

Non-Governmental Organizations and Legal Contours in India



Law

KEYWORDS :

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ABSTRACT

Non-governmental organizations (NGOs) have emerged as key players in bringing change in development, human rights, humanitarian action, environment, and many other areas of public action. In the pursuit of social transformation, NGOs have an active role to play which is very vital for country's evolution as a progressive nation. But India is also marked by diversities, so the role of these NGOs has to be in close proximity of the legal parameters established by the constitution which takes a great care of its diverse minorities by sanctioning different privileges for various groups. This paper shall underscore the idea how the functions and policies of NGOs have to be shaped viz-a-viz nation's legal contours.

Introduction

Non-governmental organizations (NGOs) are now recognized as key third sector actors of change on the landscapes of development, human rights, humanitarian action, environment, and many other areas of public action. NGOs are best-known for two different, but often interrelated, types of activity – the delivery of services to people in need, and the organization of policy advocacy, and public campaigns in pursuit of social transformation. NGOs are also active in a wide range of other specialized roles such as democracy building, conflict resolution, human rights work, cultural preservation, environmental activism, policy analysis, research, and information provision. NGOs have existed in various forms for centuries, but they rose to high prominence in international development and increased their numbers dramatically in the 1980s and 1990s.

Definition and Classification of NGOs

Non-governmental organizations are non-profit oriented organizations which are not part of local or foreign organs. The Non-governmental organizations forms a heterogeneous group and it has a long list of organization working in different areas with varied scope of work. The alternative terms used in addition to “NGO” include private voluntary organizations, civil society, independent sector, self-help organizations, grassroots organizations, volunteer sector, transnational social movement organizations, and non-state actors (NSA's).

The term NGO is broad and ambiguous. It covers a range of organizations within civil society, from political action groups to sports clubs. Its clear definition still remains contested. However, it can be argued that all NGO's can be regarded as civil society organizations though not all civil society organizations are NGO's. The roots of NGOs are different according to the geographical and historical context. They have recently been regarded as part of the “third sector” or not-for-profit organizations. Although there is contestation of the definition of an NGO, it is widely accepted that these are organizations which pursue activities to relieve the suffering, promote interests of the poor, protect the environment, provide basic social services, and undertake community development. For organizations to be recognized as not-for-profit, they should satisfy the following criteria:

First, an NGO should be privately set up and sufficiently autonomous in its activity, that is independent of direct governmental control. Secondly, an NGO should also be non-profit, which would clearly define its voluntary character. Thirdly, it cannot be considered a political party with an aim of attaining political power. Fourthly, an NGO should support development which demonstrates its public interest character.

According to Turner and Hulme, “NGOs are generally registered organizations, community groups, professional asso-

ciations, trade unions, cooperate charity organizations whose aim is to improve the well-being of their members and of those areas in which they exists”.

The World Bank, on the other hand, sees NGO's as private organizations that pursue activities to relieve suffering, promote the interests of the poor; protect the environment, provide basic social services, and/or undertake community development (WB, 2001).

NGOs have a far longer history than this recent resurgence and retreat suggests. Many of the world's best known NGOs predate the emergence of the development industry. Save the Children Fund (SCF) was founded by Eglantyne Jebb in 1919 after the trauma of the First World War. Oxfam, which was originally known as the Oxford Committee against the Famine, was established in 1942 in order to provide famine relief to victims of the Greek Civil War. CARE began its life sending US food packages to Europe in 1946 after the Second World War. The acronym “NGO” tends to be used in relation to international or “developing” country work, since its origin lies in the formation of the United Nations in 1945, when the designation “non-governmental organization” was awarded to certain international non-state organizations that were given consultative status in UN activities.

NGOs were first discovered and then celebrated by the international donor community as bringing fresh solutions to long-standing development problems characterized by inefficient government to government aid and ineffective development projects. Within the subsequent effort to liberalize economies and “roll back” the state as part of structural adjustment policies, NGOs came also to be seen as a cost-effective alternative to public sector service delivery.

Aims of NGOs

It can be seen very often that, most of the organisations have very similar aims with the only difference of where they are instituted or established, the extent of their activities and the volume of money they control.

- To fight extreme poverty, helps poor people to become entrepreneurs and run small-holder farming activities which generate a regular flow of income.
- The vision can be for all to have access to quality education, as the basis for mutual understanding, personal empowerment and equitable societies throughout the world.
- To better the lives of those at the fringe of the society.
- Supports organisations in developing countries to fight poverty.
- To work towards sustainable environmental management.
- To promote international health and education through

the efficient and effective distribution and provision of donated medical, educational, agricultural and other resources.

- Against poverty and injustice.
- Supports communities through long-term development programs in Africa, Asia.
- To focus on providing integrated development through water and sanitation, housing, education, literacy, women's empowerment, income generation and sustainable agriculture.
- Provides assistance to the poor, the vulnerable and the excluded on behalf of a billion of
- Development, and on campaigning against poverty, exclusion, intolerance and discrimination.
- Provide education for women.
- Helping children in education, meals & saving children in crisis-torn areas of the world
- Develop relief efforts for orphans and vulnerable children, handicap children and provide medical assistance to children that their parents cannot afford to handle.
- Paying school fees and school materials for children, counsel parents on the rights of a child.
- Respond on your behalf to the needs of people who suffer from poverty, hunger, disaster and injustice.
- To help the poorest of the world and strengthen their possibilities for a life in dignity.

Legal Contours in India

The right of all citizens to form associations or unions is guaranteed by the Constitution of India, Article 19(1) (c). Charitable organisations usually take the legal form of a trust, society, or non-profit company (also called not-for-profit organisations or NGOs), and are regulated by a variety of state and central government agencies, laws and authorities. Unsurprisingly for such a large and diverse country there is also a wide diversity of charitable organisations within India.

There are a variety of federal and state laws which are applicable to charitable organisations and NGOs operating in India. These include:

Indian Trusts Act of 1882:

this Act applies only to private trusts throughout India except the state of Jammu and Kashmir and the Andaman and Nicobar Islands.

Bombay Public Trusts Act 1950:

this legislation deals with charitable trusts in the states of Maharashtra and Gujarat.

Charitable and Religious Trusts Act 1920:

this law extends to the whole of India except the State of Jammu and Kashmir. The Central Government can extend its coverage to Jammu and Kashmir by notification in the Official Gazette.

Societies Registration Act 1860:

this is a federal Act and is applicable generally to all states. However some regions had already enacted their own laws, others have made amendments or modifications to the Act, and other states have passed completely new laws to regulate societies leading to considerable variation across states.

Companies Act 1956:

section 25 of the Companies Act 1956 deals with non-profit companies. This Act is a federal Act and applies to non-profit companies operating in any state.

The Income Tax Act 1961 is a federal Act which applies in

all states, and governs tax exemption of not-for-profit organisations operating in India.

Funds received from overseas are governed by the Foreign Contribution (Regulation) Act 1976.

Regulatory framework

The Registrar of Societies has regulatory responsibility for societies. A society can either register at the state level with the Registrar of Societies or at the District level with the District Magistrate or the local office of the Registrar of Societies.

The Registrar of Companies is the regulatory authority for Section 25 companies.

Charitable trusts registered under the **Bombay Public Trusts Act**, applicable in Gujarat and Maharashtra, are regulated by the Charity Commissioner in those states.

Non-profit organisations may be eligible for tax exemption under the Income Tax Act 1961. This stipulates that a not-for-profit organisation must:

- be organised for religious or charitable purposes;
- spend 85% of its income on the objects of the organisation; and
- use all funds for the public benefit.

Charitable purposes include "relief of the poor, education, medical relief, and the advancement of any other object of general public utility."

NGOs involved in relief work and in the distribution of relief supplies to the needy are 100% exempt from Indian customs duty on the import of items such as food, medicine, clothing and blankets.

Reporting Requirements:

The Societies Registration Act 1860 provides that each society has to submit an annual report and list details of its managing body every year to its local Registrar of Societies. The requirement to file accounts differs between states.

All trusts registered under the **Bombay Public Trusts Act** have to file annual reports. In addition, trusts with an income above Rs 1500 per annum have to submit audited accounts, and those with an annual income below Rs 1500 have to submit income and expenditure statements within 6 months of closing of accounts to the Charity Commissioner's office.

All section 25 companies have to file:

- audited accounts;
- an annual report;
- an annual return with the Registrar of Companies; and
- important resolutions.

The Voluntary Action Cell for overall policy co-ordination is under the Planning Commission. The Planning Commission sponsored a review of charities administration in India, which included recommendations such as:

- simplifying the procedures for registration;
- improving the infrastructure of the various regulatory bodies; and
- enhancing public access to information about charitable organisations.

Constitutional Provisions

The Indian Constitution provides a district legal space to civil

society institution (a) through its article on the right to form associations or unions – Articles 19 (1) (c); (b) through Article 43 which talks of states making endeavour to promote co-operatives in rural areas; and (c) through explicit mention in entire made in schedule 7.

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

Entry 44- “Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporation’s but not including co-operative societies.”

Entry 44- “Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.”

Concurrent List – Entry 10 – “Trusts and Trustees”.

Entry 28- “Charities and charitable institutions, charitable and religious endowments and religious institutions.”

Since forming Associations is a Constitutional right under Articles 19 (1) (c) of the Indian Constitution, it is quite feasible to set up a non- profit/ voluntary organisation without any kind of registration or recognition under any of the entries mentioned above. In fact, some of the community based organisations like village committees, small religious groups and many Resident Welfare Associations function in this manner. However, when it comes to claiming exemptions under the Income Tax Act and for availing of other benefits from the Government, there is insistence on formal registration.

The following are some of the relevant and important Articles of the Directive Principles of State Policy impacting on the promotion of a just and fair socio – economic order:

Article 38- State to secure a social order for the promotion of welfare of the people.

The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform the institutions of the national life.

The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst group of people residing in different areas or engaged in different vocations.

Article 39- certain principles of policy to be followed by the state

The State shall, in particular, direct its policy towards securing:

- a. That the citizens, men and women equally, have the right to an adequate means of livelihood;

- b. That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
- c. That the operation of the economic system does not result in the concentration of the wealth and means of production to the common detriment.
- d. That there is equal pay for equal work for both men and women;
- e. That the health and strength of workers, men and women, and the tenders age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and
- f. That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41- Right to work, to education and to public assistance in certain cases.

The State shall within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of underserved want.

Article 45- Provision for free and compulsory education for children

The State shall endeavour to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Societies, Trusts, Waqfs and other endowments

Thus, the law concerning societies, Trusts, Waqfs and other endowments in India can be placed in three broad groupings:

- (i) Societies registered under the Societies Registration Act, 1860 and various States amendments on it after 1947;
- (ii) Those engaged in pure religious and charitable work registered under the Religious Endowments Act, 1863; the Charitable and Religious Trust Act, 1920; the Waqf Act, 1995 and similar other State Acts;
- (iii) Trusts and Charitable institutions registered under the Indian Trust Act, 1882; Charitable Endowments Act, 1890; the Bombay Public Trust Act, 1950; and similar other State Acts.

Modelled on the English Literary and Scientific Institutions Act, 1854, the Societies Registration Act was enacted in India in 1860. Towards the middle of the 19th century coinciding with the 1857 event, a number of organisations and groups were established in the country on contemporary issues of politics, literature, arts and science. The above law was enacted partly to give such organisations a legal standing and partly, to enable the colonial government to maintain a watch on them. But, the Act was not intrusive at all and it gave full freedom to the Societies/ Organisations which chose to register.

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