



INTERNATIONAL ACADEMY

Initiative in Education & Lifelong Learning

Certificate Programme

NGO Management: Foundation Course

UNIT - 2

Legal Requirements In Setting Up NGOs: India & South Asia

Units of NGO Management : Foundation Course

Unit 1: Introduction to NGO Management

- NGOs: Relevance And Rationale
- Definitions And Nomenclature
- Characteristics
- Classification Of NGOs
- Evolution Of NGOs Along Different Developmental Frameworks And Approaches
- NGOs In Developing Countries

Unit 2: Legal Requirements In Setting Up NGOs: India & South Asia

- Registration of NGOs
- Legal Options Available To Register NGOs in India
- Fiscal Regime in India With Respect To NGOs
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Introduction

Law stands at the heart of a free society, channeling behaviour and assuring areas of free human choice. Various societies/organisations are formed for social, economic, cultural, literary, scientific, charitable and religious purposes. They are deliberative in character, and must have some system for conducting their affairs and rules and regulations which can govern their proceedings (Ovasdi, 2006). In the course of promoting such organisations, there comes a time in the life of the organisation when it needs to become a legal entity. The need to give a legal status to the organisation largely arises when this entity becomes interested in acquiring resources from the outside, either from the government or from other sources, or in acquiring benefits from various schemes.

In the previous module we learnt the concept of an NGO and its evolution in different development theories. In this Module we proceed to discuss the various legal requirements for registering an NGO, along with looking at the registration process in detail. This Module provides an overview and practical and basic knowledge regarding legal options available for registering an NGO specifically in India. In addition, the provisions for registration of NGOs in various South Asian countries are also examined. Finally, it details out all the phases of the registration process and the associated procedures.

Learning Objectives

After completing this Module, you will be familiar with:

- Need for registering an NGO as a legal entity, associated advantages and disadvantages
- Different legal options available for registration in India
- Fiscal regime with respect to NGOs in India
- Legal framework for NGOs in South Asian countries
- Detailed process of registering an NGO

2.1 Registration of NGOs

Prior to deciding whether to get an NGO registered under the law or not, one must be clear about the intentions of forming an NGO, and its purpose and objectives. Clarity of thought as to why one intends to start an NGO and what one will achieve by establishing it as a legal entity is important in order to meet the aspirations of the founders and the community the organisation is working in.

There are two types of NGOs that usually function in a country:

1. Registered NGOs
2. Non-registered NGOs

In principle, an NGO does not have to register itself to perform charitable, welfare or developmental activities. However, there are some specific activities which can be carried out only if an NGO is registered under the specific acts or laws governing NGOs (particularly related to fund-raising) in a country.

It is entirely up to the governing board of an NGO to decide whether it wishes to get the organisation registered, or work as an unregistered organisation. The logical question that would follow is “Why should one register an NGO, when there is no such legal binding to do so?”

2.1.1 Need For Registration

Once registered, a voluntary organisation becomes a ‘legal entity’ in its own right. It has a life of its own, independent of its members or founders and those working in it. Registration can take several forms.

- (i) When an organisation exists for a certain period of time and develops an identity of its own, in terms of its mission, purpose, tasks, activities, staff, physical characteristics, etc, then a legal form of registration helps strengthen that identity for the future.
- (ii) In relating to the environment, both to those who can provide services and to those who can utilise its services, a legal form of registration helps provide credibility to the organisation. Most donors, be they governmental or non-governmental, prefer to provide resources to a legal organisation and not to an informal group of individuals. This is so because the obligations upon a legal entity can be ensured beyond the life of a single individual or a group of individuals and can also be enforced in the eyes of the law.
- (iii) In relation to other elements in the environment, including those that provide opportunities for collaboration or working together and those that look at the organisation as an instrument of a particular kind of change, acquiring a legal frame helps enhance the credibility of the organisation. It essentially implies that a registered organisation is likely to have a life of its own, continuity and stability over a long period of time.

2.1.2 Advantages Of Registering An NGO

Specific advantages accrue to 'registered NGOs' as compared to non-registered counterparts. Some of them are:

- (i) Ideally, registration leads to the development of systematic thinking and functioning of NGOs due to the legal obligations required of a registered NGO
- (ii) Registered NGOs obtain legal status in order to enable them to interact with the government, and among donors and other organisations
- (iii) Members are able to represent the organisation
- (iv) A registered NGO can open a bank account in the name of the organisation, or sign contracts in the name of the organisation

- (v) A registered NGO can also qualify for financial assistance from government agencies and local, national and international donors
- (vi) It can also take guidance and help from relevant registration authorities, contract funds and support from relevant departments
- (vii) A registered NGO can seek tax exemption from certain incomes, training opportunities, technical assistance, and concessions when obtaining vehicles, equipment and commodities
- (viii) A legal frame also helps provide a greater degree of possibility for longevity and continuity of the organisation
- (ix) The legal framework also provides limited liability for membership, particularly those who founded it and helped set it up in the beginning. Therefore, in the event of the organisation facing a loss or a problem, and to the extent that its leadership can be shown to be acting with bona-fide intentions, the loss or problem cannot be attached to the personal assets, reputation, or life of an individual or a group of individuals

However, the above listed benefits are broad generalisations, which are not uniformly spread across all types of registrations and nor are all NGOs able to claim them.

2.1.3 Disadvantages Of Getting An NGO Registered

Along with the benefits that come along with a 'legal status', this legality also entrusts the NGO with an array of responsibilities and dutiful accountabilities. Therefore, the process of registration can well be regarded as a double-edged sword, as once an organisation is registered as a legal entity, it is bound by certain rules, procedures, norms and laws which are outlined in that particular form of registration. Some of the obligations that come along with the 'legal status' are:

- (i) The organisation is regulated through various other legal and constitutional provisions of the laws of the land
- (ii) The NGO has to ensure timely filing of returns and meet other statutory obligations
- (iii) Getting registered as a 'legal entity' also entrusts the NGO with the responsibility of meeting various statutory obligations under different laws and regulations
- (iv) It has to stick to a pre-decided organisational structure and maintain transparency in its functional activities
- (v) Once registered, obligations include reporting to the local government, keeping detailed financial records, setting up office space, etc.

2.2 Legal Options Available To Register NGOs in India

In this Unit we will discuss the various forms and laws of registering a non-profit entity/NGO in the Indian context. The most common form of registration of NGOs in India includes registering it as a society, trust, company, trade union, co-operative society, etc.

Many state and central governmental agencies have regulatory authority over not-for-profit entities. In the Indian context, the agencies at the state level 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 (under Section 8 of the Companies Act). At the national or federal level in India, regulatory bodies include the Income Tax Department and the Ministry of Home Affairs (only for not-for-profit organisations receiving foreign contributions).

2.2.1 Trust

Typically, a public charitable trust must register with the office of the Charity Commissioner having jurisdiction over the trust (generally the Charity Commissioner of the state in which the trustees register the trust). In general, trusts may register for one or more of the following purposes: relief from poverty or distress; education; medical relief; provision for 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 for the advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship.

At least two trustees are required to register a public charitable trust. In general, Indian citizens serve as trustees, although there is no prohibition against non-natural legal persons or foreign citizens serving in this capacity.

For registration, a *Deed of Trust* has to be framed incorporating the necessary provisions

for the management of affairs and objects of the organisation. This deed has to be registered with the office of the Charity Commissioner and in the states where such office does not exist, it is registered with the Sub-Registrar of the Registration Department of the respective state government. Most states have used the *Bombay Public Trusts Act, 1950* as a model for enacting similar acts (Government of Maharashtra, 1950). *The Indian Trust Act, 1882* has limited application to 'private'/'family' entities registered as 'trusts' (Government of India, 1882). Public charitable trusts, as distinguished from private trusts, are designed to benefit members of an uncertain and fluctuating class. In determining whether a trust is public or private, the key question is whether the class to be benefited constitutes a substantial segment of the public. There is no central law governing public charitable trusts, although most states have *Public Trusts Acts*.

Legal title of the property of a public charitable trust vests in the trustees. Trustees of a public charitable trust may not, however, in any way use trust property or their position for their own interest or private advantage. Trustees may not enter into agreements in which they may have a personal interest that conflicts or may possibly conflict with the interests of the beneficiaries of the trust (whose interests the trustees are bound to protect). In essence, trustees may not delegate authority with respect to duties requiring the exercise of discretion. 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.

Advantages:

- The Indian Trust Act is extremely flexible and provides for minimum government interference and regulation.
- It does not specify the number of trustees and the mode of creation of the entity is also very simple.

Limitations:

- The Indian Trust Act clearly indicates that the trustees cannot enjoy any pecuniary benefits out of the property and funds of the trust. This becomes a major limitation because the members of the trusts and the board of trustees cannot become full time staff of the trust or in any way derive income from the activities of the trust.
- A trust is a highly closed organisation and, once appointed, the trustees cannot be ordinarily removed.
- A trust also does not conform to the standards of a democratic organisation and is merely fiduciary in character. As a result, the instrument of the trust and the rules mentioned therein becomes binding, since the Act does not specify any such rules or bye-laws.
- The liability of the trustees is individually and severely unlimited. Therefore, they need to be extra careful while managing the activities of the trust; else their personal property and assets can be attached in case of breach of trust.

2.2.2 Society

Societies are governed by the *Societies Registration Act 1860*, which is an all-India Act. Many states, however, have variants of the Act. A society is one of the most democratic forms of organisation available (Government of India, 1860). It can have a broad membership, which elects periodically a governing body for managing the affairs of the society. This body is accountable to the members and may delegate some of its day-to-day functions to the full-time staff of the society.

Societies are similar in character to trusts, though there are a few essential differences. While only two individuals are required to form a trust, a minimum of seven individuals are required to form a society. The applicants must register the society with the state Registrar of Societies in order to be eligible to apply for tax-exemption. A registration application includes the society's

memorandum of association and rules and regulations. In general, Indian citizens serve as members of the managing committee or governing council of societies, although there is no prohibition in the Act against non-natural legal persons or foreign citizens serving in this capacity.

As per Section 20 of the *Societies Registration Act*, the different types of societies that may be registered under the Act include (but are not limited to) the following:

- i. Charitable societies;
- ii. Societies established for the promotion of science, literature or the fine arts, education;
- iii. Public art museums and galleries, and certain other types of museums.

The governance of societies also differs from that of trusts. Societies are usually managed by a governing council or managing committee, whereas trusts are governed by their trustees.

Individuals or institutions or both may be members of a society. Members of the general body of a society have voting rights and can demand the submission of accounts and the annual report of the society for inspection. Members of the managing committee may hold office for such period of time as may be specified under the bye-laws of the society.

Societies, unlike trusts, must file annually with the Register of Societies a list of the names, addresses and occupations of their managing committee members. Furthermore, in a society, all property is held in the name of the society, whereas all property of a trust legally vests in the trustees. Unlike trusts, societies may be dissolved. Dissolution must be approved by at least three-fifths of the society's members. Upon dissolution, and after settlement of all debts and liabilities, the funds and property of the society may not be distributed among the members of the society. Rather, the remaining funds and property must be given or transferred to some other society, preferably one with similar objects as the dissolved entity.

Advantages:

- A society is one of the most democratic forms of organisation available. It can have a broad membership which periodically elects a governing body for managing the affairs of the society. The general body of members delegates the management of day-to-day affairs to the managing committee, which is usually elected by the membership.
- The *Societies Registration Act* provides for flexibility and ease of making amendments and alterations to the society's purposes, rules and regulations and bye-laws. The Central Act provides for a procedure whereby members recommend and approve changes in a meeting of the members specially convened for this purpose and the changes are communicated to the members in writing ten days before the meeting. This needs to be agreed to by three-fifths of the members present during the meeting and subsequently confirmed by similar vote of members present at a second special meeting convened by the governing body at an interval of one month after the previous meeting. However, many of these provisions have been altered in different state legislations.

Limitations:

- The society, in its original purpose and concept, was conceived as a form meant to be utilised to provide services to a set of beneficiaries who were not members of the society. It was assumed that a set of members through their governing body would help a set of beneficiaries by the activities of the society. However, there arose conflicts of interest when the governing body members also happened to be the beneficiaries. For example, women's economic groups functioning as benefactors and beneficiaries at the same time.
- Similarly, the concept of having a self-managed organisation run by a group of people seems to come in conflict with the requirement of having beneficiaries

somewhat separate from the membership of the organisation.

- The arguments of having members of the society working as its staff as well as in other capacities have been accepted by the *Societies Registration Act*. However, the need to distinguish between their role as a member of the society, its general/governing body on one hand, and as a full time/part time staff working on activities on the other and the associate compensation becomes essential.
- Many NGOs registered as societies use their registration with a view to acquiring a legal status and most of the staff (at least in the beginning) become members of the general body/governing body of the organisation. In such a situation, in some cases, the Income Tax Act of 1961 has been interpreted to imply that such a society is not meant for charitable purposes. In such cases, the tax exemption status of such societies has been questioned, and in some cases, the society's income has been taxed.

2.2.3 Company

The legal form of a company has been described and its regulation prescribed under the *Indian Companies Act, 2013*. A company can be of two types (Ministry of Law and Justice, Gol, 2013):

- Private Company
- Public Company

The Act which principally governs for-profit entities permits certain companies to obtain not-for-profit status as 'Section 8 companies'. A Section 8 company may be formed for '*promoting commerce, art, science, religion, charity or any other useful object*'. It must apply its profits, if any, or other income, to the promotion of its objects, and may not pay a dividend to its members. At least three individuals are required to form such a company. The founders or promoters of a Section 8 company must submit application materials to the Regional Director of the Company Law Board. The application must include copies of the memorandum, articles

of association of the proposed company as well as a number of other documents, including a statement of assets and a brief description of the work proposed to be done upon registration.

The internal governance of a Section 8 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. Similar to a society (but unlike a trust), a Section 8 company may 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 8 company, preferably one having similar objectives as the dissolved entity.

The procedure for registration of a Section 8 company is very elaborate and requires printed memorandum of association and articles of association to be filed with the Registrar of Companies with all the provisions as prescribed in the Act. The *Companies Act, 2013* lays down, in considerable detail, a variety of provisions with respect to the governance of a company. Clearly, it is a form that has been desired and used to carry on commercial and for-profit economic activities. This is the most appropriate form for any economic activity. The Board of Directors of a company is elected by its shareholders and the directors themselves can be shareholders. A Section 8 company can take advantage of various provisions available within the Income Tax Act which provide for tax exemptions.

Advantages:

- A company is the most appropriate form of organisation for any economic activity. Herein, the board of directors are elected by the shareholders, and they themselves can be shareholders.
- NGOs involved in economic activity could also consider using the company as an appropriate legal form, which is meant for profit-making economic activities.

Limitations:

- The directors of the company cannot get remuneration or a share in the profit.
- The formalities and paper work required is considerable.

The comparative features of a trust, society and Section 8 Company are detailed in the table given below:

Table 1: Comparison between a Trust, Society and a Section 8 company

ASPECT	TRUST	SOCIETY	SECTION 8 COMPANY
Basic Document	Trust deed – which contains objects of the trust (bye-law)	Memorandum of association/ Articles of association with rules & regulations	Memorandum of association/ Articles of association
Formation	Easy	Simple	Slightly difficult
Jurisdiction	Deputy Registrar / Charity Commissioner	Registrar of Societies	Registrar of Companies
Legislation / Statute	Relevant state Trust Act	Societies Registration Act 1860	Indian Companies Act 2013
Objects	Social benefits and charitable	Literary, charitable, scientific and resource oriented	Non-profit activities
Modification Of Objects	Alteration can be undertaken only by the founder. If the founder is deceased, alteration of objects is impossible	Easy legal procedures	Complicated legal procedures
Required Members	Minimum = 2 Maximum = No limit	Minimum = 7 Maximum = No limit	Minimum = 7 Maximum = No limit
Registration	As Trust with the	As Society with Society	As per Companies Act

	Registrar	Registrar	under Section 8
Stamp Duty	4% of trust property value will be executed in non-judicial stamp paper with the registrar	No stamp paper required for memorandum of association, and rules and regulations	No stamp paper required for memorandum of association and articles of association
Name	Very easy to choose	Very easy to choose	Prior approval required from Registrar of Companies
Management Board	Trustees	Governing body	Board of directors and management committee
Succession In Management	Appointment	Election	Appointment
Meetings	No provisions	Annual meeting as per law. Governing body meeting as per the rules of society	Quite extensive as per provisions of the Companies Act
Legal Status	Limited	Limited	Full
Statutory Regulations	Nominal	Limited	Exhaustive
Membership Transfer	Impossible	Easier	Free or control as per desire
Member Admission	Not applicable	Governing body or general body control	General body or board control through issue of capital
Dissolution Or Take Over By State	Possible	Possible	Very risky and difficult
Payment To Members	As notified in trust deed	Not restricted	As approved by company and registrar

2.2.4 Trade Unions

According to the *Trade Union Act 1926* (Government of India, 1926), a trade union is defined as a 'temporary or permanent combination formed primarily for the purpose of regulating the relations between the workforce and employers, or between the workforce and workforce, or between employers and employers' (Government of India, 1926). Thus even employers can form and register trade unions. The Act also covers any federation of two or more unions. Under this Act, any seven persons can apply for the registration of a trade union. Every application for registration is made to the registrar along with a copy of the rules of the trade union. Some people's movements, agricultural workers' organisations, forest produce gatherers' associations, construction workers' organisations, etc, are registered as trade unions.

Advantages:

- One of the greatest advantages of trade unions as a form of registration is its direct contribution to, and association with, empowerment and collectivisation. No other form of organisation captures the essence of, or represents the meaning of collectivisation, democracy, organisation, empowerment and struggle.
- As a form to enhance the economic status of workers engaged in labour, it can be a powerful and effective tool of empowerment.
- A trade union has the capacity to work with a large number of members. As a result, tens and thousands of poor men and women can thus be a part of the union. This gives it a relative advantage in terms of relating to issues concerned with a large number of poor people within one legal entity.

Limitation:

- There has been limited understanding of trade unions as a form of registration. Along

- with this, many development promoting groups have some reservation on the form based on their orientation towards and their experience of a few trade union organisations.
- Perceived as a form used for struggle against employers, in cases wherein there are self-employed men/women, or where the employer is distant or invisible, activists do not know how to use trade union as a form of organisation.
- Since most trade unions in India are highly politicised, they can accept grants from foreign sources only after prior permission of the Foreign Contribution (Regulation) Act.
- The limitation of dues generated through membership of extremely poor people may pose constraints on the ability of a trade union to engage in a variety of activities and programmes
- As a representative organisation of members, it can also limit the possibility of utilising certain types of professional skills that may be needed for initiating new developments or economic programmes

2.2.5 Co-operative Societies

A co-operative is a form of organisation which is based on certain principles. It is the implementation of these principles in an organisational form that defines the practice of co-operatives. Thus, co-operatives can be seen as a form of organisation which is perhaps most appropriate and suitable for enhancing the economic status of the marginalised. It provides for the opportunity of equality of shareholding and right to decision-making for each member of the co-operative.

Co-operative societies are regarded as instruments to mobilise and aggregate community effort to eliminate layers of middlemen in any product or service supply chain, hence resulting in greater benefit sharing for the grassroots farmer, worker or artisan. The co-operative as a form of organisation has been in existence in India for about 100 years. The first Co-operative Act was introduced in 1904. Since then, the law has been changed and modified in several

states in different ways and has resulted in a very high degree of control in the hands of the government and its nominees.

Advantages:

- It is the most useful form for income generating projects and activities among groups of poor women and men.

Limitations:

- The membership of co-operative societies has been heterogeneous and, therefore, unequal members become co-operators. As a result, the rich, particularly in rural areas, have dominated and manipulated co-operative societies
- Government regulations have to control co-operative societies, and often utilise them as vote banks and as sources of funds for party workers

NOTE BANK

Other forms of registration

a. Multi-State Co-operative Societies (MACTS)

The *Multi-state Co-operative Societies Act, 2002*, which substitutes the earlier statute of 1984, facilitates the incorporation of co-operative societies whose objects and functions spread over to several states. The act provides for formation of both primary (with both individual and institutional memberships) and federal co-operatives (with only institutional memberships). Any application for the registration of a multi-state co-operative society, of which all the members are individuals, should be signed by at least fifty persons from each of the states concerned. In case of a society of which members are co-operative societies, it should be signed by duly authorised representatives of at least five such societies registered in different states.

b. Foundations

A foundation is a non-profit organisation that supports charitable activities in order to serve the common good. Foundations are often created with endowments—money given by individuals, families or corporations. They generally make grants or operate programmes with the income earned from investing the endowments. There are three basic types of foundations which provide grants to other organisations.

i) Independent foundations: This is the most common type of private foundation. They are generally founded by an individual donor, members of the donor's family, a donor family or by an independent board. When a foundation is operated by a family, it is often referred to as a family foundation.

ii) Corporate foundations: Corporate foundations are created and funded by companies as separate legal entities, operated by a board of directors that usually comprises company officials. Corporations may establish private foundations with endowments, make periodic contributions from profits, or combine both methods to provide resources to the foundation. Some companies operate in-house corporate-giving programmes, which unlike corporate foundations are under the full control of the company. Many corporations maintain both a foundation and a corporate-giving programme.

iii) Community/public foundations: Community and other public foundations are publicly supported foundations operated by, and for the benefit of, a specific community or geographic region. They receive their funds from a variety of individual donors, and provide a vehicle for donors to establish endowed funds without incurring the costs of starting a foundation. Community/public foundations are administered by a governing body or a distribution committee representative of community interests.

THINK TANK

You have been invited by an agency to participate in a seminar on 'Legalities in Registering a Non-Profit Entity'. You have been asked to speak on the legal provisions for registering the non-profit entity in your country/province and its strengths and limitations.

Prepare a small note to send the organisers in advance to distribute in the seminar.

2.3 Fiscal Regime in India With Respect To NGOs

In the earlier Unit we learnt the various forms and laws under which a non-profit entity can be registered in India. Once an entity is registered, there are laws which are applicable to NGOs. Different countries and provinces have specific laws related to taxes, foreign receipts and statutory obligations that the non-profit entity has to follow. In the Indian context, other than the obligations of the law under which the NGO has been registered, it is governed by various tax laws. The NGO has to obtain various registrations for obtaining benefits, as well as complying with the obligations set under various laws. The key registrations and processes under the fiscal laws are discussed in this section.

2.3.1 PAN / TAN Registration:

- i. **Permanent Account Number (PAN)** is a unique alphanumeric combination issued to all juristic entities identifiable under the Indian Income Tax Act 1961 (Government of India, 1961). It is issued by the Indian Income Tax Department under the sponsorship of the Central Board for Direct Taxes (CBDT). It is almost equivalent to a national identification number. It is a must to have a PAN number for all those who file their income tax returns, because from 2005 onwards it has been made obligatory by the Income Tax Department to quote the PAN on return of income as well as on all correspondence with any income tax authority in the country.

- ii. **TAN or Tax Deduction and Collection Account Number** is a 10 digit alpha numeric number required to be obtained by all persons who are responsible for deducting or collecting tax. It is compulsory to quote TAN in TDS/TCS return (including any e-TDS/TCS return), any TDS/TCS payment challan and TDS/TCS certificates. Under the Income Tax Act, 1961, every person making payment or crediting income of specified types to another person is required to deduct a specific proportion of amount payable/creditable at the time of making payment or giving credit, whichever is earlier, and deposit the sum so deducted, i.e., TDS. Prior to making any such deduction, every

such person shall have to apply to the assessing officer for allotment of a tax deduction account number (TAN) under Section 203A of the Income Tax Act. Any organisation deducting tax at source is required to quote the TAN in the following documents:

- All challans while depositing the tax so deducted
- All certificates issued against the tax deducted
- All returns furnished in respect of tax deducted at source
- All other documents pertaining to such transaction as may be prescribed

2.3.2 Tax Exemptions

(i) The Income Tax Act, 1961

This Act governs tax exemption for not-for-profit entities. Organisations may qualify for tax-exempt status if the following conditions are met (Government of India, 1961):

- The organisation must be organised for religious or charitable purposes;
- The organisation must spend 85 per cent of its income in any financial year (April 1st to March 31st) on the objects of the organisation. The organisation has until 12 months following the end of the financial year to comply with this requirement. Surplus income may be accumulated for specific projects for a period ranging from 1 to 5 years;
- The funds of the organisation must be deposited as specified in section 11(5) of the Income Tax Act;
- No part of the income or property of the organisation may be used or applied directly or indirectly for the benefit of the founder, trustee, relative of the founder or trustee or a person who has contributed in excess of Rs. 50,000 to the organisation in a financial year;
- The organisation must timely file its annual income return; and
- The income must be applied or accumulated in India.

**(ii) Corpus
Donations**

Corpus donations or donations to endowment are capital contributions and should not be included to compute the total income of the organisation.

NOTE BANK

Disqualification from Tax Exemption

Groups that are ineligible for tax exemption include all private religious trusts and charitable trusts or organisations created after April 1, 1962, and established for the benefit of any particular religious community or caste. However, a trust or organisation established for the benefit of "Scheduled Castes, backward classes, Scheduled Tribes or women and children" is an exception; such a trust or organisation is not disqualified, and its income is exempt from taxation.

(iii) Business Income

Under amendments to Section 11(4A) of the Income Tax Act 1961, a not-for-profit organisation is not taxed on income from a business that it operates that is incidental to the attainment of the objects of the not-for-profit organisation, provided the entity maintains separate books and accounts with respect to its business. Furthermore, certain activities resulting in profit, such as renting out auditoriums, are not treated as income from a business.

2.4 Additional Information On Tax Laws

2.4.1 Tax Deduction For Donors

Section 80G of the Income Tax Act sets forth the types of donations that are tax-deductible. The Section permits donors to deduct contributions to trusts, societies and Section 8 companies. Many institutions listed under Section 80G are government-related; donors are entitled to a 100 per cent deduction for donations to some of these government funds. Donors are generally entitled to a 50 per cent deduction for donations to non-governmental charities. Total deductions taken may not exceed 10 per cent of the donor's total gross income.

The following are examples of governmental charities listed in Section 80G, contributions to which entitle the donor to a 100 per cent deduction (Government of India, 1961):

- 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.

As to those entities not specifically enumerated in Section 80G, donors may deduct 50 per cent of their contributions to such organisations, provided the following conditions are met:

- The institution or fund was created for charitable purposes in India;
- The institution or fund is tax-exempt;
- 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 expressed to be for the benefit of any particular religious community or caste; and
- The institution or fund maintains regular accounts of its receipts and expenditure.

In-kind donations are not tax-deductible under Section 80G. Receipts issued to donors by not-for-profit organisations must bear the number and date of the Section 80G certificate and indicate the period for which the certificate is valid.

2.4.2 Reporting Foreign Contributions

Under the Foreign Contribution (Regulation) Act, 2010 (FCRA) all not-for-profit organisations in India (e.g., public charitable trusts, societies and Section 8 companies) wishing to accept foreign contributions must (Ministry of Law and Justice, GoI, 2010):

- (a) Register with the central government; and
- (b) Agree to accept contributions through designated banks

Furthermore, not-for-profit entities must report to the central government regarding foreign contributions received within 30 days of their receipt and must file annual reports with the Home Ministry. The entity 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. Foreign contributions include currency, securities and articles, except personal gifts under Rs. 1,000 (approximately \$20). Funds collected by an Indian citizen in a foreign country on behalf of a not-for-profit entity registered in India are considered foreign contributions. Moreover, funds received in India, in Indian currency, if from a foreign source, are considered foreign contributions.

NOTE BANK

According to FCRA guidelines if 50 per cent or more of the 'office bearers' (not members of the board of management) of a trust/society or Section 8 company change, the organisation must apply to the Home Ministry for approval of the change. This approval could take as long as 3-4 months. In the interim period, the FCRA registration granted to the organisation would stand 'suspended'.

2.4.3 Customs Duty

Not-for-profit organisations involved in relief work and in the distribution of relief supplies to the needy are 100 per cent exempt from customs duty on the import of items such as food, medicine, clothing and blankets. Moreover, other exemptions may be available, such as an exemption from customs duty for scientific/technical equipment and components intended for research institutes. Donors should investigate whether an exemption from customs duty is available before shipping articles to not-for-profit entities in India.

THINK TANK

An agency wants you to deliver a keynote address on the legal obligations of non-profit entities in your country/province and their strengths and limitations. Explore the various laws, particularly related to tax, foreign receipts, etc, and prepare a short note regarding the same.

2.5 Differing Legal Frameworks For NGOs In South Asian Countries

The laws, rules and regulations that govern the non-profit sector in South Asian countries come from multiple origins. They are not merely the modern applications of colonial law, but arise out of complicated indigenous and colonial strains of control and facilitation, mixed with significant religious and cultural influences in each country (Sidel & Zaman, 2004).

2.5.1 Bangladesh

There are two distinct set of laws in Bangladesh that pertain to non-profit organisations. One set of laws lays down the parameters whereby organisations may acquire legal status, to the extent that they can sue and be sued in their own names. Another set of law spells out regulatory measures under which organisations must operate. As such, the legal regime governing non-profit organisations involves, on the one hand, laws for formation and, on the other, laws for regulating the activities of these organisations.

Non-profit organisations (NPOs) in Bangladesh are mainly formed under four Acts (Sidel & Zaman, 2004):

- The Societies Registration Act, 1860
- The Trusts Act, 1882
- Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961
- The Companies Act 1994

However, the most frequently used law is the Societies Registration Act, as it appears to be the most flexible and enables an organisation to carry out a wide range of activities.

The activities of non-profit organisations and their funding status are regulated under (Sidel & Zaman, 2004):

- The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961
- The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978
- The Foreign Contributions (Regulation) Ordinance, 1982

There are also 'legislated' religious laws pertaining to the registration and activities of religious, philanthropic and charitable institutions. For example, the Waqfs Ordinance (1962) was established for the registration and regulation of Muslim trusts.

2.5.2 Nepal

Non-governmental organisations in Nepal have gained recognition as one of the more effective mechanisms to generate civil awareness and deliver social services. Government trusts and private trusts have an established role in the culture and religion of Nepal and remain active and recognised by law and society, though clear procedures for the establishment of new private trusts is lacking at present. A few companies that might be termed 'not-for-profit-distribution' companies also exist under company legislation. The key legislation governing this broad sector includes (Sidel & Zaman, 2004):

- Societies Registration Act 1977
- Co-operative Act 1992
- Guthi Sansthan Act, 2033BS (Trust Corporation Act 1976 AD)
- National Directive Act 1961
- Social Welfare Act 1992
- Education Trusts under the Education Act 1971

However, the regulation of non-profit organisations has traditionally been insufficient or ineffective, requiring substantial expenditures of money, time and effort in management and administration rather than meeting objectives and carrying out programmes. Along with this, there also exist regulatory problems relating to registration, pre-requisites of registration, and prior approval for financial support.

2.5.3 Pakistan

NGOs are governed by the law through which they are registered and their governance is controlled by their own constitution, memorandum, rules or bye-laws submitted for registration. While a body of laws governing various types of NGOs exists, through which they are recognised and registered, the fundamental right of an individual to associate with others in order to pursue common goals is recognised by Article 17 of the Constitution of Pakistan.¹

The set of laws through which the registration of NGOs may be sourced are (Sidel & Zaman, 2004):

- Societies Registration Act 1860
- Religious Societies Act 1880
- Trusts Act 1882
- Charitable Endowments Act 1890
- Mussalman Waqf Act 1923
- Voluntary Social Welfare Agencies (Registration & Control) Ordinance 1961

2.5.4 Sri Lanka

The legal regime for non-profit organisations in Sri Lanka has a generally applicable set of criteria for the formation of non-profit groups. Such organisations may therefore be created under any one of the many laws that generally apply to the formation of 'entities', either in the form of companies, or associations of natural persons, or trusts (Sidel & Zaman, 2004). Additionally, many 'groups', usually community based organisations, frequently carry on such activities without any registration at all, with the result that they remain unregulated for all intents and purposes.

¹ Article 17 (1): Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

Thus, NGOs may be formed in terms of the general law of the country applicable to the formation of artificial 'persons'. These provisions are contained in the Companies Act, as well as other, more sector specific laws, such as the Societies Ordinance and the Co-operative Societies Law (Sidel & Zaman, 2004). NGOs are also commonly formed under the Trusts Ordinance. There are also NGOs, especially those pursuing cultural, social, religious and educational objectives that are created through specific statutory enactments. Thus, the general rule applicable to the creation of NGOs is that it can be done under one of many laws, depending on the nature and objectives of the proposed entity.

2.6 Processes and Essentials for Registration

Registration under the law can provide a legal umbrella to an autonomous, fully functioning group like an NGO. Therefore, it is important to recognise that the pre-registration phase is of crucial importance and must be paid considerable attention to, instead of a quick and hurried registration. The registration of an NGO has to be approached gradually and after considerable preparation.

In most countries, there are specialised departments or officers within local governments that deal with registering an NGO. There are several documents that need to be submitted, and these differ from country to country. Information on the NGO/NPO board, its mission statement, programmes and project information, staff members, funding sources, etc, are usually required at the time of registration. A typical set of documents to be submitted to the appropriate authority for registering an NGO includes:

- Memorandum of Association or bye-laws, including applicable rules and regulations;
- Report of annual activities, financial reports/audit reports;
- Sources and pattern of income and expenditure;
- Minutes of the Executive Board or General Assembly that endorses the setting up of the NGO; and
- Letters of support (references), etc.

In all countries and provinces, the laws that call for incorporation of NGOs as legal entities typically require statement of objectives, its location, founding members, etc. In order to understand the process in a convenient way, this Unit will discuss the registration process of a non-profit entity in a phased manner, i.e., pre-registration, during registration and post registration.

2.6.1 Pre-Registration Phase:

- **Articulate Mission And Purposes:**

Before registering an NGO, the founder of the NGO should be clear about the purpose of the organisation. A clear, written statement that describes the charitable mission and purposes of the organisation becomes the driving force. This must be broad enough to reflect the values of the NGO and the reason for its existence. It is important to remember who the target community of the organisation is and why it is important to reach out to this community. It is also necessary to envision what the organisation will become and what the long term goals and objectives are. This should be done through a rigorous process of discussions and consultations.

- **Select A Name For The Organisation**

Before registering an NGO, it is important to choose a name. The name will also depend on the form of organisation under which the NGO is being registered. It is also essential to research local government agencies and state offices to make sure that the proposed name is not already being used. This also applies to the logo if the NGO is going to have one. In case of any acronym that may be used with respect to the organisation, this too needs to be decided now.

- **Identify Governing Board Members**

To register a non-profit entity, the founder(s) must identify the governing board member/trustee or board of directors, which will be disclosed in the bye-laws. It is helpful to start with a small group of committed individuals because the first board is the foundation of the organisation. The members must have strong legal, financial and technological skills and should be aware of the fact that they are expected to serve on the basis of the public's best interest. The members must be those who clearly understand the mission and goals of the organisation and who have new and progressive ideas to contribute to its growth. Most importantly, the initial board should

be able to work as a team in order to help the organisation get started and gain acceptance among the community it intends to work in. The size and structure of the board, as well as the people who constitute the same, may change based on the size and needs of the organisation and once the NGO becomes officially established. While selecting the board members, the guidelines of the registering authorities must be kept in mind, as different forms of registration have different sets of guidelines for membership to the board.

- **Drafting Bye-laws**

A concrete set of bye-laws form the core of an NGO's identity and structure. Bye-laws are referred to by different names in different countries, including Articles of Association, Statutes, Articles of Incorporation, Constitution, etc. Having a clear set of bye-laws not only provides clarity to an NGO's structure and functioning, it also provides a basis for trustworthy relationships with other organisations and entities, and in building the NGO's identity. In many countries, developing and adopting a set of bye-laws (and taking action on the issues stipulated in the bye-laws) is a critical pre-requisite for official registration with local authorities.

While the bye-laws ensure the accountability of the organisation to the external world, they also represent the responsibilities the NGO has entrusted itself with. The bye-laws of an NGO specify how it will run. They act as a rule book determining structure, power and organisation. The bye-laws are self-imposed by the NGO and, therefore, should conform to the needs of the specific organisation. It helps resolve and minimise disputes and should be available to all members of the NGO for reference. The table below provides a standard list of articles/clauses, their content and sample text that can be adapted by a new NGO. It also identifies the various content areas that need to be discussed and written in the bye-laws.

Table 2: Content Of Bye-Laws

Article/Claws	Content
1: Preamble	What is the bye-law about? What will it contain?
2: Name, acronym and logo	What is the name of the NGO? What is its official acronym? If available, what does its logo design look like?
3: Applicable laws and legal status	Under what local and national laws is the NGO set up? Does it have official consultative status with the UN, or is it UN-accredited? Is it a member of any national, regional or international network/association/initiative?
4: Sphere of activities	What activities will the NGO undertake? What will be its spheres (or categories) of activities?
5: Location and duration	Where is the registered office of the NGO located? What is its postal address? How long will the NGO be set up for - that is, is it for a limited period only, or is it unlimited?
6: Aims, visions and mission	What are the aims of the NGO? Have goals and objectives been developed? What is its vision statement? What will be the mission of the NGO, and who will be its target beneficiaries?
MEMBERSHIP	
7: Membership	Does the NGO have members? What is the membership structure of the NGO?
8: Qualification	What are the qualifications of the NGO's members? Why are such qualifications needed?
9: Admission	How will members be invited and admitted to the NGO? What is the procedure?
10: Responsibility	What will be the expectations and duties/responsibilities of the NGO members?
11: Consensus building	How will consensus building be achieved among the members? How will decisions be taken on the NGO's activities? What are the procedures?
12: Resignation	What are the procedures for a member to resign from the NGO's membership? Who should it be addressed to, and how is it accepted and processed?

13: Expulsion or suspension	Under what circumstances can a member be expelled or suspended from the NGO? Who will take the decision and how will it be implemented? What process of redress will be available to the member?
ORGANISATION	
14: Organisational structure	What is the organisational structure of the NGO? What will be the position of the staff members responsible for different aspects of the NGO's programmes?
GENERAL ASSEMBLY	
15: Procedures	Will the NGO have a General Assembly? Why is it needed? Who can participate in the General Assembly? Is there a proxy policy? How will the proceedings be reported to the general public?
16: Scope	What is the scope of the General Assembly? What will be the duties and responsibilities of the General Assembly?
17: Decision-making	How will the General Assembly decisions be taken? How and who can present proposals for decision-making, and what is the procedure/process for taking decisions?
18: Quorum	What will be the minimum quorum needed to call for a General Assembly, for the proceedings to take place, and for decisions to be taken?
BOARD OF DIRECTORS	
19: Composition	What will the Board consist of? How many members will the Board contain? What will be their positions? Which current working staff members will also be on the Board of the NGO?
20: Eligibility	Who will be eligible to become members of the NGO's Board? What will be their qualifications?
21: Selection and appointment	How will potential individuals be identified and selected to the NGO's Board? How will the appointment be decided and implemented?
22: Term of office	How long will a member's term of office be on the NGO's Board?
23: Vacancies	How will vacancies in the Board's membership be handled? How will the position be advertised and recommendations/applications processed?

24: Duties and functions of the board	What will be the duties and functions of the Board? What is the NGO's expectation of a Board member?
25: Decision-making	Like the General Assembly, how will decisions be taken in Board meetings? What is the procedure and quorum for a decision to be accepted and implemented?
26: Press statements	Who will prepare press statements to reflect the proceedings and functioning of a Board meeting or NGO's activities? How will a Board's acceptance of media/press statements be sought?
27: Meetings	What is the usual agenda for a Board meeting? Who will call it, and how will the proceedings be handled?
28: Quorum	What will be the minimum quorum needed to call for a Board meeting, for the proceedings to take place, and for decisions to be taken?
29: Resignation	If a Board member wishes to resign from his/her position, how will it be handled? What is the procedure?
30: Removal	Under what circumstances can a Board member be removed (either expelled or suspended) from the NGO's Board? What is the procedure, and who has the authority to initiate such a procedure? What process of redress will be available to the Board member?
SUPPORTING COMMITTEES	
31: Running	What committees will be set up to support the functioning of the NGO? (e.g., funding, media, strategy/policy/project development, etc).
32: Aims and responsibilities	Why will these committees be set up? What will be their main aims and responsibilities?
33: Election and term of office	How will the committees be set up? What is the procedure for the election/selection of committee member? What will be their term of office?
34: Duties and responsibilities	What function will the members of the committee perform? What will be their duties and responsibilities? Who will decide the duties and responsibilities, and how can they be modified?
AUDITOR	
35: Annual audit	Will the administration and finances of the NGO be audited? What is the procedure of the audit? How will findings of the audit be implemented?

STAFFING	
36: Definition	How are staff members defined within the overall structure of the NGO's organisation? How are they different from other types of members (e.g., General Assembly or Board members)?
37: Duties and roles of staff members	How many staff members will be working at the NGO (both full-time and part-time)? What will be their duties and roles within the overall functions and activities of the NGO?
38: Hiring and dismissal	How will staff members be hired? Under what circumstances will staff members be dismissed or suspended? Who is authorised to take such action?
RESOURCES	
39: Sources and uses	What is the nature of (financial) resource needs of the NGO? What will be the primary sources of such resources (including private/personal sources)?
40: Initial capital and assets	What will the initial capital needs of the NGO be? What kinds of assets (financial and non-financial) will be needed to start the NGO?
41: Funding raising	What policy will be put in place by the NGO for fund raising? What purposes will it be used for, and who will be responsible?
OTHER CLAUSES	
42: Liability	What are the applicable liabilities for the NGO? Under what circumstances are these liabilities applied? What procedures are in place to activate these liabilities, and who is responsible for them?
43: Fiscal year/financial year	What is the duration, and starting month, of the NGO's fiscal/financial year?
44: Applicable law and court	Under what applicable law and court will the NGO be constituted? How will disputes and other legal matters be handled?
45: Dissolution	Under what circumstances can/will the NGO be dissolved? What is the procedure for dissolution? Who will be responsible for dissolving the NGO?
46: Liquidation profit	If profits are generated during the liquidation process of an NGO, how will it be disbursed? What procedures are in place to handle such matters?

About The Bye-Laws	
47: Coming into force	When do the bye-laws come into force? What is the procedure to ensure that the bye-laws are legally accepted and are also informed to all appropriate/concerned persons?
48: Validity, and extension of validity, of bye-laws	What is the period of validity of the bye-laws? What is the procedure to extend the validity of the bye-laws?
49: Additions, modifications and amendments to Articles	What is the procedure for additions, modifications and amendments to be made to the articles in the bye-laws? Who is authorised to undertake the task?

THINK TANK

You have been approached by a group of women activists who are working on gender justice issues. They were working independently but now they want to register their organisation. They need your assistance in developing their bye-laws.

Suggest draft bye-laws for them. Include how legal provisions in your region would affect the drafting of the bye-laws.

2.6.2 During Registration

- **Register the Organisation**

After a name is chosen and the bye-laws/articles are written, it is necessary to register the organisation within the local government framework. As discussed, there are specific departments that are responsible for registering an NGO and getting the requisite forms. The documents to be submitted vary, but in most cases information about the board members, mission statement and staff members is required, while the articles and/or bye-laws are essential.

During the registration process it should be ensured that all necessary forms, documents and required evidences are available. It must be ensured that all such documents are received from the authorities conducting the registration process well in advance of registering.

2.6.3 Post Registration

i. Hold An Initial Governing Board/Directors Meeting

Once the NGO is legally registered, an initial board meeting should be held. The board members should officially adopt the bye-laws in the first meeting in order to explain how the board functions. The first meeting is important in establishing officers, committees, and discussing preliminary programmes and activities.

ii. Set Up An Accounting System

All NGOs need an accounting system in order to track where the money comes from and how it is being used. Since NGOs' finances tend to be closely scrutinised, it is important to put an effective accounting system into place to deal with the nuances of non-profit book-keeping and reporting. Seeking the help of an accountant who can help set up a book-keeping system and explain how to use it is a useful practice. Often, NGOs have an accountant on the board who is familiar with these systems, which is a useful option. It is also important to decide whether the book-keeping system should be cash or accrual.

Cash Based Accounting Is A System Where:

- Revenue is recorded when added to a bank account
- Expenses are recorded when money is withdrawn from the bank

This system is very straightforward. However, it only merely informs the NGO about its bank balance. It does not reveal information on how much money might be owed to the organisation or vice versa.

Accrual Based Accounting Records:

- Revenue that is earned (may be before or after it is received)
- Expenses when incurred (may be before or after payment)

In general, it seems that the information provided through accrual based accounting is more useful to an organisation than cash based accounting because it paints a broader financial picture. It allows an NGO to see through not just its immediate payments and deposits, but also what kind of money it owes or may receive in the future. This allows an organisation to be more aware of its financial status.

Once the NGO decides what the book-keeping system should be, it is essential that all financial transactions are documented and recorded into financial journals by the book-keeper.

iii. Develop A Resource Mobilisation Plan

An NGO requires financial support in order to begin functioning. Money required for an NGO to operate primarily goes into its programmes and the overall operation of the NGO

(administration, utilities). The founder-members should be active participants in fund raising and it is important that writing grants, seeking contributions and other fund raising skills are those that are acquired early in the process of NGO development. In order to come up with the best fund raising strategy, it is important to identify the needs of the NGO and the sources that can best fulfil these needs.

iv. Making Visibility And Setting Up The Organisation

Once the NGO has been registered, it is important to express visibility and prepare the organisation for start-up work. There are a few miscellaneous tasks that must be completed before the NGO can fully operate. Some of these include:

- Hiring staff and volunteers;
- Reaching out and becoming known in the community;
- Seeking office supplies (furniture, computers, and machinery);and
- Insuring the NGO

In furtherance to this, programme activities can be discussed and implemented. It may take about a year before these prove to be successful. Finally, at the end of the first year, it is important to review the mission, goals and vision to make sure the NGO has been able to fulfil its mandate. Critiquing programmes and activities to see what can stay or needs to be changed is also beneficial. Some of these steps and processes will be discussed in detail in the upcoming modules.

Summary

In this Module, you were introduced to the importance and relevance of registering NGOs. Further, the different options available for NGO registration in India were detailed and analysed. This Module also introduced various other aspects under the fiscal regime in India such as PAN/TAN registration, tax exemptions, etc, along with relevant additional information on foreign contributions, customs duty, etc. The legal frameworks and scheme of registration in various South Asian countries were also examined and analysed. Finally, the Module provided the details of the process of registration, and the various requirements associated with it.

Required Readings

- Forms of Organisations: Square pegs in the round holes, PRIA , New Delhi
- Tandon, R., & Jain, A. (1993). Management of Voluntary Organisations. Delhi: Participatory Research in Asia (PRIA).

Recommended for further reading

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