSVA Training and promotional Institute)		

		Societies	Trusts	Section 25 Companies
		The Mharshtra Association of Anthropological Sciences		
	Nagpur	Comprehensive Community Health and Village Development Society		
	Amravati	**Health Education Services to tribals in** Melghat		
		Apeksha Homeo Society		
	Beed	YUVA Gram Vikas Mandal		
Tamil Nadu	**Chennai**	Reaching the Unreached	Worth Trust	
		Development Promotion Group	Inead Foundation	
		Association for Sustainable community development	Vijay Lakshmi Educational Public Charitable Trust	
		Coimbatore Multipurpose Social Service Society	Udhanum Ullangal	
		Rural Women's Development Society	New Life Charitable Trust	
		YWCA	Centre for Women's development and Research	
		Centre for Rural Health and Social education	Vishranthi Charitable Trust	
		AFDORP	Swami Charitable Trust	
		Dindigul Multipurrpose Social Service Society	Siva Sakthi Homes	
		Mazerello Nagrika Nalhazhru Manjain	Jeeva Jyothi	
		Kaingkarya Social Welfare Society	Gnanan Deepam	
		Kaveri Comprehensive Rural development Society	DRI Charitable Trust	
		Christ Faith Home for Children	Nethrodaya	

		Societies	Trusts	Section 25 Companies
		Neo Education Social Awareness and management Society	Mahalakshmi Foundation	
		Bureau for integrated rural development	Friends of the needy	
		Vasantham	Maitheri Educational and Charitable Trust	
		Women's collective	Tamil Nadu Handi Federation	
		Vision Age India	Kothari Institute for Integrated Rural development	
		Ennamus Community Welfare Fund	Sarnammal educational trust	
		Sampradaya	CARE foundation	
		Children's Welfare Home	HITOKI	
		Sankara Eye Hospital	Snegithan	
		Citizen development Centre	Shyam Chari Trust	
		Schizophrenia research Foundation	Banyan	
		EKTA	Trust for Education and Rehabilitation of Disabled orphans	
		Indian Council for Child Welfare	Arvind Eye hospital	
		Mithra Rehabilitation Centre	Vishwa Bharathi Vidyodaya Trust	
		Don Bosco Aubilcam Social Service society		
		Maithee		
Orissa	**Orissa**	Gram Vikas		
karnataka	**Karnataka**		Nagrik Seva Trust	
West bengal	**Kolkatta**	Ankur Kala	DISHA Foundation	Bengal Rowing Club
		ASHA	Lions Calcutta Greater Educational Trust	Salt lake Chamber of Commerce and Industry
		Centre for Study of man and Environment (CSME)	Narendra Seva Trust	Vishwa Jyotish Vidyapith
		Child In Need Institute	Tagore Foundation	
		ENDEV - Society for Environment and Development	Williamson Megor Educational Trust	
		Gana Unnayan Parshad		

		Societies	Trusts	Section 25 Companies
		Karma Kutir		
		Maheshpur Welfare Society		
		Manovikas Kendra Rehabilitation and Research Institute for the handicapped		
		Marigold Charitable Society		
		N. Bengal Mission for Weaker Society		
		Patdaha Netaji Sangh		
		Rahara - Abhikshan		
		Society for Direct initiative for Social and Health Action (DISHA)		
		Tomorrow's Foundation		

Annexure 5

List of Interviews

S. No	State	Name	Designation
NPO Functionaries			
1	Delhi	Mr. Anil Singh	VANI, New Delhi
2	“	Mr. T. K. Mathew	Deepalaya
3	“	Mr. Raghunandan	Society for Social and Economic Studies
4	“	Ms. Malini Shah	Centre for Civil Society
5	“	Mr. Prashar	Development Alternatives
6	Ahmedabad	Mr. Manubhai Shah	CERC, Ahmedabad
7	“	Ms. Indu Kapoor	Chetna, Ahmedabad
8	“	Mr. Piyush Desai	Wagh Bakri Industries
9	“	Mr. Anil Shah	
10	“	Mr. Annie Prasad	
11	“	Mr. Dinesh V. Shah	Lalbhai Dalpatbhai Charity Trust
12	“	Ms. Usha Sanghvi	Consumer protection council
13	“	Mr. V. K. Bhal	Director, CERC
14	“	Mr. Rajesh Mehta	Development Support Centre
15	“	Justice R. A. Mehta	Trustee, CERS
16	“	Mr. Bhushan Punani	Executive Director, Blind People's Association
17	“	Mr. F. J. Powan,	Blind People's Association
18	“	Mr. Raval Rupak M	CERC
19	Maharshtra	Mr. Noshir Dadrawala	Ex Secretary, CAP
20	“	Mr. B. N. Makhija	SOSVA
21	“	Mr. K. K. Anand	
22	“	Mr. Sarish Batliwala	SDTT, Mumbai
23	“	Mr. Anna Hazare	
24	Tamil Nadu	Mr. Henry Tiphagne	Advocate and Director, Peoples Watch, Madurai
25	“	Mr. Ossie Fernandes	Human Rights Foundation, Chennai
26	“	Mrs. Saulina Arnold, Honorary Secretary, TNVHA	Honorary Secretary, TNVHA
27	“	Ms. Sheriffa	Director, STEPS, Pudukottai
28	“	Mr. R. Karthik Venkatesh	CIOSA
29	“	Mr. D. K. Srinaivasan	Hindu Mission Hospital
30	“	Mr. Arun T. T.	Mitra Technology Foundation
LAWYERS			
1	Maharashtra	Mr. B. S. More	Chairman, Maharshtra State Law Commission

2	“	Mr. I. T. Mishra	
3	“	Mr. R. R. Chari	Retired Appellate, IT Commissioner
4	Tamil Nadu	Mr.Habibullah Basha	
5	“	Mr. Krishnamurthy	
6	“	Mr. Somayaji	
CHARTERED ACCOUNTANTS			
1	Delhi	Mr. V. Nagarajan	
2	“	Mr. Sanjay Patra	FMSF
3	“	Mr. Sanjay Aggarwal	Account aid
4	Maharashtra	Mr. Freedi Daruwala	
5	“	Mr. Sanjay Mehta	Auditor, CAP, Mumbai
6	“	Mr. Hoshinn Walia	
7	“	Mr. Sudhir Mehta	
8	Tamil Nadu	Mr. Hariharan	
9	“	Mr. G. V. Raman	
10	“	Mr. M. Kandasami	
11	“	Mr. Baskaran	
12	“	Mr. Shankarlal	
13	“	Mr. Fernando	
14	“	Mr. I. Daniel Selvaraj	
15	West Bengal	Mr. M. N. Chopra	CA and Trustee, Disha Foundation, Calcutta

5.2 List of Government Functionaries interviewed.

	Agency / Department	**Official Interviewed**
1	***Registrar of Societies***	Mr. Yadav, Assistant Director, ROS, Delhi
2	***Charity Commissioners***	Mr. A. C. Rao, Charity Commissioner, Ahmedabad
		Mr. B. S. Parikh, Ex Charity Commissioner, Judge, City Civil Court, Ahmedabad
		Mr. M. D. Dhruv, Ex Charity Commissioner; Legal Consultant; and Retired Judge, City Civil & Sessions Court, Ahmedabad
		Mr. S. B. Dhumal, Charities Commissioner, Mumbai
		Mr. K. M. Desai, Ex - Charities Commissioner, Mumbai
		Mr. Pagdhare, Superintendent - Records, Charities Commissioner’s office, Mumbai
		Mrs. Pandit, Superintendent, Charities Commissioner’s office, Mumbai
3	***Registrar of Companies***	Mr. Samir Biswas, Regional Director, Company Affairs (Licensing Authority), Chennai
		Mr. Vijayan, Registrar of Companies, Mumbai
		Mr. B. L. Sinha, Assistant Director - Technical, Registrar of Companies, Mumbai

4	***Income Tax***	Mr. A. N. Tripathi, Director General, Income Tax Exemptions, Delhi
		Mr. A. N. Sangma, Ex - Director General, Income Tax Exemptions, Calcutta
		Mr. Sudhir Chandra, Director, Income Tax Exemptions, Delhi
		Mr. Sahu, Director IT Exemptions, Chennai
		Mr. A. N. Majumdar, Income Tax exemptions - 35 AC, Delhi
		Mr. T. S. Srinivasan, Retired Chairman, CBDT, Chennai
		Mr. P. N. Mittal, Retired Member, CBDT, Delhi
5	***Others Officials***	Mr. N. Rangachary, Advisor, Finance Department, Govt. of Andhra Pradesh
		Mr. B. K. Bhuva, Deputy Secretary, Government of Gujarat, Legal Department, Gandhinagar
		Mr. S. G. Pathan, Gujarat State Legal Services Authority

Annexure 6

Charity Law Reform Process in UK.

The Government of UK recognizing its role in creating an enabling environment by providing a sound legal and regulatory framework for the non-profit sector, launched a review of the existing legal and institutional framework in July 2001.

The Government of UK has already promoted support for the sector through the Compact on relations between government and voluntary organisations; tax changes to encourage charitable giving; initiatives on volunteering; and closer partnerships between central, local government and the sector on initiatives such as the National Strategy for Neighbourhood Renewal. Building on these reforms, the Government of UK has also undertaken three complementary reviews to help the sector achieve its full potential. These cover:

- The legal and regulatory framework for charities and the wider not-for-profit sector (led by the Strategy Unit, Government of UK);
- The role of the voluntary sector in public service delivery (led by HM Treasury as part of the 2002 Spending Review); and
- Improving access to public regeneration funding (led by the Regional Co-ordination Unit).

The Government published a report on the other reviews in September 2002 – 'The Role of the Voluntary and Community Sector in Service Delivery'.

Objectives of the Review on Legal and Regulatory Framework

The review process considers how to improve the legal and regulatory framework to enable existing organisations to thrive, to encourage new types of organisations to develop, and to ensure public confidence.

The review sets out a package of proposals for reform which aim to:

- *Modernise charity law and status to provide greater clarity and a stronger emphasis on the delivery of public benefit;*
- Improve the range of available legal forms enabling organisations to be more effective and entrepreneurial;
- Develop greater accountability and transparency to build public trust and confidence; and
- Ensure independent, fair and proportionate regulation.

Main Recommendations:

The main recommendations are as stated below:

1. Modernising charity law

The law on charitable status is outdated and unclear. It excludes some types of organisation that clearly provide public benefit. This review proposes a number of legal reforms.

i) ***Updating and expanding the list of charitable purposes***

A charity should be redefined as an organisation providing public benefit which has one or more of the following ten purposes:

1. The prevention and relief of poverty.
2. The advancement of education.
3. The advancement of religion.
4. The advancement of health.
5. Social and community advancement.
6. The advancement of culture, arts and heritage.
7. The advancement of amateur sport.
8. The promotion of human rights, conflict resolution and reconciliation.
9. The advancement of environmental protection and improvement.
10. Other purposes beneficial to the community.

ii) Requiring a clearer focus on public benefit

There should be a clearer focus on public benefit. In particular charities which charge large fees for their services, thereby excluding a substantial part of the population, will need to demonstrate how their activities have a public character. It is recommended that the Charity Commission should have an on-going programme to review the public character of charities.

iii) Encouraging entrepreneurialism

Charities increasingly seek entrepreneurial ways to secure a sustainable income. This review proposes to provide greater freedoms by removing the requirement for trading charities to establish separate trading subsidiaries.

iv) Enabling charities to campaign

Charities perform a valuable role in campaigning for social change. The guidelines on campaigning should be revised to encourage charities to play this role to the fullest extent.

v) Cutting red tape.

Some legal obstacles inhibit charities from modernising their constitutions, merging with others, or using their endowments in different ways. A package of deregulatory measures have been proposed to give charities greater flexibilities.

2. Improving the range of legal forms available to charities and social enterprises

There are no corporate legal forms designed specifically for charities. Those available to social enterprises are often not well suited to their needs, because they neither protect assets nor offer a strong identity in which the public and funders can have confidence.

i) By creating Community Interest Companies

This review proposes a new legal form for social enterprise - the Community Interest Company. This would improve access to finance, create a strong new brand, be legally protected from demutualisation, and preserve assets and profits solely for social purposes.

ii) Modernising the law on Industrial and Provident Societies

The Industrial and Provident Society is an under-used form. It is recommended that this be strengthened and up-dated by enabling Societies to opt for protection from demutualisation, and by renaming them as either Co-operatives or Community Benefit Societies.

iii) Introducing the Charitable Incorporated Organisation.

Many charities choose to incorporate as Companies Limited by Guarantee, but this legal form was not designed for charities and does not differentiate clearly the requirements of company law and charity law. Introducing the Charitable Incorporated Organisation, a new form specifically for charities, would remove these difficulties.

3. Developing greater accountability and transparency

Public trust and confidence enable charities and the wider sector to thrive and prosper. But for some there are few external pressures to improve performance. And accountabilities to beneficiaries and donors are unclear.

i) By improving information available to the public

In general the sector does not produce sufficiently accessible and relevant information to meet the public's needs. The review proposes higher standards of information provision, including a Standard Information Return in which larger charities will focus on their objectives and measure outcomes against these. It encourages benchmarking, social audit and other quality tools through sector-led initiatives with Government support.

ii) Regulating fundraising more effectively.

Fundraising is the public face of the sector and can strongly influence public attitudes. A simplified licensing system for public collections should be introduced. A new self-regulatory initiative, overseen by a new independent body, should be developed to promote good practice in fundraising.

4. Ensuring independent, open and proportionate regulation

The regulation of charities should aim to:

- Increase public trust and confidence;
- Ensure compliance with charity law;
- Enable and encourage charities to maximize their social and economic potential; and
- Enhance accountability to donors and beneficiaries.

i) By updating the rules on registration

Accountability for the smallest organisations is best ensured at the local level, but standard regulation can be excessive for the smallest organisations. There should be higher thresholds for registration with the Charity Commission, and a new status of “Small Charity” for those which are too small to register. Some large charities are currently not required to register with the Charity Commission. To achieve greater accountability for voluntary funds, these charities should be monitored for compliance with charity law by their existing sector regulator – or, where necessary, by the charity regulator.

ii) Giving the Charity Commission clearer goals and greater accountability

The Charity Commission regulates charities in England and Wales. The review proposes consolidating recent improvements in its performance and ensuring greater accountability through establishing:

Clear statutory objectives against which it regularly reports;

- Open public Board meetings and an Annual General Meeting;
- An enlarged Board to include a wider range of stakeholders;
- A new status as a statutory corporation called the Charity Regulation Authority;
- A new independent tribunal to enable trustees to challenge its decisions at reasonable cost; and
- Reports, carried out with sector participation, of performance in particular areas of charitable provision.

Annexure 7

A Case Study of Development Support Centre, Ahmedabad

Proceedings before the Deputy Charity Commissioner to obtain permission to mortgage the property of development Support Centre, Ahmedabad.

Development Support Centre (DSC) applied on 30.05.2003 to the Deputy Charity Commissioner (Mr. C.J Patel) seeking approval for change (by acquisition) in DSC's property being;

1. Office premises at 2, Prakruti Apartment, Opposite Red Rose Restaurant, H.L College of Commerce Road, Navrangpura, Ahmedabad 380009, admeasuring about 155 sq. yards including cellar valued at Rs. 5, 50,205/-; and
2. Land at Block No. 304, sub plot No.38 Paiki at village Bopal, Ta. Daskroi, Dist. Ahmedabad, admeasuring about 951.68 sq. meters valued at Rs. 15,22,688/-

The said application was taken on record in the Deputy Charity Commissioner's office vide Sr. No. 599/03/ Dated 02.06.2003

DSC simultaneously applied to the Charity Commissioner on 06.06.2003 seeking permission to mortgage DSC's property being land at Block No. 304, Sub plot No. 38 Paiki at village Bopal, Ta. Daskroi, Dist. Ahmedabad, admeasuring about 951.68 sq. meters, for obtaining loan from Housing Development Finance Corporation Ltd. (HDFC) for construction of DSC's office building and training centre. This application was entered in the office of the Charity Commissioner vide Sr. No.36/48/03. A hearing before the Charity Commissioner was fixed on 13.08.2003 to hear and decide the application seeking permission for mortgage. DSC managed to collect all relevant documents, which were likely to be demanded for its production before the Charity Commissioner. However, during the proceedings, the Charity Commissioner indicated that unless the property that is proposed to be mortgaged is registered in the records of the Deputy Charity Commissioner, no permission could be granted to mortgage the said property.

DSC thereafter approached the Deputy Charity Commissioner requesting him to proceed on DSC's application seeking approval for change in property. DSC appeared before the Deputy Charity Commissioner with all the relevant documents on 12.09.2003 when Deputy Charity Commissioner did not hear DSC's application on the ground that the date (12.09.2003) was not fixed by him and asked DSC to appear on 23.09.2003. During the hearing on 23.09.2003 all relevant documents including additional documents required were handed over to the concerned clerk of his office and on inquiry DSC was informed that no personal follow up was needed, the necessary order would be communicated in due course of time.

In the meanwhile DSC had to take adjournment from hearing of its application seeking approval to mortgage land (23.09.2003), 04.10.2003, 04.11.2003, 19.11.2003) from the Office of the Charity Commissioner for want of the Deputy Charity Commissioner's order approving the change (registering the property) in DSC's property. The Deputy Charity Commissioner finally granted sanction to DSC's application seeking registration of property and issued official order on 06.12.2003. The delay in releasing the Order by Deputy Charity Commissioner approving change in property prevented DSC from obtaining permission from the then Charity Commissioner Shri B.S Parikh who had heard DSC's application since date of submission. This delay deprived DSC from obtaining the sanctioned loan funds for construction of the office building and training center that affected DSC's planned scheduled.

When DSC submitted the approved Change Report they were asked to appear on 06.12.2003 before the in-charge Charity Commissioner Shri J.I. Antan. The in-charge Charity Commissioner Shri Antani was away on tour on 06.12.2002 and therefore DSC was given adjournment on 30.12.2002. During this hearing Shri J.I. Antani asked DSC to submit the plans and estimates and cash flow analysis indicating how DSC proposes to repay the loan to be submitted on 02.01.2004. DSC was assured by Shri Antani that he would examine the documents submitted by DSC and if found proper may release the appropriate orders when DSC appears on 17.01.2004, When DSC appeared on 17.01.2004 it was informed that Shri Antani was away on tour and therefore DSC was been given adjournment on 21.02.2004.

Finally on 21.02.2004, after the rigorous follow up of six and a half month, the in-charge Charity Commissioner issued the written order permitting DSC to mortgage DSC's property i.e. land and building to come up on the said subject to certain conditions.

<u>Procedures that need to be amended to make the process simpler and effective</u>

1. The Governing Board by virtue of Memorandum and Rules and Regulations of the Trust/Society has powers to deal with (purchase, sell, mortgage) the property of the trust by passing a resolution in their meeting. However, it is necessary to obtain and present the consent of all the members of the Governing Board (including those who have been granted the leave of absence from the meeting) for issues relating to dealing with the property of the trust.

2. The relevant documents are to be enclosed with the application seeking permission from the office of the Charity Commissioner.

3. Once the application is submitted to the office of the Charity Commissioner the applicant has to appear before the appropriate authority and present the application to fix the hearing on application.

4. Any Change in the membership of the Governing Board and property registered with the office of the Charity Commissioner needs to be approved by the appropriate authority (i.e., Deputy Charity Commissioner or Charity Commissioner). The changes should be approved and incorporated in trust records on the basis of the declarations and relevant documents filed by the Managing Trustee/ Chief Functionary.

5. The managing Trustee / Chief Functionary is required to appear before the appropriate authority at the time of hearing. The appearance of Chief Functionary of the trust should be made exceptional.

6. It is mandatory to file affidavit by the Managing Trustee / Chief Functionary of the trust for all applications made to office of the Charity Commissioner. This requirement also needs to be exceptional.

7. There is need to fix up the time limit to dispose off the application made by the institution. When a particular application as a result of urgency is followed up regularly the authorities claim that they have substantial backlog and applicant's case is not the only case under their purview.

8. There has been inordinate delay in obtaining the copy of PTR (Public Trust Record) since it is prepared manually. It is suggested that at least PTR should be computerized.

Annexure 8

SICP's Representation to the Maharashtra Law Commission

To,
Shri B. G. More
Chairman,
Maharashtra State Law Commission
Govt. Barrack No. 13
Free Press Journal Road
Opposite Mantralaya
Mumbai-400021 8 April,2004

Subject: Our considered opinion on certain recommendations made by Maharastra Law Commission on Bombay Public Trusts Act, 1950

Dear Sir,

Our organization, Sampradaan Indian Centre for Philanthropy (SICP), is a non-profit organization with a mission to promote, strengthen and re-establish philanthropy as a way of life in Indian Society. Ours is an intermediary organization, building bridges between donors and NGOs. We undertake various activities like research and documentation, dissemination of information and advocacy in order to motivate and educate donors and to help NGOs mobilize private funds for social development.

Sampradaan is currently engaged in research on charities administration in India with a view to suggesting institutional improvements. As part of literature survey for this research study,we carefully studied the " 13^{th} Report of the Law Commission on the revision of the Bombay Public Trust Act,1950" and recommendations made therein. While we are in agreement with most of the observations and recommendations, there were 2 recommendations in particular which we feel deserve further & broader considerations.

These recommendations are referred to hereunder:

1. It is recommended that in addition to the instrument of trust, every public trust should have a constitution according to which the trust would be administered. This constitution should override the instrument of the trust.

   It is also recommended that though founders or settlors of the trust should be free to appoint trustees, their number should be limited so that they can not control the trust; and that a provision should be made in the constitution that trustees should both be nominated and elected, but that the nominated members should always be in minority. Further, it is also recommended that trusts should have fee-paying members (like societies)**. (Refer Page 13, Section 21.1.4 of the Law commission report).**

2. The Commission recommends that as in the Andhra Pradesh Charitable and Religious Institutions and Endowment Act 1966, Govt. should appoint Executive Officers in important and wealthy trusts whose annual income is above Rs. 5 lakhs. These Executive Officers would be **Government Officers** and their duties would be defined. They would be answerable to the trustees but also to beneficiaries and the government. **(Refer Page 14, Section 21.2).**

We had circulated our views to a number of knowledgeable persons in Maharashtra.
Our letter and the replies of some are attached vide Annexure-1 & 2 respectively.
On the basis of these letters and our own view, we hereby wish to record our considered opinion on these recommendations:

1. The idea of a constitution or bylaws may be desirable where the trust deeds are poorly drafted and is silent on key issues of the trust's administration and governance- but this is in rare case(s) as usually trust's deeds are drafted by knowledgeable experts in the field. However, be such a case, the authorities (Charity administration office) can always advise the applicant (seeking registration) about such gaps and ensure the documents are suitably revised/modified, prior to according registration.

   In cases where the trust deed is properly drafted, having an additional constitution would be meaningless and superfluous. It will add to unnecessary bureaucratization of religious and charitable trusts, making them subservient to Government administration (political interference).

   Further, the Commission's recommendation for appointment of elected trustees in a majority position in order to dilute the control of the founders – leaves out of account large number of small public trusts which may not be availing of any Government grant or public donations. Many a time a family creates a trust to commemorate a dead member and family resources are constituted into a corpus and some charitable

   Activities like education and health are carried out in the neighbourhood, or for general community. To force outside members on such a trust would serve no public purpose and only dry up charity work. It is also not likely to make any difference to the management of the trust because membership principles will be decided by the trustees themselves as per the model constitution and this will not ensure that any objective outsider would necessarily become a member and he/she would elect useful trustees.

   The surviving trustees should have the right to appoint new trustees (without limiting their numbers)-whether through election or nomination; and whether their term should be for a fixed duration, allowing for periodic rotation and facilitating infusion of new (fresh) blood etc.- these decisions may be left on the trustees and not imposed.

   Having any scheme of membership should be voluntary and, once again, not to be Imposed on trusts.

2. The proposal to appoint an Executive Officer, who would be a Government Officer, in important and wealthy trusts (having annual income of 5 lakhs and more), is not required and would lead to unnecessary infringement or encroachment on trust's autonomy and hamper charitable cause(s). It would also have a distinct adverse impact on growth of charitable institutions in the country for all time to come.

   Taking over the administration of such trusts, first, through model constitution and then Government appointed Executive officers will only facilitate bureaucracy taking over the control of such institutions having taken shape out of a few or group of people's concern for charity and human welfare. Over time it may (could) become a tool for harassment and political control. Such action(s) shall also appear in direct contrast with stated Government Policy acknowledging the need and encouraging involvement of the Third Sector in development paradigm. Also, it (such action/s) will find itself in isolation, completely out of tune with increasing advocacy and policy measures (being) taken by the Government of India towards liberalization in recent times.

One cannot imagine bureaucracy in charge of trusts shall be able to effectively serve the needs and aspirations of the beneficiaries and meet the laudable objectives laid down by the settlors of such trusts.

We, therefore, request you to please get the Commission to re-examine these recommendations in the light of our views and opinions as expressed above and ensure necessary modifications in the light of our observations.

We request for your serious attention on the matter and look forward to an early response on the same.

With kind regards,

Yours sincerely,

Pushpa Sundar
Executive Director