Philanthropic Freedom Pilot Study: India Country Report

Overall Philanthropic Freedom Score: 3.80

General Background Information on India

- GDP per capita: $ 1,489[1]
- Population: 1,205 million[2]
- Percent of population reporting "giving money": 19%[3]
- Percent of population reporting "volunteering time": 10%[4]
- There are three types of relevant organizations: public charitable trusts, societies, and section 25 companies. Charitable trusts are charities that can have a number of purposes including poverty relief, education, health and others. Societies are membership based organizations that can be registered for a charitable purpose. Section 25 companies are limited liability companies that do not distribute their profit among members.

Philanthropic Freedom Score Summary

Category	Score	Notes
Civil Society Regulation	4.00	• CSOs may pursue any lawful purpose. However, the State has the power to frame laws and thus reasonable restrictions can be imposed on this right as well in the interest of the sovereignty and integrity of India as also public order. • The law does interfere with internal governance structures of CSOs and a CSO can voluntarily dissolve.
Domestic Tax Regulation	4.00	• Individuals and corporations can obtain 50% to 100% deductions on money donated to organizations with an authorized donee status. The ceiling on such donations (corporate and individual) is 10% of annual taxable income. In-kind donations are not tax deductible. • To receive a tax deduction, the recipient organization must be registered as tax exempt in India. • The process of receiving the tax exemption status is clear and predictable. A broad range of CSOs are eligible for tax exemption
Cross-Border Flows Regulation	3.50	• Cross border cash donations are regulated under Foreign Contributions Regulation act but **otherwise tax exempt** . All foreign contributions received must be reported to the government within 30 days. In kind donations receive customs duties and VAT. • Sending international contributions requires permission from the Reserve Bank of India.
Overall	**3.80**	• **The policy environment in India is slightly restrictive to philanthropic activity due to small barriers for CSOs, cross-border outflows, and a ceiling on deducible donations.**

[1] World Bank. (2012). Data retrieved December 26, 2012, from World Bank Databank.
[2] Central Intelligence Agency. (2012). Data retrieved December 26, 2012, from The World Factbook 2012.
[3] World Giving Index. (2012). Kent, UK: Charities Aid Foundation, 2012.
[4] Ibid.

Socio-Cultural Background on India's Giving Environment
Provided by Noshir H. Dadrawala
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Voluntary effort has always been an integral part of Indian culture and social tradition. In India, the concept of Daana (giving) goes back to the Vedic period. The roots of the voluntary/nonprofit sector in India can be traced in philanthropic and religious obligations enjoined on individuals to help the needy. Charity inspired by religious beliefs and values continued to remain popular and fairly widespread in pre-colonial India.

Some experts in India believe that while India has an ancient and strong tradition of philanthropy, what it lacks today is "vision." In 1922, Mahatma Gandhi enunciated his vision of the ideal state, which he called "Ram Rajya." He conceptualized a society based on social and political order in which the poor could hope to get protection, women to live in safety and the starving millions to see an end of hunger. Some experts believe that since India's independence the voluntary sector has been devoid of vision.

As far as law is concerned, the various Trusts Acts, the Societies Registration Act, and the Income Tax Act do not mention CSOs specifically, but only refer to organizations of "Charitable Purpose." Development organizations today encompass a wide-ranging field of activities, including designing and implementing innovative programs in various sectors of development. Their activities also include work in various areas of research, reporting, documentation, and training to support grassroots initiatives, and also involve highly technical and technological outputs.

According to the Central Statistical Institute of India there are 3.3 million registered NGOs. It is difficult to say how many are really active. It would probably be a million.
Like for any other sector (including government and corporate) there is a degree of mistrust or to put it more correctly a lack of proper understand, insight and appreciation of the non-profit sector and its work. The well-known NPOs who raise a lot of public money are quite transparent. But having said that, the general public perception is that NPOs are not transparent enough. It could take a few months to get an NPO registered.

India has moved on from charity to philanthropy, and now venture philanthropy. The number of high net-worth individuals (HNIs), especially in Asian countries, including India, is booming. The number of millionaires in India has surged to a record high of 153,000 in 2010, making the country's HNI population the 12th largest across the globe. The increase in India's HNI population has also helped Asia-Pacific overtake Europe as the region with the second-highest number of millionaires, as per the annual World Wealth Report of Merrill Lynch Wealth Management and Capgemini.

However, the question remains: does more wealth automatically lead to increased giving? Conventionally, this has been true. Ford and Carnegie 'gave' only because they had the wealth in the first place. But, wanting to give is easy, it's giving wisely that's challenging. In The Gospel of Wealth (1889) Andrew Carnegie observes, “It is more difficult to give money away intelligently than to earn it in the first place.”

Today, philanthropists are not just looking for the ‘feel good factor’. They are looking for measurable impact and a sound return on their social investment. They are looking for innovation and willing to provide ‘risk capital’. And, most important of all, they are looking for credible CSO partners. They are looking out for CSOs which have systems of accountability and transparency and are governed on the basis of shared values.

Scoring of India's Civil Society Regulation
Provided by Noshir H. Dadrawala

Indicator Question 1: To what extent can individuals form and incorporate the organizations defined?	**Score: 4.0**	The law does not prohibit the formation and operation of 'unregistered' groups. An 'Association of Persons' (AOP) whether registered or unregistered is recognized under law. CSOs may pursue **any lawful purpose**. However, the State has the power to frame laws and thus **reasonable restrictions can be imposed** on this right as well in the interest of the sovereignty and integrity of India as also public order. Registration processes are procedurally long and often complex but otherwise clear and well established. Any person above the age of 18 can be a founder. In most cases, it is not necessary to have capital or assets at time of establishment. **A fixed set of documents** like Memorandum of Association & Rules, Affidavits etc. are required along with a nominal registration fee. Registration processing is generally carried out in an apolitical manner. But, there are often **inordinate procedural delays**. In the interest of natural justice, a reason is almost always given explaining why registration is denied and there is always the right of appeal to a higher judicial authority.
Indicator Question 2: To what extent are CSOs free to operate without excessive government interference?	**Score: 4.0**	The law allows **various forms of registration** – as a trust, a society, or as a nonprofit company. The **law does interfere** with internal governance structures. In all cases a Governing Board is required which may be permanent or rotating or appointed by periodic elections by members of the organization. If funds are received from a 'foreign source', the organization comes under the Home Ministry's 'Foreign Contribution Regulations Act 2010' under which an organization being of a political nature cannot receive funds from a 'foreign source'. However, an organization of a political nature may receive funds from a valid source within the country. CSOs are permitted to contact and cooperate with colleagues in civil society, business and government sectors, both within and outside the country with no specific restrictions. At best it is regulated. CSOs are permitted to participate in networks and use the Internet and all forms of social media. Reporting requirements such as filing annual returns with the registering and tax authorities **are fairly clear and routine.**
Indicator Question 3: To what extent is there government discretion in shutting down CSOs?	**Score: 4.0**	A CSO may **voluntarily dissolve** or terminate. The law broadly requires that at least three fifths of the organization's members must vote in favor of such a termination and any surplus funds or property of the CSO cannot be distributed among its members but must instead be given to a CSO with similar objects or mission. In case any government authority at the State or Federal level considers the activity of a CSO illegal it could freeze it's back accounts but for a limited period of time and as a principle of natural justice, due opportunity would be given to the CSO to explain why the government should not terminate it. The CSO would also have the right of **appeal to a court of law.** Despite this, recently the Ministry of Home Affairs cancelled the registration of over 4,000 CSOs in a rather arbitrary manner. For this reason, a score of 4.0 is applied.
Average Score on Civil Society Regulation: 4.00		

Scoring of India's Domestic Tax Regulation
Provided by Noshir H. Dadrawala

Indicator Question 4: Are there income tax incentives (at national, state, or provincial levels) in the form of credits or deductions for individuals and/or corporations to donate money or charitable gifts?	**Score: 4.0**	Donations made to most CSOs by an individual or corporate donor can claim 50% tax deduction. The ceiling for such a deduction is 10% of taxable income. In certain cases where CSOs work for the rural poor or urban slum dwellers the tax deduction is 100%. Donations to Research organizations qualify for 175% tax deductions. *(This question does not require a score by the expert. CGP applied a score of 4.0 On the positive side, tax deductions are available. On the negative side, the ceiling on such donation is relatively low.)*
Indicator Question 5: To what extent is the tax system favorable to making charitable donations?	**Score: 4.0**	Under section 35 AC, a donor giving to a project for uplift of the rural poor or urban slum dwellers can claim 100% tax deduction. The process of receiving tax benefit **is clear and predictable.**
Indicator Question 6: Do CSOs receive tax exemptions in the form of property tax exemptions, income tax exemptions, or others? If so, what are these exemptions?	**Score: 4.0**	The income of **a CSO is tax exempt provided** it follows certain norms laid down under law such as the organization must apply at least 85% of its income in any given financial year on the activities of the CSO, which includes administrative expenses. Funds can be invested only in approved securities and the governing board members should not derive any personal benefit from the CSO. *(This question did not require a score by the expert; CGP applied a score of 4.0. This may be changed based on alterations to question 7 below.)*
Indicator Question 7: To what extent is the tax system favorable to CSOs in receiving charitable donations?	**Score: 4.0**	The income of a CSO is tax exempt provided it continues to operate within the **clear norms laid down under income tax law**. Income of a CSO would include donations and grants, fees for services charges, sale of products (usually made by beneficiaries of the CSO) rent, subscription fees from members etc. The ceiling on business income for CSOs that are not established for relief of poverty, or health care or education and instead falling under the category "any other object of general public utility", is currently 2.5 million Indian rupees. **The process of receiving the tax exemption status is clear and predictable**. A **broad range of CSOs are eligible for tax exemption** from those addressing poverty and literacy issues to those working on health, environment, culture, sports, livelihoods and any other object of general public utility. All these CSOs are eligible for private donor support. NPOs cannot generate any business income over 2.5 million and thus remain donor dependent. Investment of NPO funds is highly regulated (cannot invest in shares or stocks only bank fixed deposits, government bonds etc.)
Average Score on Domestic Tax Regulation: 4.00		

Scoring of India's Cross-Border Flows Regulation
Provided by Noshir H. Dadrawala

Indicator Question 8: Are there costs/taxes on cross-border philanthropic cash and/or in-kind donations (e.g. customs, duties, VAT, etc) ?If so, what are these costs?	**Score: 3.0**	Cross border cash donations are regulated under Foreign Contributions Regulation act but **otherwise tax exempt**. In kind donations have **customs duties and VAT.** Sending charitable contributions outside India is highly restricted. However, according to USIG, nonprofit organizations involved in relief work and in the distribution of relief supplies to the needy are 100% exempt from customs duty on the import of items such as food, medicine, clothing and blankets. *(This question did not require a score by the expert. CGP applied a score of 3.0. On the positive the cost of receiving funds is minimal. On the negative, the process of sending funds abroad is highly restricted.)*
Indicator Question 9: To what extent is the legal regulatory environment favorable to cross-border flows impeded?	**Score: 4.0**	With permission of the Home Ministry under **Foreign Contributions Regulation Act (FCRA) cross border donations can be made and these funds received by the CSO in India would be tax free**. However these have to be reported annually to the Home Ministry. The only cost involved would be bank transfer charges. Sending charitable contributions outside India is highly restricted. International contributions are only made after obtaining permission from the Reserve Bank of India. Funds coming into India from foreign sources are regulated under the Foreign Contribution Regulation Act 2010. Organizations of a political nature are not allowed to receive funds from foreign sources under FCRA. 'Political Nature' has not been clearly defined but it would include agitation against the government of India.
Average Score on Cross-Border Flows Regulation: 3.50		

Overall Philanthropic Freedom Score*: 3.80

***This score reflects equal weighting of the three categories described above.**