

INDIA¹



Civil society organizations (CSOs)/Non-Governmental Organizations (NGOs), play an important role in the betterment of lives of the people, particularly those belonging to distressed and disadvantaged categories. Their official initiatives include organizing people for self-development and self-dependence. They also play a significant role in awareness generation, education, as well as advocacy for claiming citizens' rights.

While it is the primary responsibility of the government to look after the development and welfare of the people, due to resource constraints (particularly in developing countries), much is left to be desired and done. Hence, the role of CSOs/NGOs as complementary and supplementary agencies becomes very important in tackling the left-out issues and areas of immediate intervention such as relief measures during natural disasters. Since CSOs/NGOs are free of red tape culture and more flexible in decision-making, they are able to plunge into action immediately.

With their significant role in nation building and human welfare, it becomes all the more important to study the impact of the legal and political environment on their functions. There is a need to uncover the constraints and challenges they are facing in implementing their projects/plans for the development of the communities they serve, and to suggest measures to improve their performance.

Another important aspect is that there are cases where the integrity of CSOs is suspected and are questioned for involving in unlawful activities and anti-national agitations by misappropriation of funds, as a result more stringent laws are introduced in the name of checking malpractices which adversely affects the flow of funds for activities. Thus, the present study is needed, timely, and fully justified.

The main objectives of the study are:

- to provide a brief description of the civil society organizations in India;
- to assess the legal and political environment for developmental NGOs; and,
- to present recommendations on protecting and enhancing CSO space in the country.

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Methodology

Considering the constraints of resources and timeframe, data and information required for the study have been collected from secondary sources including government reports and websites, review of relevant literature/studies, and consultations with knowledgeable organizations and individuals. A validation workshop was conducted on 20 September 2022 to enhance the findings and recommendations as presented in this study.

The study covers the entire country because the national level policies and regulations with regard to CSOs/NGOs come under the purview of Ministry of Home Affairs, Government of India. The main focus of the study is the legal and political environment affecting the functioning of CSOs.

History and evolution

India has a long and healthy tradition of voluntary action. Since times immemorial the service and care of the poor, sick, weak, disable, destitute, and disadvantaged were accepted as social and moral obligations on the part of society as well as individuals towards their lesser fortunate brethren. The acts of benevolence, selfless service, and sacrifice for the good of others were considered to be righteous acts. Religious considerations motivated acts of charity and service to acquire *punya* (sacred), and in the process, an honest desire for the service of the needy was generated.

In the long historical process through the ages, the Indian social system also developed certain customs and practices deemed unhealthy and undesirable – i.e., *sati* (a custom of cremation of wife along with her husband after his death), child marriage, and the caste system. Reacting sharply to such unhealthy trends, various social reform movements focused on women's, children's, and widows' welfare, and education rights emerged at the dawn of the nineteenth century.

The focus of social work during the early twentieth century extended to strengthening nationalism and sense of brotherhood among the people. The Servants of India Society marked the beginning of an organized effort for enlisting the cooperation of a group of dedicated volunteers recruited and trained for specific purposes.

It is also in the same period that Mahatma Gandhi emerged in the Indian political scene as the undisputed leader of the freedom movement. His vision of voluntary action was to strengthen people's power at the grassroots level. He conceived constructive programs aiming to convert the Indian National Congress into Lok Seva Sangh (Association for People's Service).

Many dedicated followers of Gandhiji joined voluntary action to realize Gandhiji's vision, and some even started *vidyapeeths* (indigenous universities). These initiatives in the Gandhian era strengthened the spirit of patriotism, nationalism, *swadeshi* (indigenous), and engendered a deep faith in people's power. Gandhiji strongly advocated equal status for women in the social, economic, and political fields. Consequently, many voluntary bodies like the All India Women's Conference, Indian Adult Education Association and Bhartiya Depressed Classes League came into existence.

In the post-independence era (1947), some organizations of Gandhian stream began to receive financial assistance from the government while others became organs of the government.

Some of the senior Gandhians resisted institutionalization of voluntary action and preferred individual and group action. Acharya Vinoba Bhave, acclaimed as spiritual successor of Gandhi, started the *Bhoodan* (Land gift) movement in 1951 due to the then growing violence in the countryside on the issue of unequal distribution of land.

Jaya Prakash Narayan, looked upon as a natural successor to the first Prime Minister of India (Jawahar Lal Nehru), strongly promoted that Gandhism should be fully utilized in order to develop a sound ideology for socialism in India. He realized that Vinoba's efforts and the people's response to it is not merely a movement of redistribution of land but the beginning of a great social revolution. After the elections in 1952, he plunged whole-heartedly into the Bhoodan movement as he moved from village to village securing donations of thousands of hectares of land for the rural people. Here, he thought, was "revolution by non-violent mass action" taking place before his eyes. Gradually, he became so deeply committed to the movement that he decided to devote all his time and energy to it.

Jaya Prakash Narayan, decided not to join the cabinet. He believed that mere governmental efforts are not enough to achieve the goals of equality, freedom, brotherhood, and peace; and, that a successful democracy "people's power" at par with "State power" is a pre-requisite. He realized that there is no organized mechanism or effort to organize civil societies to protect the people's interest and prepare them to participate in the process of their self-development.

After experiencing the slow pace of development, deteriorating situation of law and order due to poverty and hunger, and the apathy of the local government officials towards the problems of the people, he decided to establish Sokhodeora Ashram in Gaya district of Bihar on 5 May 1954. It is a non-governmental effort empowering people with various programs of constructive works leading to income/employment generation.

While working along these lines, Jaya Prakash Narayan realized that many voluntary organizations working in different parts of the country in isolation on various issues had a lot to share for strengthening one another. There was also no national-level platform where they could meet and discuss common problems of the voluntary sector and take decisions for collective efforts on issues of common concern. He felt the need to set up a national-level team of experts in different disciplines of development to: (a) help small voluntary organizations in developing meaningful participatory programs, (b) micro-level planning, (c) mobilization of resources, (d) implementation of small development programs, (e) monitoring and evaluation, and (f) fostering new voluntary organizations in areas where they do not exist to tap the skills of the people and meaningful utilization of local resources for transforming their lives.

The above idea was discussed in a seminar organized by Indian Cooperative Union in 1958 and a decision was taken to establish a national-level network of NGOs or voluntary organizations (VOs), and that is how Association of Voluntary Agencies for Rural Development (AVARD) came into existence in 1958 with the following objectives:

- to promote cooperation and understanding among voluntary agencies working for the rural communities;
- to strengthen existing agencies and foster new ones;
- to act as a clearing house of information and knowledge on voluntary action and rural development;
- to facilitate interchange of ideas and experiences;
- to provide training and research support as well as mobilize resources; and,
- to serve as a link with like-minded national and international organizations.

In 1963 to 1964, the Gandhi Peace Foundation (GPF) was established to spread the thoughts and philosophy of Mahatma Gandhi with its chapters in many States. Many other organizations like Gandhi Nidhi, Gandhi Darshan, Gandhi Smriti, etc. were established for the same purpose.

In June 1975, another twist in voluntary action is noted when Mrs. Indira Gandhi, the Prime Minister of India, falsely accused AVARD, as well as the other Gandhian organizations, for acting against the national interest and misappropriation of foreign funds for political purposes. A Commission of Enquiry was set up to probe the role of these organizations. Despite of the four years of serious inquiry, the Central Bureau of Investigation (CBI) could not prove even a single charge against these organizations.

Another important development and milestone was the introduction of the Foreign Contribution Regulation Act (FCRA), 1976 to monitor and control receipt as well as utilization of foreign funds. This regulation has since then adversely affected the pace of voluntary action.

Overview of the CSOs in the country

Definition and characteristics

CSOs in India are commonly known as NGOs/VOs. However, those with Gandhian background and traditional constructive workers prefer to be called voluntary organization because NGO is a negative term and reflects opposition to the government. NGOs or non-profit institutions may be defined as:

“Non-profit institutions are legal or social entities created for the purpose of producing goods and services whose status does not permit them to be a source of income, profit or other financial gains for the unit that establish, control or finance them. In practice, their productive activities are bound to generate either surpluses or deficits, but any surpluses they happen to make cannot be appropriated by other institutional units” (OECD, 2021).

The main characteristics of NGOs/non-profit institutions are:

- They are formed voluntarily;
- These are legal entities registered under the law of the land;
- They are independent by nature and are controlled by those who have formed them or by the Board of Management to which such people have delegated, or are required by law to delegate responsibility for control and management;
- They are not for personal private profit or gain; and,
- They have to comply with the provisions of the laws under which they are registered.

Coverage and types of organizations

There is no apparent segregation of organizations in India. However, those registered under NGO DARPAN of NITI Aayog are developmental NGOs while those registered under FCRA are a mix of organizations. As far as the types of organizations are concerned, these could be divided as under:

- Grassroots NGOs;
- State/district level organizations;
- Charitable trusts and NGOs (running hospitals, schools, orphanages, relief and rehabilitation works during calamities, etc.);
- Rights-based organizations (e.g., Ekta Parishad);

- National level NGOs and networks (e.g., AVARD, VANI); and,
- Donor/funding agencies.

Number

There is no centralized system of registration for NGOs and it varies widely in the country from State to State. In their first initiative to map out the NGOs in India as directed by the Supreme Court in 2015, the CBI released a figure of 3.1 million NGOs.

Per the statement of the State Minister of Home Affairs in Parliament on 24 November 2020, about 49,859 NGOs are registered under FCRA. On the other hand, 143,196 NGOs have signed up on NGO DARPAN of NITI Aayog, which is mandatory for accessing government funds.

Areas/Sectors where CSOs have significant presence in the country

Majority of NGOs work in multiple sectors depending upon the need of the people of the area they operate. However, NGOs have strong presence in sectors like rural development, agriculture, irrigation, education and research, health, women and child welfare, welfare and development of Scheduled Caste/Scheduled Tribe communities, income/employment generation for women and marginalized communities, *khadi* (hand-made goods particularly hand-spun and woven coarse clothes) and village industries, development of traditional artisans, culture, social welfare, empowerment of the disabled, and a host of welfare as well as relief and rehabilitation works.

Further, NGOs play a vital role in persuading and/or pressuring the State to do its duty to people and desist from abusing its authority, generating replicable/sustainable alternatives of development, facilitating participatory process through awareness building, conducting training courses, advocating causes, monitoring the effects of development actions and highlighting their contradictions, strengthening democratic institutions, and filling in the gaps in development.

As far as geographical coverage is concerned, larger States have a greater number of NGOs. Economically better-off States like Punjab and Haryana have lesser number of NGOs. Similarly, disturbed areas like Jammu and Kashmir and far-flung smaller States/union territories like Ladakh, Andaman, Arunachal, and Pradesh have lesser number of NGOs.

Reach and major NGO networks

The reach of NGOs differs widely – some work at the national scope while others are focused at the regional, State or district levels.

At the country level, there are the Association of Voluntary Agencies for Rural Development (AVARD) and Voluntary Action Network-India (VANI). Both of these networks of NGOs are Delhi-based. Networks in this context are associations of autonomous NGO members along the lines of a bottom-up federal structure.

On the other hand, there are some NGOs operating all over India with their State chapters but these are limited to their operational partners hence they may not be treated as networks. Such organizations include Voluntary Health Association of India (VHAI), Gandhi Peace Foundation (GPF), Gandhi Nidhi, Ekta Parishad, Adult Education Association of India, etc. There are some State level/regional networks, particularly SATHI (Friends) needs special mention, which works in Central and Eastern Uttar Pradesh.

Legal environment for developmental NGOs

Registration of NGOs/VOs

The registration system of NGOs/VOs was introduced during British regime in the year 1860. As of now, there are nine different laws that govern NGO registration:

- Indian Trust Act, 1882;
- The Societies Registration Act, 1860;
- Companies Act, 1956 under section 25;
- Charitable and Religious Trusts Act, 1920;
- Sikh Gurudwara Act, 1925;
- Trustees and Mortgagees Power Act, 1866;
- Waif Act, 1995;
- Indian Trustees Act, 1866; and,
- Religious Endowment Act, 1863.

NGOs must also register under the FCRA to access foreign funds. In order to avail of tax exemptions and to provide tax rebates to donors, NGOs should register under the Income Tax Act.

On the other hand, NGOs need to register under the CSR of Ministry of Corporate Affairs, Government of India, to be able to access their grants. Similarly, for accessing government funds, the NGO has to sign up with NITI Aayog DARPAN portal.

Those working for *khadi* and village industries are required to get a certification from Khadi and Village Industries Commission (KVIC) for getting financial support either in form of project or loan. The service providers to government departments must get registered as vendors with the ministry/department concerned.

To register a Society, one has to approach the Registrar of Societies or the designated office with the: (a) organization's by-laws, and (b) the personal information and designation of the persons involved in the Society. The application is submitted with a modest fee and is processed in due course.

In case of registration of Trusts, one has to go to any court with the deed of the Trust and documents of the persons involved as Settler and Trustees. A registration fee is also paid.

For registration under FCRA, Income Tax Acts, CSR, and NGO DARPAN, the NGO has to apply online. Prior to approval of registration under FCRA, an inquiry on the track record and members of the organization is done by the Intelligence Department of the Home Ministry. The officers of Intelligence Department physically make visits, check documents, and file their reports to the FCRA Division. All registered organizations must inform the relevant authorities about any changes in the composition of their board of officers. They must also submit audited statements of accounts to the Income Tax Department and to the FCRA division, if registered under FCRA.

The main problem that NGOs are facing is related with the renewal of FCRA Registration. There are many NGOs, while the staff with intelligence agencies for verification are limited, so the government continues to extend the investigation dates. Moreover, some cases of corruption in the department have also come to light. The licenses of some NGOs have been cancelled for not following the proper procedures while others have taken their cases to court.

Funding for NGOs

Availability of funds is a very crucial element for the continuity of activities of NGOs and the sources of funding are continuously decreasing over time. The main sources of funding of NGOs are:

- **Membership fees** which are very nominal and limited;
- **International donor agencies** – Access to foreign funding is permitted for those registered under FCRA. However, after the implementation of amended FCRA 2010, the access of NGOs to foreign funds has decreased because of the decline in the number of donor agencies based in the country. Many of them have closed their offices either due to shortage of funds or complex regulations;
- **National Trusts** – Donor agencies like Tata Trusts, Azim Premji Foundation, Ambani Foundation, etc;
- **Individual donations** for which income tax rebate is admissible;
- **Corporate Social Responsibility (CSR)** – Corporations are required to donate at least two percent of their profit to NGOs;

- **Central and State governments** seeking assistance for the implementation of projects or activities;
- **Income generating activities** – from NGO-managed hospitals, sale of goods, operation of schools, etc.; and,
- **Crowd funding** for any particular cause/issue.

NGOs have to get all their accounts audited by an accredited chartered accountant and the balance sheets have to be submitted to the income tax department within the stipulated period.

The legal framework for utilization of indigenous funds is supportive but as far as foreign funds are concerned it is bit regulative. For receiving foreign funds, the NGOs should have a bank account with State Bank of India, Main Branch, New Delhi and their FCRA registration should be renewed as provided under the amended Act.

Those receiving foreign funds must report the amount received every quarter and submit the audited statement of accounts every financial year. If they are late, they are penalized with fines as decided by the government.

Government-CSO relations

It is vital and essential in public interest that the relationship between government and civil society organizations is constructive, collaborative, and rational in a democratic country like India. Together, they can share responsibilities for improving the socio-economic conditions of the people. NGOs can play a role in filling-in the gaps of national development by enhancing people’s participation and implementing innovative schemes through mobilizing resources from local and international funding agencies/individual donors. The status of Government-NGO relations in India is discussed below.

Right to freedom of expression, assembly and unrestricted mobility

The Constitution of India under Article 19 guarantees the right to freedom of speech and expression; to assemble peacefully and without arms; to form associations and unions; to move freely throughout the territory of India; and, to practice any profession or carry on any occupation, trade or business. All of these are listed as Fundamental Rights to Freedom.

However, the State can make laws to impose “reasonable restrictions” on the exercise of above rights in the interest of the sovereignty and integrity of India; the

security of the State; friendly relations with foreign States; public order; decency or morality; or, in relation to contempt of court, defamation, or incitement of an offence.

Right to information and participation

The Right to Information Act of 2005 provides that any citizen of India can seek information from public authorities per the prescribed procedure at a nominal fee. However, this right is not unlimited. The authorities cannot share sensitive and classified information pertaining to the security of the country and the Ministry of Defense.

As far as participation is concerned, it is not a right but a desirable element in government initiatives. The government appoints members of the NGO sector in its various committees at central, State, and district levels that play an important role in decision-making and implementation of various policies and programs of the government.

Suggestions of NGOs are heard to some extent and incorporated in government policies and programs such as watershed management, Clean India Campaign, promotion of literacy, etc.

Partnership and coordination mechanism

The first ever “National Policy on Voluntary Sector 2007” jointly formulated by the Central Government and Voluntary Sector provides a framework to begin a process to evolve a new working relationship between government and voluntary sector without affecting the autonomy and identity of voluntary organizations.

This policy is a commitment to encourage, enable, and empower the voluntary sector to contribute to the social, cultural, and economic advancement of the people of India. It recognizes that the voluntary sector has contributed significantly in finding innovative solutions to poverty, deprivation, discrimination, and exclusion, through means such as awareness raising, social mobilization, service delivery, training, research, and advocacy.

Also, the policy deals with partnership in development relating to various vital issues such as the imperative of working together with mutual trust and respect, and with shared responsibility and authority, multi-level consultation, collaboration and funding. The policy promotes as well as joint consultative mechanisms, utilization of expertise of voluntary sector, national collaborative programs to address complex problems, need-based decentralization, and acceptable accreditation of VOs for better funding decisions.

In essence, this policy recognizes three instruments of partnership:

- Consultation through formal processes of interaction at the central, State, and district levels;
- Strategic collaboration to tackle complex interventions where sustained social mobilization is critical over the long term; and,
- Project funding through standard schemes.

While the policy is comprehensive and constructive, the current government, the National Democratic Alliance (NDA) has paid little attention to it since its assumption to power on 26 May 2014

The current regime is seen supportive to the NGO activities implemented through indigenous funding. However, in the case of foreign-funded activities, the government is cautious and regulative in the name of protecting integrity and security of the country. In fact, some communal tensions indicate that foreign funds are being diverted to spoil the communal harmony and promote illegal religious conversions in the shadow of NGOs.

Conclusion and recommendations

Conclusion

India has a long and healthy tradition of philanthropy and social service since times immemorial and it was accepted as a moral obligation on part of the society as well as individuals to help the needy. At present, CSOs, NGOs, or VOs are spread all over the country but they are more in number in larger States. NGOs are engaged in almost all sorts of developmental activities but they have significant presence in areas of education, research and training, health care, environment, income/employment generation activities, welfare of women/children and marginalized communities, advocacy, in addition to relief and rehabilitation works.

The overall legal and political environment of NGOs in India is strict with regard to accessing foreign funds to stop misuse of funds for anti-national purposes but supportive for activities implemented with indigenous funds. The roots of democracy are quite deep and strong so there are no major challenges.

Recommendations

To strengthen the role of NGOs as agents of change, the following policy and program actions are recommended for the government:

- A system with information about the NGO sector at State and national level should be in place. NITI Aayog and the Department of Statistics may be involved in this undertaking.

- The restriction of sharing foreign funds with other NGOs needs to be relaxed particularly in case of networks of NGOs.
- The provisions of renewal of registration every five years under FCRA should be extended to 10 years.
- Corporations should be barred from forming their own NGOs for CSR funding.
- There should be some platform at the national level where government entities and NGOs can meet and discuss matters pertaining to the NGO sector. NITI Aayog may be entrusted with this responsibility.
- NGOs should be sought out to be more involved in tackling problems of population explosion, environmental degradation, empowerment of marginalized communities, popularization of government schemes, among other contemporary issues. ■

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