CHAPTER 4

LEGAL FRAMEWORK GOVERNING CHARITABLE ORGANISATIONS IN INDIA

This chapter throws light on the legal framework governing charitable organisations in India with special reference to the Societies Registration Act, 1860.

4.1 Introduction

Non-profit organisations (NPOs) have been and continue to be an important partner in identifying and meeting the needs of the world’s have-nots. Traditionally, there have been large entities in the developed world extending varying forms of aid to parts of the world with the greatest need. By many of the world’s measures there has been no abatement in the needs that exist. In fact the needs are graver in many places. Economic development and the changes in our needs and how they are met have widened the gap between our richest and poorest people. If the need was in fact greater, conventional wisdom would have us expect that there would be a comparable expansion of voluntary organisations. This has not been the case. In places where the need is greatest such as India there is forecasting of a contraction of the voluntary sector. New legislation in the form of Foreign Contributions Registration Act 2010, coming out of the Government has generated a large degree of concern regarding the future of these organisations and the people they serve.

Since the 2001 terrorist attacks in the United States, there has been a serious contraction of the voluntary sector. All over the world, Governments have sought to restrict the scope and reach of voluntary organisations for fear that funds intended to work for the benefit of the poor will finance the subversive activities of radical anarchist organisations. The International Centre for Not-for-profit Law (ICNL) has reported that a “disturbingly large number of Governments, principally but not exclusively authoritarian or hybrid regimes are working to undermine voluntary organisations.” While we have grown accustomed to seeing the heavy-handed approach of authoritarian regimes used to mute voluntary organisations around the world, ICNL finds more troubling the creep in otherwise democratic societies. There are, however, alarms being sounded about countries like Argentina, India and the United States of America.
In Argentina, for example, the law permits the termination of an NGO when it is “necessary” or “in the best interests of the public”, while in India, NGOs have protested that the proposed Foreign Contribution Management Control Bill (FCMC) would further burden foreign funding. Similarly, in the United States, civil liberties groups have challenged the recent use of secret, unchallenged evidence to close down charities purportedly associated with terrorists and criticized amendments to the Foreign Intelligence Surveillance Act which expand Government authority to monitor private phone calls and emails without warrants if there is “reasonable belief” that one of the parties is overseas. (INCL & NED 2008)

Moreover, the Indian Ministry of Corporate Affairs constituted a committee in May, 2011 under the chairmanship of Dr. K.N. Chaturvedi, which presented a draft of Multistate Societies Registration Bill, 2012. It has provided a Model Legislative Framework for regulating the societies having multi-state operations, for which at present there is no law to be followed by such societies, vesting the Societies Registration Act, 1860. The committee has made a draft of two Bills, i.e. (1) Model Law for Societies Registration Bill to be adopted by the States in respect of Societies having operations in one state (2) A new enactment on the Societies having operations/activities which are spread to more than one state in India or having pan India operations.

There has been heightened rhetoric around the regulation of NPOs in India over the last few years. The Government’s decision to reform and update the tax laws and the Foreign Contribution Regulation Act has sparked serious debates, which may have influenced the expression in the quote above. In the face, increasing claims of corruption, of declining confidence in the VOs, and potential terrorist threats, the Government of India has sought to establish new restrictions in the form of two major bills to the Direct Tax Code and the Foreign Contributions Registration Act (Voluntary Action Network India, 2010).
4.2 International Perspective

The USA, Canada, the United Kingdom, France and other developed countries of Europe have a well-developed system for regulation and promotion of this sector.

In most of these countries, revenue officials initially decide whether an organisation is charitable or not. This approach is based on the assertion that revenue officials are not biased in their determination of charity registrations and that the tax authority is in the best position to administer the system of tax deductibility, including determining which organisations are eligible for tax exemption.

An effective grievance redressal system is in place. There are provisions for appeals against decisions, and graded sanctions for violation of laws.

In the USA and Canada, registration of a charity is a State responsibility but financial and tax regulation is through the Inland Revenue, which is a federal agency. In the United States, charities are created under the State Law but they are subject to control by both Federal and the State Governments.

There is easy access to data on charities:

(i) There is a Public Register of charities and,
(ii) It is mandatory for a voluntary organisation to supply information on demand.

The Charity Commission administers the Charities Act in England and Wales. The Act empowers the Commission to exercise regulatory jurisdiction over all matters concerning charities. The Charities Act, 2006 has completely changed the Government-voluntary sector interface in the United Kingdom. The Act provides for the establishment of an autonomous body called Charity Commission to regulate and support the functioning of Charity organisations across England and Wales. There is also a Charity Tribunal to entertain appeals against the orders of the Charity Commission.

As this subject are under the legislative control of states according to VII schedule of constitution, so the multi-state/pan Indian charitable societies and those working overseas face lots of challenges in complying with the multiplicity of the laws. An Expert committee constituted by Ministry of corporate affairs under the chairmanship of Dr. K.
N. Chaturvedi has suggested recommendations and prepared model law for the solution of this particular problem, so the Government should take the requisite steps to implement the law as soon as possible.

4.3 Formation and Registration of a Non-Profit Organisation in India

There are three avenues to establishing an NPO in India, these are:

1. The Societies Registration Act, 1860
2. The Indian Trusts Act 1882 and similar other States Trust Acts.
3. The Indian Companies Act, 1956 (Section 25)

4.3.1 The Societies Registration Act, 1860

The Societies Registration Act came into force in 1860, after the Revolt of 1857 was put down. After Independence, this Act was adopted as the law in the new nation as a federal provision. Given that administration of VOs falls under the providence of state Governments, States in some instances have set up entirely new registration requirements for societies, using the federal regulation as a mere guideline. In other cases they add small tweak and in yet other states the Act is administered as is.

According to section 20 of the Societies Registration Act, 1860, the following societies can be registered under the Act: ‘charitable societies, military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs.’

Legislation: Societies are registered under the Societies Registration Act, 1860, which is a federal act. In certain states, which have a charity commissioner, the society must not only be registered under the Societies Registration Act, but also, additionally, under the Bombay Public Trusts Act.
**Main Instrument:** The main instrument of any society is the memorandum of association and rules and regulations (no stamp paper required), wherein the aims and objects and mode of management (of the society) should be enshrined.

**Trustees:** A Society needs a minimum of seven managing committee members; there is no upper limit to the number of managing committee members. The Board of Management is in the form of a governing body or council or a managing or executive committee.

**Application for Registration:** Registration can be done either at the state level (i.e., in the office of the Registrar of Societies) or at the district level (in the office of the District Magistrate or the local office of the Registrar of Societies).

The procedure varies from state to state. However generally the application should be submitted together with: (a) memorandum of association and rules and regulations; (b) consent letters of all the members of the managing committee; (c) authority letter duly signed by all the members of the managing committee; (d) an affidavit sworn by the president or secretary of the society on non-judicial stamp paper of Rs.20/-, together with a court fee stamp; and (e) a declaration by the members of the managing committee that the funds of the society will be used only for the purpose of furthering the aims and objects of the society.

All the aforesaid documents which are required for the application for registration should be submitted in duplicate, together with the required registration fee. Unlike the trust deed, the memorandum of association and rules and regulations need not be executed on stamp paper.

**Grievance Redressal Mechanisms – Appeals**

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.
4.3.2 The Indian Trusts Act 1882 and Similar Other States Trust Acts

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 Indian Trust Act applies only to private trusts. Some states have separate acts governing the administration of charitable institutions and endowments. Generally, a charitable trust must register with the office of the Charity commissioner of the state in which the trustees register the trust in order to be eligible to apply for tax-exemption. In general, trusts may register for one or more of the following purposes:

Relief of poverty or distress; Education; Medical relief; Provision of facilities for recreation or other leisure-time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit; and the advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship.

Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner may take steps to revive the trust. Furthermore, if it becomes too difficult to carry out the objectives of a trust, the doctrine of *cy pres*, meaning "as near as possible," may be applied to change the objects of the trust.

**Legislation:** Different states in India have different Trusts Acts in force, which govern the trusts in the state; in the absence of a Trusts Act in any particular state or territory the general principles of the Indian Trusts Act 1882 are applied.

**Main Instrument:** The main instrument of any public charitable trust is the trust deed, wherein the aims and objects and mode of management (of the trust) should be enshrined. In every trust deed, the minimum and maximum number of trustees has to be specified. The trust deed should clearly spell out the aims and objects of the trust, how the trust should be managed, how other trustees may be appointed or removed, etc. The trust deed should be signed by both the settlor/s and trustee/s in the presence of two witnesses. The trust deed should be executed on non-judicial stamp paper, the value of which would depend on the valuation of the trust property.
Trustees: A trust needs a minimum of two trustees. There is no upper limit to the number of trustees. The Board of Management comprises the trustees.

Application for Registration: The application for registration should be made to the official having jurisdiction over the region in which the trust is sought to be registered.

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 a very nominal registration fee which may range from Rs.3/- to Rs.25/-, depending on the value of the trust property.

The application form should be signed by the applicant before the regional officer or superintendent of the regional office of the charity commissioner or a notary. The application form should be submitted, together with a copy of the trust deed.

Two other documents which should be submitted at the time of making an application for registration are affidavit and consent letter.

Grievance Redressal Mechanisms – Appeals

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 judgment 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.

4.3.3 The Companies Act, 1956

The Indian Companies Act, 1956, which principally governs for-profit entities, permits certain companies to obtain not-for-profit status as "section 25 companies." A section 25 company is formed for "promoting commerce, art, science, religion, charity or any other useful object." A section 25 company is required to apply its profits, if any, or other income to the promotion of its objectives, and should not pay dividend to its members. A minimum of three individuals is necessary to form a section 25 company.
The founders or promoters of a section 25 company must submit application materials to the Regional Director of the Company Law Board.

The application must include copies of the memorandum and articles of association, as well as a number of other documents, including a statement of assets and a brief description of the organisational objectives. The governing structure of a section 25 company is similar to that of a society. It generally has members and is governed by directors or a managing committee or a governing council elected by its members.

A section 25 company can be dissolved. Upon dissolution and after settlement of all debts and liabilities, the funds and property of the company may not be distributed among the members of the company. Rather, the remaining funds and property must be given or transferred to some other section 25 company, preferably one having similar objects as the dissolved entity.

**Legislation:** Section-25 companies are registered under section-25 of the Indian Companies Act. 1956.

**Main Instrument:** For a section-25 company, the main instrument is a Memorandum and Articles of association (no stamp paper required).

**Trustees:** A section-25 Company needs a minimum of three trustees. There is no upper limit to the number of trustees. The board of management is in the form of a board of directors or managing committee.

**Application for Registration:**

1. An application has to be made for availability of name to the registrar of companies, which 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.

2. Once the availability of name is confirmed, an application should be made in writing to the regional director of the company law board. The application should be accompanied by the following documents:
a. 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.

b. 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 thereunder have been duly complied with, in respect of registration or matters incidental or supplementary thereto.

c. 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.

d. 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.

e. 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.

f. A statement specifying briefly the grounds on which the application is made.

g. A declaration by each of the persons making the application that he/she is of sound mind, not an undercharged 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.

3. 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 that had been filed before the regional director of the company law board.

4. 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 in a newspaper in a principal language of the district in which the registered office of the proposed company is to be situated or is situated and circulating in that district, and at least once in an English newspaper circulating in that district.

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

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

Grievance Redressal Mechanisms – Appeals

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

4.4 Comparison among Trust, Society and Non-profit Company

The table 4.1 demonstrates the comparison of trust, society and non-profit company.

<table>
<thead>
<tr>
<th>Statute/Legislation</th>
<th>Trust</th>
<th>Society</th>
<th>Section-25 Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant State Trust Act or Bombay Public Trusts Act, 1950</td>
<td>Societies Registration Act, 1860</td>
<td>Indian Companies Act, 1956</td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Deputy Registrar/Charity commissioner</td>
<td>Registrar of societies (charity commissioner in Maharashtra)</td>
<td>Registrar of companies</td>
</tr>
<tr>
<td>Registration</td>
<td>As trust</td>
<td>As Society</td>
<td>As a company u/s 25 of the Indian Companies Act.</td>
</tr>
<tr>
<td>Registration Document</td>
<td>Trust deed</td>
<td>Memorandum of association and rules and regulations</td>
<td>Memorandum and articles of association and regulations</td>
</tr>
<tr>
<td><strong>Stamp Duty</strong></td>
<td>Trust deed to be executed on non-judicial stamp paper, vary from state to state</td>
<td>No stamp paper required for memorandum of association and rules and regulations.</td>
<td>No stamp paper required for memorandum and articles of association.</td>
</tr>
<tr>
<td>---------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Board of Management</strong></td>
<td>Trustees / Board of Trustees</td>
<td>Governing body or council/managing or executive committee</td>
<td>Board of directors/Managing committee</td>
</tr>
<tr>
<td><strong>Mode of Succession on Board of Management</strong></td>
<td>Appointment or Election</td>
<td>Appointment or Election by members of the general body</td>
<td>Election by members of the general body</td>
</tr>
</tbody>
</table>

Source: Compiled from Handbook on Laws Governing Formation and Administration of Charitable Organisations in India, 2012, pp. 63-64

Beside these laws, charitable organisations are also required to follow the provisions of the laws that are applicable to their functional areas. For example, those working in the health sector also need to follow the laws applicable to that sector. Similarly, organisations working on environment protection will have to abide by the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Forest (Conservation) Act, 1980 etc.

From aforesaid acts, the basis of discussion will be “The Society Registration Act, 1860” as All India Pingalwara Charitable Society was registered under this act.

### 4.5 Historical Background of the Society Registration Act, 1860

The origin of societies in India can be traced back to the ancient times. Societies of those times were served as platforms to discuss important developments in the fields of arts, sciences, astronomy etc. for like-minded intellectuals. Besides this, societies existed in the form of religious or charitable organisations dispensing relief to the needy. However, most of these societies were unorganized and operated in a haphazard manner like other social systems in India before coming of the British. Modelled on the English Literary and Scientific Institutions Act, 1854 “The Societies Registration Act” came into being in 1860, tried to consolidate the activities of a societies in an organized manner.
Before the enactment of the said act, a number of organisations were established in the country whose area of working included the issues of politics, literature, arts and science. Coinciding with the 1857 event, the British Government enacted an act (The Society Registration Act, 1860) with a view to effectively govern such societies. This was enacted partly to give such organisations a legal standing and partly, to enable the colonial Government to maintain a watch on them.

So, it is a pre-independence era legislation that envisaged the incorporation, management and dissolution of societies that were registered under the said Act. Those Societies were mainly for non-profit making and for benevolent purposes. But, the Act was not intrusive at all and it gave full freedom to the Societies/organisations which chose to register with the Government under the act.

Although, it was not explicitly stated under the Act but the tenor of this was oriented towards regulating charitable societies presuming that, societies were mainly established for altruistic purposes.

In this respect, Section 20 of the Act specifically listed the type of societies to which the Act applies, such as charitable societies, military orphan funds or societies, societies established for promotion of science, literature, or for fine arts, societies established for intrusion and diffusion of useful knowledge, diffusion of political education, societies established for maintenance of libraries or reading rooms for general public, societies established for public museums and galleries for paintings or other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs (Report of the Expert Group on Societies Registration Act, 1860, 2012).

Till independence, this Act did not invite any major changes. Most of the Societies constituted during this period were not financially sound and were driven primarily by the strong intent and tenacity of the founding members. Often and on, they could get financial support from some quarters but the overall health of such Societies was poor. After 1947, as a result of adaptation orders 1948/50, the Act remained on the statute, but “Societies” being a subject under the State list, it came under the legislative competence of State Governments.
It was clear in the original act that any form of State interference into affairs of such institutions has no scope, except routine matters of filing annual statements but after independence, many states amended this act and introduced widespread Governmental controls in the legislation to deal with abuses, malfunctioning and corruption in Societies. The states had taken many measures (legal as well as administrative). The legal measures include State’s power of enquiry and investigation, cancellation of registration & consequent dissolution of societies, supersession of the governing body, and appointment of administrator, dissolution and deletion of defunct organisations. As this act was under the State list after 1947 so they amended the act as per their needs. Hence, State legislations on this subject vary widely. According to the ninth report of second Administrative Reforms Commission of India, the amendments mainly concern the following four issues:

1. Purpose for which societies can be formed
2. Regulatory powers with regard to change in memorandum of association, bye-laws, alienation of property and investment, amalgamation and dissolution of the Body
3. Powers with regard to submission of annual returns
4. Powers of the State Government with regard to supersession, dissolution or cancellation of registration.

In contrast to the original 1860 Act, the State amendments have considerably expanded the list of purposes for which Societies could be formed and the scope of State intervention in the affairs of the societies. For example, the Karnataka Act goes much beyond the original purpose of promotion of science, literature, or the fine arts for instruction, diffusion of useful knowledge and includes many other activities connected with conservation and use of natural resources and scarce infrastructural facilities like land, power, water, forest etc. Similarly, with regard to change in the memorandum of association, bye-laws, alienation of property, investment, amalgamation and dissolution, submission of annual returns and in matters of supersession, dissolution or cancellation of registration, the State has appropriated vast powers. Madhya Pradesh, Andhra Pradesh and Kerala are the other three States which have converted this enactment into a strongly State centric Act (Ninth report of second Administrative Reforms Commission, 2008).
4.6 Laws Governing Charitable Organisations in India

Charities can be formed in multiple ways and may be subject to various acts of legislation. The right of all citizens to form associations or unions is guaranteed by the Constitution of India, Article 19(1)(c). “Charities and charitable institutions, charitable and religious endowments and religious institutions” is a subject of the Concurrent list of the Seventh Schedule to the Constitution of India, where both the Centre and the States are competent to legislate and regulate charitable organisations. Under Schedule VII of the Indian Constitution, the subject ‘Trust and Trustees’ finds mention at Entry No.10 in the Concurrent List and ‘Charities & Charitable Institutions, Charitable and religious endowments and religious institutions’ find place at Entry No.28 of this list (Adukia, 2012).

The legal framework for the charity sector in India is quite complex with a number of different acts of legislation governing it in their own way. There are three basic legal forms of charitable entities under Indian law: trusts, societies, and section 25 companies. The legal framework governing the charitable institution will depend on the form of business organisation the charitable institution takes. There is no comprehensive central law for legal incorporation of non-profit organisations which applies to trusts, registered societies and section 25 companies alike (Adukia, 2012).

If the charitable institution is formed as a Public Trust, it will be governed by the Public Trust Act applicable in the relevant State. However, if no Public Trust Act exists in that state, then the applicable legislation will be the Indian Trusts Act 1882.

If the charitable institution is formed as a Society, it will be governed by the Societies Registration Act, 1860. The charitable institution can also be formed as a non-profit company under section 25 of the Companies Act, 1956.

Apart from the above legislations, the Income Tax Act 1961 will be applicable to charitable institutions. And in the case of foreign contributions to these charitable institutions, the Foreign Contribution (Regulation) Act, 2010 will be applicable. Apart from the above, various laws are applicable to Trusts, Societies and Wakfs.
Also, various State Laws are applicable to Charitable Institutions. For example, all public charitable trusts in the state of Maharashtra are governed by the Bombay Public Trusts Act, 1950. The same Act, with minor changes, is also operational in the state of Gujarat. Rajasthan, too, has a Trusts Act of 1959, while Madhya Pradesh had an Act of 1951. In certain southern states like Andhra Pradesh, there are endowments Acts, while a number of northern and north-eastern states in India have no trust Act at all. Even the capital of India, New Delhi has no trust Act.

Moreover, many state and central Government agencies have regulatory authority over these not-for-profit entities. For example, all not-for-profit organisations are required to file annual tax returns and audited account statements with various agencies. At the state level, these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (referred to in some states by different titles, including the Registrar of Joint Stock Companies), and the Registrar of Companies (for section 25 companies). At the national or federal level, the regulatory bodies include the income tax department and Ministry of Home Affairs (only for not-for-profit organisations receiving foreign contributions) (Adukia, 2012).

The following are the laws governing charity sector in India.

A. Main Laws Governing the Charity Sector
   1. Indian Trusts Act, 1882 (applicable for private trusts)
   2. Public Trusts Acts of various states in India.
   3. The Societies Registration Act, 1860
   4. The Companies Act, 1956
   5. Income Tax Act, 1961
   6. Foreign Contribution (Regulation) Act, 2010

B. Other Laws Governing Charity Sector
   I. Societies
      1. Religious Societies Act, 1880
      3. The Rajasthan Societies Registration Act, 1958
      4. The Karnataka Societies Registration Act, 1960
      5. The West Bengal Societies Registration Act, 1961
      6. The Madhya Pradesh Registration Adhiniyam, 1961
7. The Tamil Nadu Societies Registration Act, 1975
8. Manipur Societies Registration Act, 1989
10. Societies Registration (Uttar Pradesh Amendment) Act, 2000

II. Trusts
1. Charitable and Religious Trusts Act, 1920
2. Religious Endowments Act, 1863
3. Charitable Endowments Act 1890
5. Official Trustees Act, 1913
6. Civil Procedure Code, 1908
7. Registration Act, 1908
8. Indian Stamp Act, 1899

III. Wakfs
1. Mussalman Wakf Act, 1923
2. Mussalman Wakf Validating Act, 1913
3. Mussalman Wakf Validating Act, 1930
4. Wakf Act, 1995

IV. State Acts
2. Bihar Hindu Religious Trusts Act, 1950
8. Orissa Hindu Religious Endowments Act, 1951
9. Rajasthan Public Trust Act, 1959
10. Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
11. The Madras Hindu Religious And Charitable Endowments Act, 1951
13. Charitable Endowments (U.P. Amendment) Act, 1952
14. United Provinces Charitable Endowments Rules, 1943
15. Religious Endowments (Uttar Pradesh Amendment) Act, 1951

The Madhya Pradesh Public Trusts Act, 1951 has been repealed by the Bombay Public Trusts (Unification and Amendment) Act, 1959-(Bombay Act No. VI of 1960).

4.7 Constitutional Provisions with Regard to Charitable Organisations

The Indian Constitution provides a distinct legal space to social capital / civil society institutions:

a. Through its Article on the right to form associations or unions – Article 19 (1)(c).

b. Through Article 43 which talks of States making endeavour to promote cooperatives in rural areas and

c. Through explicit mention in entries made in the Seventh Schedule.

The relevant entries in the Seventh Schedule to the Constitution are as follows:

A. The Union list (List I)
   • Entry 43 – “Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies”.
   • Entry 44 – “Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities”.

B. The State list (List II)
   • Entry 32 – “Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies”.

C. The Concurrent List (List III)
   • Entry 10 – “Trusts and Trustees”
• Entry 28 – “Charities and charitable institutions, charitable and religious endowments and religious institutions”.

Since forming associations is a Constitutional right under Article 19 (1) (c) of the Indian Constitution, it is quite feasible to set up a non-profit/voluntary organisation without any kind of registration or recognition under any of the entries mentioned above. In fact, some of the community based organisations like village committees, small religious groups and many Resident Welfare Associations function in this manner.

However, when it comes to claiming exemptions under the Income Tax Act, 1961 and for availing of other benefits from the Government, there is insistence on formal registration.

4.8 Changed/Current Scenario

In addition to above, it is increasingly common for non-profit organisations to venture beyond the traditional charitable models to meet commercial self-sufficiency and attain organisational goals. For example, registered societies or trusts that were originally envisaged as non-business entities, have, in recent years, acquired economic significance by involvement in social welfare activities that may involve commercial transactions. It is also not uncommon for societies or trusts to be operating in multiple state jurisdictions across India and also outside India.

According to Ministry of Statistics and Programme Implementation, Government of India (“MOSPI Report”), the number of registered societies has also increased manifold in the last twenty years. A recent Report on Non Profit institutions in India (March 2012) by the National Accounts Division, Central Statistics Office, found that there were only 1.44 lakh societies registered till the year 1970, followed by 1.79 lakh registrations in the period 1971 to 1980, 5.52 lakh registrations in the period 1981 to 1990, 11.22 lakh registrations in the period 1991 to 2000, and as many as 11.35 lakh societies were registered after 2000.

Another development was that societies started acquiring economic significance by way of their multi-state operations. Since inception, societies predominantly restricted themselves to charitable objects within the State and were organized for community-based objectives. As a result, societies started operating across several States spanning
multiple legal jurisdictions across India and, in certain cases, even outside the country. The Act had not envisaged this development. On the contrary, the entire basis of regulation under the Act was premised on the assumption that activities carried out by societies would be local in nature (Report of the Expert Group on Societies Registration Act, 1860, 2012).

The major changes that have occurred in last two-three decades are summarised as follows:

1. The activities undertaken by societies have acquired economic significance and larger public interest.
2. The activities of societies have become multi-jurisdictional in nature and in some cases, also in foreign jurisdictions.
3. The present regulatory framework does not contain a centralized oversight or reporting mechanism for societies operating in multiple jurisdictions.
4. There is an urgent need to align the societies to the governance requirements.
5. The present regulatory framework does not provide for an enabling framework to ensure transparency and accountability in governance of societies.
6. The present regulatory framework does not provide for universally acceptable self-regulatory standards which are critical for the governance of societies operating in the new economic environment.

4.9 Shortcomings of “The Societies Registration Act, 1860”

After a thorough analysis of the conditions of charitable societies prevailing under “The Societies Registration Act, 1860”, following shortcomings can be mentioned. Although shortcomings are mentioned here under different headings but all these are due to law itself.

1. Legislative
   a. Problems due to legislative competence
   b. Diversity of laws (Multiplicity of charitable laws)

2. Administrative
   a. Ineffective institutional mechanism (Ineffectiveness of institutions of Government in regulating the sector and securing legal compliance).
b. No enforcement of provision of submitting financial reports  
c. Inspection problem  
d. Poor quality of statistics at state level (no mechanism to maintain the database in Registrar's office)  
e. Non uniform countrywide approach.  
f. Most of the states don’t have computerised records of registered societies.  
g. Poor governance  

3. Self-Regulation  
   a. Improper maintenance of account books  
   b. Poor employment and financial records  
   c. Timely Audit  

4. Miscellaneous  
   a. Definition of charity and charitable purpose  
   b. Interface with state Governments  

4.10 Conclusion  

Non-profit organisations in India are facing a crisis of confidence. It appears that the public as well as the Government has little trust in the sector. The Government has shown its miss trust with a bevy of legislation that at first glance appear to add hurdles to the already difficult terrain that Indian NPOs must navigate to bring vitally needed services to the most vulnerable among us. India is not alone in what is being perceived as a serious backlash against voluntary organisations. In the interest of national security whether real or perceived, this wave of legislation is having a negative impact on the ability of NPOs to deliver on expectations.  

Looking at India in isolation with the levels of corruption as a backdrop tempts even the most astute observer to label the system of regulations in place as itself corrupt. However, when compared to what exist elsewhere, we see that India does not fair badly. It has been observed from the analysis that, the major problem in regulation of NPO sector is that since independence no significant development has taken place. The diversity of charity laws has prevented evolution and growth of a proper institutional framework in this sector. While NPOs often feel harassed in complying with the various legal obligations, institutions of the Government too have not been effective in regulating
the sector and securing legal compliance. There is a strong need that the Union Government drafts a comprehensive model legislation covering both Trusts and Societies in lieu of the existing laws on Societies, Trusts, Endowments and Charitable Institutions etc. That law should be able to instil transparency in the functioning of societies and establish accountability for the actions of the societies.