INDIA

Philanthropy Law Report

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PHILANTHROPY LAW REPORT

KEY INDICATORS[1]	
POPULATION	1,266,883,598 (2016 estimate)
CAPITAL	New Delhi
TYPE OF GOVERNMENT	Federal Parliamentary Republic
GDP (PURCHASING POWER PARITY)	$8.721 trillion (2016 estimate)
GDP PER CAPITA	$6,700 (2016 estimate)
GDP – REAL GROWTH RATE	7.6% (2016 estimate)

Introduction

In general, the Republic of India's legal framework is considered relatively supportive of civil society, and particularly supportive of philanthropic giving. Indian culture places great emphasis on *Daana* (giving). The ancient philosophy of *Nishkama Karma* – "do good without the expectation of getting a reward" – continues to profoundly influence many peoples' lives. In keeping with this philosophy, *Daana* (giving) is widely practiced and can take various forms, including *Vastra Daana* (giving clothing), *Anna Daana* (giving grain), or *Shram Daana* (giving voluntary service). Every individual or household is expected to help the needy and the suffering in some way. In addition to feeding the hungry and providing access to clean water for those without, charitable individuals and groups have built temples, *dharmashalas* (shelters for travelers), schools and colleges, and hospitals and clinics providing free medical services.

Recent Developments

In December 2015, the Ministry of Home Affairs (MHA) issued the Foreign Contribution Amendment Rules 2015. Under the new Rules, the process to apply for registration under the Foreign Contribution Regulation Act (FCRA), a 2010 law that regulates foreign donations to Indian organizations, is now completed entirely online; there is no need to submit paper copies, and all fees can be paid electronically. At the same time, the new rules significantly increase reporting requirements for foreign contributions. For instance, nonprofit organizations (NPOs) must now post details about the foreign contributions they have received on their websites, or a website

[1] Central Intelligence Agency, *The World Factbook* (Washington, DC: Central Intelligence Agency, 2016), https://www.cia.gov/library/publications/the-world-factbook/geos/in.html.

provided by the MHA, every quarter. Banks must also inform the MHA within 48 hours if a foreign contribution is credited to an NPO's bank account.

In May 2016, the MHA added three major NGOs, the Open Society Foundation (OSF), the World Movement for Democracy, and the National Endowment for Democracy (NED), to its "watch list." Inclusion on the "watch list" means that these donors cannot extend any financial assistance to any registered or unregistered organization or individual without clearance from the ministry. There are now a total of eighteen major foreign donors on this "watch list," including Greenpeace, the Climate Work Foundation, and CORDAID.[2]

In the middle of 2016, the MHA drew up a list of sixty-seven NPOs that were found to be disbursing or receiving funds in violation of FCRA, but tried to avoid penalty by invoking the Foreign Exchange Management Act (FEMA) registration for their branch or liaison offices. Because FEMA regulates the flow of commercial and business funds into India, NPOs are reportedly taking cover under their FEMA registrations to avoid FCRA regulation. Accordingly, the MHA wants to make FCRA the "umbrella legislation" for all oversight over these NPOs. This would entail curtailing the Finance Ministry's supervisory role over NPOs under FEMA.[3]

In November 2016, the MHA announced that 1,736 applications to register under FCRA had been closed due to "non-submission or deficiency of documents."[4] It additionally stated that 11,319 NPOs had FCRA registrations valid through October 31, 2016, but did not submit renewal applications; thus, these registrations would be considered expired as of November 1, 2016.[5]

The MHA may soon require that all NPOs registered or granted prior permission to receive foreign funds under FCRA provide real-time access to their FCRA bank accounts to the Central Government. It is not yet clear how the government plans to implement and enforce this requirement. According to proposed amendments, NPOs may have to give their consent to such access in writing when applying for registration or renewal. Another proposed amendment would require all NPOs to maintain their FCRA accounts in banks with a core banking system. A third amendment currently under consideration seeks to enshrine into law a limitation on prior permission applications to just two transactions or projects, after which an NPO seeking to receive foreign funding would have to apply for regular registration under FCRA.

A recent amendment to the Finance Act (2016) established that the "accreted income" of a trust or institution registered under Section 12AA[6] will be taxed at the maximum marginal rate (30

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[2] "Three major US-based donors on MHA's 'watch list,'" *The CAP Blog*, June 12, 2016, http://capnewsviews.blogspot.in/2016/06/three-major-us-based-donors-on-mhas.html.

[3] "NGOs violating FCRA seek refuge by invoking FEMA registration, Home Ministry wants the option closed," *The Economic Times*, August 29, 2016, http://economictimes.indiatimes.com/news/politics-and-nation/ngos-violating-fcra-seek-refuge-by-invoking-fema-registration-home-ministry-wants-the-option-closed/articleshow/53902771.cms.

[4] "List of Applications Closed," Ministry of Home Affairs, *Government of India*, https://fcraonline.nic.in/home/PDF_Doc/FCRA_Cases_02112016.pdf.

[5] "Notice," Ministry of Home Affairs, *Government of India*, November 22, 2016, https://fcraonline.nic.in/home/PDF_Doc/fcra_11319_03112016.pdf.

[6] Section 12AA sets forth a tax exemption for NPOs under the Income Tax Act.

percent) under prescribed circumstances. The tax on accreted income will be paid in addition to the income tax on the total income of the trust or institution.

On August 3, 2016, the Rajya Sabha[7] nearly unanimously approved the Goods & Services Tax Bill (officially known as The Constitution [122nd Amendment] Bill), thereby paving the way for a roll-out of the Goods & Services Tax (GST). On August 8, 2016, the Lok Sabha[8] passed the amended bill. After being ratified by the states,[9] the bill received assent from India's President on September 8, 2016,[10] and was published in the Gazette of India on the same date. The GST has been referred to as the single largest tax reform in India since independence. It addresses concerns regarding differences in taxation at the central and state levels; the GST institutes a uniform tax rate. It is estimated that the GST will boost GDP by somewhere between 1.5 and 2 percent.

In December 2016, the Department of Personnel and Training of the Ministry of Personnel, Public Grievances, and Pensions issued an Office Memorandum regarding the July 2016 amendment to the Lokpal & Lokayukta Act (2013). The Memorandum stated: "There is no requirement for filing of declarations of assets and liabilities by public servants now." It additionally stated that the government is in the process of "finalizing a fresh set of rules." Prior to this announcement, all public servants had been expected to comply with the Act by declaring their assets and liabilities by December 31, 2016. The Act defined "public servant" to include trustees and officers of certain NPOs and charitable institutions (those receiving more than Rs. 1 Crore (approximately $149,000) from the Central Government or donations in excess of Rs. 10 Lakhs (approximately $14,900) from a "foreign source"). Until new rules are issued, NPOs will no longer have to worry about compliance with the Act.

International Rankings		
Ranking Body	Rank	Ranking Scale (best – worst)
UN Human Development Index	130	1-188
Foreign *Policy*: Fragile States Index	70	178-1
CAF World Giving Index	91	1-145
• Helping a Stranger	103	
• Donating Money	86	
• Volunteering Time	60	
Hudson Philanthropic Freedom Index	46	1-64

[7]The Rajya Sabha is the upper house of Parliament in India.
[8]The Lok Sabha is the lower house of Parliament in India.
[9] Because the Goods & Services Tax Bill is a constitutional amendment, a minimum of 15 state assemblies needed to ratify it.
[10]"President Pranab Mukherjee gives assent to Constitution Amendment Bill on GST," *The Times of India*, September 8, 2016, http://timesofindia.indiatimes.com/india/President-Pranab-Mukherjee-gives-assent-to-Constitution-Amendment-Bill-on-GST/articleshow/54193004.cms.

Relevant Laws

India maintains a common law system inherited from the British colonial era. Following Indian independence in 1947, the country adopted its first independent Constitution, which guarantees numerous fundamental human, political, and civil rights for all Indian citizens.

The Constitution allocates power between the central government and the states, enumerating areas delegated to the Union, the states, or both concurrently. Federal (or Union) laws generally extend throughout India; however, states may pass laws within their own territories on issues delegated to them or shared concurrently with the Union. Accordingly, there may be variations in the laws from state to state on certain matters – including those related to NPOs.

Constitutional Framework

Article 19 of the Constitution of India contains the following provisions relevant to NPOs, philanthropic organizations, and philanthropic giving.

Article 19 - Protection of Certain Rights Regarding Freedom of Speech, etc. [excerpt]

1. All citizens shall have the right:
    a. To freedom of speech and expression;
    b. To assemble peaceably and without arms;
    c. To form associations or unions or co-operative societies;

2. Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests 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 to an offence.

3. Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

4. Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

National Laws and Regulations Affecting Philanthropic Giving

Table 1 lists the national laws and regulations affecting philanthropic giving in India.

Table 1. National Laws and Regulations Affecting Philanthropic Giving in India

Title of Law or Regulation	Year Enacted	Description	Links to Law or Regulation
Framework Laws			
Indian Companies Act	2013	Federal law that governs primarily commercial, for-profit organizations, but Section 8 of the Act provides for registration of nonprofit companies.	English
Bombay Public Trusts Act	1950	State law that governs trusts in the states of Maharashtra and Gujarat.	English
Indian Trusts Act	1882	Federal law governing trusts. The Law applies in states that do not have their own Trusts Act.	English
Societies Registration Act	1860	Federal law governing societies.	English
Laws Governing Funding			
Foreign Contribution Regulation Act	2010	Federal law regulating foreign funding to Indian organizations.	English
Tax Laws			
Income Tax Act	1961	Federal law with provisions granting tax exemptions for nonprofits and tax deduction for donors.	English
Laws of General Application			
Prevention of Terrorism Act	2002	Federal law that defines “terrorist” and “terrorist act,” and gives additional authorities to counter-terrorism officials.	English

Analysis

Organizational Forms for Nonprofit Organizations

Nonprofit organizations (NPOs) usually take one of three legal forms: public charitable trusts, societies, or Section 8 companies. According to the Central Statistics Office of India, there are 3.3 million NPOs registered in India, although this number may include organizations that are no longer active.

Public Charitable Trusts: Three or more trustees may form and govern a public charitable trust. Such a trust may be established for a number of purposes, including poverty relief, education, medical relief, the provision of facilities for recreation, or any other objective of general public utility. Indian public trusts are generally irrevocable.

The laws governing charitable trusts vary from state to state. Most states have their own Public Trusts Act. Maharashtra State, for example, governs trusts under the Bombay Public Trusts Act 1950. The same Act is applicable in neighboring Gujarat State, with some variations. In states that do not have a Trusts Act, the federal Indian Trusts Act of 1882 applies.

Societies: A society is a nonprofit membership organization formed by seven or more members for a literary, scientific, or charitable purpose. The definition of "society" and the scope of its permissible purposes may vary somewhat based on the relevant state law, though most state laws are based on the federal Societies Registration Act of 1860. Section 20(1) of the federal Act provides that it applies to: "Charitable societies, the military orphan funds,… 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, collections of natural history, mechanical and philosophical inventions, instruments, or designs." The differences among state laws may have implications for NPOs, however. For example, a society registered in Maharashtra or Gujarat is not required to renew its registration periodically. However, a society registered in the northeastern states must renew its registration every year.

A society is usually managed by a governing council or a managing committee. Unlike trusts, societies may be dissolved.

Section 8 Companies: A Section 8 company is a nonprofit company that has as its purpose "the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object." It must apply any profits or other income to the promotion of its objectives, and must prohibit the payment of any dividend to its members.

Section 8 companies may be either private or public. A private company is formed by two or more directors, while a public company requires seven or more directors. Private Section 8 companies do not offer stock to the public; their stockholders are typically the company founders, family

members, and/or employees. Private companies also have no duty to disclose their finances to the public, as public companies do.

Unlike trusts and societies, which are generally subject to state law, nonprofit companies are governed by the federal Indian Companies Act 2013. (Section 8 companies were previously registered under Section 25 of the Indian Companies Act 1956, and therefore used to be called Section 25 companies. The new Act came into force on April 1, 2014.)

Informal Organizations: An Indian organization is not required to form a legally-recognized entity, and may instead operate as an informal organization. However, such organizations do not enjoy tax exemptions, and donors to such organizations do not receive tax deductions on their donations. Accordingly, informal organizations are outside the scope of this report.

Registration of Domestic Nonprofit Organizations

Registration Authorities

Public Charitable Trusts: The registration process for trusts varies from state to state. In states that have their own Trusts Act, a trust can register with the State Charity Commissioner. In states where there is no state Trusts Act or Charity Commissioner, the trustees may register the Deed of Trust with the office of the Registrar of Deeds or Assurances. The key registration document is the Deed of Trust. The Deed must specify the name of the trust, the names of its founders and trustees, the purposes of the trust, and how the trust should be governed.

Societies: Societies register with the state Registrar of Societies. The two key registration documents are the Memorandum of Association, which contains the society's name and objectives, as well as names, addresses, and occupations of its founders; and the society's Rules and Regulations.

Section 8 Companies: A nonprofit company may be registered with the Registrar of Companies. The key registration documents are the Memorandum of Association and Articles of Association.

The Federal Income Tax authorities govern all three NPO forms (trust, society, and Section 8 company) for the purpose of tax exemption and deductions. In order to enjoy certain tax benefits, NPOs must register with the Income Tax Department under certain sections of the Income Tax Act. NPOs must register under Section 12AA in order to obtain tax exemption, and under Section 80G in order for donors to the organization to obtain to be able to give donors tax deductions.

Additionally, the Ministry of Home Affairs regulates all three NPO forms if they receive foreign contributions. An NPO seeking to receive funds from a foreign source must apply to the Ministry under the Foreign Contributions Regulation Act (FCRA) 2010.The organization may either apply for a one-time prior permission to receive funds from a single foreign source, or it may register for a five-year permit to receive unlimited foreign contributions from several foreign sources. Registration is generally only granted to organizations that have been active for at least three years.

Permissible Founders

Founding members of all NPOs must be of majority age (above the age of 18 years). Foreign nationals are not specifically barred from serving as founders of NPOs. If the NPO seeks foreign contributions, however, the organization is less likely to be approved for registration or prior permission under FCRA if it has a foreign national as a founding member.

Public Charitable Trusts: At least three founders are required to form a trust. In addition to being majority age, a trustee must be competent to contract, which requires that he or she be "of sound mind" and "not disqualified from contracting by any law to which he is subject."

Societies: At least seven members are required to form a society. There are no specific qualifications for the founders of a society.

Section 8 Companies: Only two directors are required to register a private Section 8 company. If the company is public, at least seven directors are required in order to register.

Additional Registration Requirements

All NPOs are required to have a physical address. This may be the home or business address of a founder or member of the organization, or a rented premise.

NPO registration fees are very reasonable, and range from 500 Rupees (approximately $8) for trusts and societies, to 1,000 Rupees (approximately $15) for nonprofit companies. NPOs often hire lawyers and accountants, who may be considerably more expensive, to assist in the registration process.

Trusts are required to have an initial capital holding of only 500 Rupees (approximately $8). Societies and nonprofit companies are not required to have initial capital.

Permissible Purposes

An NPO's stated objectives must fall within the relevant definition as described above for each form, for the purpose of registration and carrying out activities.

For the purpose of charitable tax exemptions and tax deductions for donors, an NPO must pursue a "charitable purpose" according to the definition provided by the Income Tax Act 1961. Section 2(15) of the Act 1961 states that "charitable purpose" includes:

- Relief of the poor
- Education
- Medical relief
- Preservation of the environment (including watersheds, forests and wildlife)
- Preservation of monuments or places or objects of artistic or historic interest
- The advancement of any other object of general public utility.

Amendments made under the Finance Acts of 2008, 2010, 2011, and 2015 have affected all organizations falling under the sixth category, primarily limiting the permissible scope of economic activity an NPO may carry out without losing its tax exempt status.

Implementation

It takes approximately three to four months to register a trust, society, or Section 8 company in certain states. In practice, an education or health-related organizations may face fewer obstacles during the registration process and complete the process more quickly than an advocacy organization or one conducting seemingly commercial activities.

The Income Tax Department may require an additional three to four months to grant an NPO tax exempt status and process donors' tax deductions. Finally, the Ministry of Home Affairs could take three to four months to process applications submitted under FCRA for an NPO to receive foreign contributions.

Registration of Foreign Nonprofit Organizations

Foreign NPOs seeking to establish branch or liaison offices in India are required to obtain approval from the Reserve Bank of India (RBI) under the provisions of Foreign Exchange Management Act, 1999 (FEMA). The RBI is the sole registration body relevant for foreign NPOs seeking to operate in India. FEMA does not provide specific constraints on a foreign NPO's independent activities, provided that the RBI specifically permits such activities.

To establish either a branch or liaison office, a foreign NPO must submit a form to the RBI containing the name of the applicant NPO; date and place of incorporation or registration; contact information; details on the organization's financial holdings; a brief description of its activities; and details as to the location and proposed activities of the organization's branch or liaison office. (Unlike branch offices, which may carry out independent activities, a liaison office may only undertake the activities of a liaison; it generally only functions as a channel of communication between the organization's home office abroad and parties in India, and is not allowed to undertake any business activity or earn any income in India.) A foreign NPO must also provide details as to what activities it already carries out elsewhere and where they take place. It must additionally attach copies of its articles of association, by-laws, an audited balance sheet, and a report from the organization's bank in its home country stating that the organization is in good standing with a sound financial record over the previous three years.

The RBI considers such applications in coordination with the Finance Ministry. If permission for a foreign NPO to establish a branch or liaison office is granted, the initial permission lasts for three years, after which the NPO must apply for an extension. Liaison and branch offices of foreign NPOs must file Annual Activity Certificates and audited balance sheets showing that they have carried out only those activities permitted by the RBI.

FCRA provisions are only applicable to foreign NPOs with branch or liaison offices in India. However, they may become relevant depending on the nature of any grants received and disbursed by the foreign office in India. If the branch or liaison office if they receive funds from foreign sources other than the organization's head office. For instance, if a branch office of a foreign NPO receives a grant in India directly from a foreign donor, then FCRA applies. In such a case, the branch office must either seek prior approval from the Ministry of Home Affairs for a one-time foreign grant, or register with the ministry for multiple foreign contributions.

If, instead of operating a branch or liaison office, the foreign NPO decides to register as a trust, society, or Section 8 company in India, all the relevant laws applicable to an Indian trust, society, or Section 8 company would apply. A foreign NPO must operate in India within the scope of the definition provided for each of the three legal forms by the relevant federal or state law. A foreign NPO desiring to enjoy charitable tax benefits and raise funds in India or through foreign sources other than its parent organization must apply for tax exemption and deduction under the Income Tax Act. It must also seek prior permission or registration under FCRA if it wishes to receive foreign contributions.

Nonprofit Organization Activities

Political Activities.

NPOs in India may not engage in political campaign activities nor undertake a range of advocacy activities related to legislative processes. They are not, however, specifically prohibited from communicating with legislators, other government officials, or the media, or encouraging their constituents to do so. Indian NPOs may also lobby for non-political causes, provided that such activity promotes the "general public utility" and is incidental to the attainment of the charity's objectives. Societies, moreover, may have as their primary objective the dissemination of political education, according to the Societies Registration Act 1860. Although the laws governing the three NPO forms do not clearly define what makes an NPO's activities "political," courts in India have held that an institution or trust whose dominant object is political in character cannot be said to have been established for charitable purposes.

In addition, under FCRA, if an NPO is deemed to be of a "political nature" it may not receive foreign contributions. The Act does not specifically define "political nature," but sets forth a process by which the central government makes such a determination based on the organization's activities, ideology, program, or its association with the activities of a political party. The Foreign Contribution Rules 2011 clarify that an organization can be designated to be of "political nature" on one of many grounds, including:

- An organization having avowed political objectives in its Memorandum of Association or bylaws;
- A trade union whose objectives include activities for promoting political goals;
- A voluntary action group with objectives of a political nature or which participates in political activities;
- A front or mass organization such as a students' union, workers' union, or women's wing of a political party; or

- An organization of farmers, workers, students, or youth whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include advancing the political interests of political parties.

In practice, this often means that an NPO aligned with an oppositional party or endorsing an ideology in opposition to the government may be more likely to be deemed "political" and precluded from receiving foreign funds. The government must notify an organization of this determination and its basis in writing, and the NPO has thirty days to respond.

Economic Activities. There are no restrictions on an organization's incidental business, commercial, or economic activities for any of the three legal forms of NPO, provided that the NPO is established for and primarily carries out activities for the relief of poverty or distress, education, or medical relief. An NPO must maintain separate books of account for the business, commercial, or economic activities, and any profits received must be applied fully towards charitable objectives. As described further below, however, an organization that has as its purpose the advancement of an "object of general public utility" may not generate business income in excess of 20 percent of its total income from donations and grants. If the above conditions are not satisfied, the NPO will lose its income tax exemption and its income will be liable to taxation at the maximum marginal rate (30 percent).

Prohibition on Distribution of Income or Assets/Private Inurement. Public charitable trusts must benefit a large class of beneficiaries and must be for the public benefit. Moreover, trustees of public charitable trusts may not engage in self-dealing.

The Societies Registration Act does not prohibit the inurement of any earnings of the society to any private shareholder or individual.

The Indian Companies Act (2013) provides in Article 8 that a limited, nonprofit company must direct any profits towards the realization of the company's objectives and prohibits the payment of any dividend to its members.

In all cases, the Income Tax Act specifically provides that a nonprofit entity will lose its tax-exempt status if the author, founder, or any trustee or his/her relative derives any personal benefit. The Income Tax Act further provides that any remuneration paid to a Board Member "must not be in excess of what may be reasonably paid for such services" (Income Tax Act Sections 13(2)(c) and 13(3)(cc)).

Whether an individual may have a proprietary interest in a nonprofit entity relates to the issue of inurement. For a public charitable trust, the trustees hold trust assets on the trust's behalf. Thus, although trustees have legal title to the trust's assets, they hold these assets for the beneficiaries of the trust, not for themselves. Members of the managing committee or governing council of a society or Section 8 company hold the assets of a society or Section 8 company (Societies Registration Act Section 5).

Reporting. Every NPO registered in India is required to keep proper financial records and have them audited annually. They must file returns separately with each of the state and federal

registering authorities, such as the Charity Commissioner, Income Tax Department, and Ministry of Home Affairs. NPOs do not have to regularly report to the government on their activities, however, this is often required by donors.

An NPO is permitted to provide grants to individuals or institutions in any amount or proportion, at the discretion of the NPO's governing body, in order to further its objects. However, members of the governing body themselves and their families are not allowed to gain any personal benefit from such a grant, according to the Income Tax Act.

Beyond financial reporting requirements, NPOs are generally not under direct supervision of or obligation to any government authorities. NPOs are generally independent with regard to their internal governance, as well. The government has the right to regulate but not control the internal affairs of an NPO. Fines and penalties may be imposed for certain irregularities such as not filing audit returns in time. For instance, the law provides that an NPO that submits its financial returns late will be penalized with a fine ranging from 10,000 Rupees (approximately $150) to 50,000 Rupees (approximately $740), or a percentage share of its income – whichever amount is higher. NPOs may also be subject to random financial or tax assessments by the regulatory authorities, at their discretion.

Termination, Dissolution and Sanctions

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 trust's objectives, the doctrine of cy pres, meaning "as near as possible," may be applied to change the objectives of the trust. Under certain circumstances, such as if a trust pursues objectives found to be against state interest or sovereignty, a trust can also be officially declared as inoperative, defunct or moribund. This is a rare occurrence, however.

Unlike trusts, societies and Section 8 companies may be dissolved. The government may unilaterally dissolve a society or Section 8 company if it deems the organization's activities "against national interests or the sovereignty or integrity of India." Upon dissolution and after settlement of all debts and liabilities, any remaining funds and property must be given or transferred to some other society or Section 8 company, preferably one with similar objectives, as determined at the time of the NPO's founding and designated in the NPO's founding documents. The remaining funds and property of the society or company may not be distributed among the members.

A society or Section 8 company may be voluntarily dissolved if the objectives for which it was registered are achieved or are no longer relevant or if the governing body is no longer interested in continuing the organization.

With regard to sanctions, as noted above, NPOs face penalties for the failure to submit their financial reports in a timely manner. NPOs face a variety of potential penalties for violations of FCRA, as well. For example, if an NPO accepts and deposits a foreign contribution without being

registered under FCRA or having obtained prior approval to do so, the organization is barred from using the contribution and must pay 25,000 Rupees (approximately $370) or 3 percent of the foreign contribution, whichever is higher. An FCRA-registered NPO, meanwhile, may have its registration revoked, if it accepts a foreign contribution likely to affect prejudicially:

- The sovereignty and integrity of India;
- The security, strategic, scientific or economic interest of the State;
- The public interest;
- Freedom or fairness of election to any legislature;
- Friendly relation with any foreign State;
- Harmony between religious, racial, social, linguistic, regional groups, castes or communities.

FCRA registration may also be revoked if the accepted contribution is deemed to "lead to incitement of an offense," or "endanger the life or physical safety of any person." These sanctions apply regardless of the NPO's legal form.

Charitable or Public Benefit Status

In order to obtain charitable status and therefore be eligible for tax exemption and deductible donations under the Income Tax Act (see section on Tax Law), an NPO must have religious or charitable purposes according to the definition provided by the Income Tax Act 1961. Section 2(15) of the Act 1961 states that "charitable purpose" includes:

- Poverty relief;
- Education;
- Medical relief;
- Preservation of the environment;
- Preservation of monuments or places or objects of artistic or historic interest; or
- "The advancement of any other object of general public utility." An NPO providing advisory services to other NPOs and social enterprises, for instance, could fit within this category.

With its tax benefits, charitable status enables NPOs to more effectively raise donations and receive grants from individual donors, companies, governments, and foreign organizations.

Beyond annual audits and filing of their returns, charitable NPOs are subject to few additional duties in order to maintain their tax exempt status.

Local and Cross-Border Funding

Local Funding. As long as an NPO is registered, it may generally seek and receive funds from local sources to further its charitable purposes without any legal constraints. An NPO may mobilize local funds in any lawful manner, including by way of soliciting donations and grants or sponsorships or organizing public fundraising events. NPOs are obligated to issue receipts and keep proper records of such funds.

Donors in India who seek to support either domestic or foreign NPOs must ensure that the NPO is registered. If they wish to receive a deduction, they should ensure that the NPO has also registered with the Income Tax Department and can provide an 80G certificate. A tax exempt donor organization in India must also ensure that any organization it supports has the same or similar purposes. For instance, a domestic foundation that supports education and health care may lose its tax exemption if it provides support to an NPO that does not have one or both of these issues as its purpose.

Cross-Border Funding. Under the FCRA, all NPOs in India that wish to accept multiple foreign contributions must:

- Register with the Central Government;
- Agree to accept contributions through designated banks; and
- Maintain separate books of accounts with regard to all receipts and disbursements of funds.

Registration under FCRA is relatively straightforward for most organizations, and generally takes three to four months. The Intelligence Department has a role in reviewing applications, however, and may delay the process if it has additional inquiries about an NPO applicant. FCRA registration must be renewed every five years.

NPOs registered under FCRA must disclose all foreign contributions received on their own websites or the one provided by the government, on a quarterly basis, and must file annual reports with the Home Ministry. The organization must report the amount of the foreign contribution, its source, the manner in which it was received, the purpose for which it was intended, and the manner in which it was used.

Under FCRA, foreign contributions include currency, securities, and articles. Funds collected by an Indian citizen in a foreign country on behalf of an NPO registered in India are considered foreign contributions. Moreover, even funds received in India, in Indian currency, are considered foreign contributions if they are from a foreign source. (Contributions from an expatriate Indian are not considered "foreign contributions" unless the individual has become a citizen of a foreign country.) Commercial receipts are not considered foreign donations. In other words, NPOs may receive consultancy or other commercial receipts from foreign sources without FCRA registration and that FCRA-registered NPOs may deposit commercial receipts in their domestic, non-FCRA-designated bank accounts, and such receipts are not required to be reported to the FCRA department.

FCRA guidelines prohibit FCRA-registered NPOs from re-granting received funds received from a foreign source from its FCRA account to another organization, unless that organization also has clearance from the Home Ministry to receive funds from a foreign source.

FCRA (2010) added to the prior version of the law a provision that prohibits using more than 50 percent of a foreign contribution to pay administrative expenditures. An “Administrative Expenditure” includes:

- Remuneration and other expenditures for board members and trustees;
- Remuneration and other expenditures for persons managing an NPO's activity;
- Office expenses;
- Costs of accounting and administration;
- Expenses towards running and maintenance of vehicles (unless used for program-related activities);
- Costs of writing and filing reports;
- Legal and professional charges; and
- Rent and repairs to premises.

The following expenditures are not considered administrative in nature:

- Salaries of personnel engaged in training or in collection or analysis of field data for an association primarily engaged in research or training; and
- Expenses related to activities, such as salaries to hospital doctors, salaries to school teachers, etc.

Beyond the constraints on an Indian NPO's dealings with foreign funds, NPOs are generally not subject to limitations with regard to contact or affiliation with foreign organizations or persons. Indian NPOs are not permitted to operate internationally, however. The Income Tax Law requires that the funds of an Indian NPO be used exclusively in India. If an NPO seeks to apply funds towards activities outside of India, it must first obtain approval from the Central Board of Direct Taxes.

Tax Law

The Income Tax Act 1961 (with amendment by subsequent Finance Acts), which is national law applicable throughout India, governs tax exemption of nonprofit entities. The Act provides that organizations may qualify for tax exempt status if the following conditions are met:

- The organization must be organized for religious or charitable purposes;
- The organization must spend 85 percent of its income in any financial year (April 1 to March 31) on the objectives of the organization. The organization has twelve months following the end of the financial year to comply with this requirement. Surplus income may be accumulated for specific projects or a capital purpose for a period ranging from one to five years;
- The funds of the organization must be deposited as specified in Section 11(5) of the Income Tax Act;
- No part of the income or property of the organization may be used or applied directly or indirectly for the benefit of the founder, trustee, relatives of the founder or trustee or a person who has contributed in excess of 50,000 Rupees (approximately $740) to the organization in a financial year;
- The organization must file its annual income returns in a timely manner;

- The organization's income must be applied or accumulated in India. However, trust income may be applied outside India to promote international causes in which India has an interest (such as disaster relief, or a cultural exchange), without being subject to income tax; and
- The organization must keep a basic record (name, address and telephone number) of all donors. According to Section 115BBC, introduced with the Finance Act (2006), all anonymous donations to charitable organizations are taxable at the maximum marginal rate of 3 percent. Finance Act No. 2 (2009), however, carves out the following exception: Anonymous donations aggregating up to 5 percent of the total income of the organization or a sum of 100,000 Rupees (approximately $1,500), whichever is higher, will not be taxed. Additionally, religious organizations including, temples, churches, and mosques, are exempt from the provisions of this section.

As noted above, nonreligious NPOs must also meet the Income Tax Act's definition of "charitable purpose:" poverty relief; education; medical relief; preservation of the environment; preservation of monuments or places or objects of artistic or historic interest; and a broad category for organizations seeking "the advancement of any other object of general public utility." An amendment to these provisions in 2015 placed new limits on the final category, primarily limiting the permissible scope of economic activity an NPO may carry out without losing its tax exempt status. The amendment provides that if an organization conducts even limited business activity totaling less than 2.5 million Rupees (approximately $37,000), it will not be eligible for a charitable purpose tax exemption unless (a) the business activity is undertaken in the course of advancing an objective of general public utility; and (b) the aggregate receipts from the business activity during the previous fiscal year do not exceed 20 percent of the organization's total receipts for that year.

In order to obtain tax exempt status, an eligible NPO must file form 10G with the Income Tax Department. The form requires extensive details about the organization's activities, modes of funding, any business or trade activities it undertakes, and a guarantee that no income or property is being used to benefit any person associated with the organization. If successful, the organization receives an 80G tax deduction certificate, which it may provide to prospective donors. In general, the process of applying for tax exempt status is relatively clear and straightforward.

Foreign NPOs that have established and registered a separate legal entity in India (as opposed to a branch or liaison office) may likewise apply for tax exemption.

The Income Tax Act permits donors to deduct contributions to trusts, societies, and Section 8 companies that have been granted charitable status, as well as institutions specifically listed in Section 80G of the Act. Donors are entitled to a 100 percent deduction for donations to organizations specifically listed in Section 80G, which includes many government-related institutions, such as: the Prime Minister's National Relief Fund; the Prime Minister's Armenia Earthquake Relief Fund; the Africa (Public Contributions – India) Fund; and the National Foundation for Communal Harmony.

Donors may deduct 50 percent of their contributions to entities not specifically enumerated in Section 80G, provided the following conditions are met:

- The institution or fund was created for charitable purposes in India;
- The institution or fund has registered as tax exempt under Section 12AA of the Income Tax Act;
- The institution's governing documents do not permit the use of income or assets for any purpose other than a charitable purpose;
- The institution or fund is not designed to be for the benefit of any particular religious community or caste; and
- The institution or fund maintains regular accounts of its receipts and expenditures.

In addition, total deductions may not exceed 10 percent of the donor's total gross income. Further, in order to qualify for a tax deduction, any donation in excess of 10,000 Rupees (approximately $148) cannot be made by cash.

Companies may also claim the standard 50 percent deduction for charitable donations made to qualifying NPOs, for instance through their corporate social responsibility programs. Philanthropic individuals and groups are not limited in the amount they may contribute or designate to a charity, by India's inheritance law or other law.

An amendment[11] to the Finance Act (2016) recently established that "accreted income" of a trust or institution registered under Section 12AA[12] would be taxed at the maximum marginal rate (30 percent) under prescribed circumstances. For the purposes of the Act, "accreted income" is the difference between the fair market value of the assets and the liabilities of the trust or institution. Trusts and institutions will be subject to the tax on accreted income under the following circumstances:

- If the trust or institution gets converted into any form which is not eligible for exemption under Section 12AA (e.g., the nonprofit is converted into a for-profit form);
- If the trust or institution is merged with any entity ineligible under Section 12AA (e.g., the nonprofit merges with a for-profit company);
- If the trust or institution, in the case of dissolution, fails to transfer its assets to exempt entities under Section 12AA and Section 10(23C)(iv), (v), (vi), and (via) (e.g., the residuary funds are given to a for-profit entity after dissolution).

The tax on accreted income is to be paid in addition to the income tax on the total income of the trust or institution.

In September 2016, the Goods & Services Tax (GST) received assent from India's President. The GST addresses concerns regarding differences in taxation at the central and state levels. Previously, different states had different tax rates; the GST institutes a uniform tax rate. Conceptually, GST is similar to VAT, meaning that tax will be applied only on the value added at each point in the supply chain. The GST subsumes ten indirect taxes. The benefits of simplified

[11] The amendment adds Sections 115TD, 115TE, and 115TF in Chapter XII-EB.
[12] Section 12AA sets forth a tax exemption for NPOs under the Income Tax Act.

compliance and a uniform process across India promised by the GST are likely to contribute significantly to the ease of doing business. Once governed by separate laws, taxes like the service tax and the VAT will now be governed under a single piece of legislation. A GST Council will be formed to determine the tax rate. Central GST (CGST), State GST (SGST), and Integrated GST (IGST) laws will also be drafted and are expected to be approved in the Winter Session of Parliament to pave the way for implementation of the new taxation scheme.

Exceptions. Donations to institutions or funds "for the benefit of any particular religious community or caste" are not tax deductible. An NPO created exclusively for the benefit of a particular religious community or caste may, however, create a separate fund for the benefit of "Scheduled castes, backward classes, Scheduled Tribes or women and children." Donations to these funds may qualify for deduction under Section 80G, even though the organization, as a whole, may be for the exclusive benefit of only a particular religious community or caste. The organization must maintain a separate account of the monies received and disbursed through such a fund.

In-kind donations are also not tax deductible under Section 80G.

Receipts issued to donors by NPOs must bear the number and date of the 80G certificate and indicate the period for which the certificate is valid. Previously, approval under Section 80G could be for one or more assessment years, not to exceed five. However, the Finance Act 2009, effective January 10, 2009, eliminated the need for organizations to become frequently recertified. Since that time, an organization need not renew its 80G certificate unless it was specifically revoked.

News and Events

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This Philanthropy Law Report is made possible by the generous support of the Bill & Melinda Gates Foundation. The Report has been prepared by the International Center for Not-for-Profit Law in partnership with Noshir H. Dadrawala, CEO of the Centre for Advancement of Philanthropy, March 2017. The views expressed herein are those of the authors and do not necessarily reflect the views of the Bill & Melinda Gates Foundation. The information in this report reflects the authors' understanding of laws and regulations currently in effect in India, as well as best international practice, and does not constitute a legal opinion or advice.