



India

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Section One: CSO Formation, Operation, & Dissolution

The questions in this section pertain to the laws and regulations governing civil society organizations (CSOs). CSOs refer to a wide range of groups including the following: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations. The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question One: To what extent can individuals form and incorporate the organizations defined?

In India, the law permits individuals to act collectively through either registered or unregistered groups, and does not specifically prohibit the formation and operation of “unregistered” groups. While many organizations start as unregistered groups, they usually register once they reach a stage where growth becomes challenging in the absence of registration. Being registered also confers onto groups a degree of credibility that may aid fundraising, as foundations and companies are generally reluctant to provide funds to unregistered groups. Furthermore, registration also allows organizations to qualify for tax exemptions and allows donors to receive tax deductions. Finally, a CSO can also be established as a trust with a token sum of money—usually around 10 USD—as the ‘trust property’ or as a Society or nonprofit company without any share capital.

Reviewer
Score
3.0

While the registration process for most Indian organizations is relatively time intensive, if the objects of an applicant are for “charitable purposes”, registration is almost invariably granted. The founders of an Indian CSO may be individuals, a trust, or a company, although a minor or anyone who

cannot legally be party to a contract cannot serve as a founder. Unfortunately, participation by foreigners in the founding process is actively discouraged by the rules of the Foreign Contribution Regulation Act (FCRA).

The documents required for registration are simple and standardized. As such, the time-intensive nature of the procedure stems not from the requirements imposed upon CSOs, but rather from a government registration system that is painfully slow.

The registration fees themselves are quite reasonable at about 20 USD and the seemingly high cost of registration is primarily due to the commission that founders usually pay to a professional who does the actual registration work. There is, however, no real need to employ a professional for registration, and many groups only do so to expedite the process and for convenience. Taken together, it usually takes between one and three months to register a CSO.

Unfortunately, Indian law does not include adequate safeguards during the registration process, and notably lacks a fixed time period within which the responsible registration authority must review and decide upon registration. The law does, however, provide a few written grounds on which registration may be denied and authorities generally operate in a politically neutral manner, and provide a written statement justifying their decision. In case of refusal, CSOs also maintain the right to seek redress with a higher authority such as a tribunal or a court of law.

A CSO's governing body's activities are somewhat transparent, and most—though certainly not all—of the bodies have their own website that provides reasonable data and information to the public. There is, however, no requirement for them to do so.

Question Two: To what extent are CSOs free to operate without excessive government interference?

Indian law allows for sufficient discretion in setting the structure and governance of CSOs. The government's role is one of a "Regulator" and does not act as the "Controller" of the internal policies and governance of a CSO. Under the Income Tax Law and the country's Public Trust laws, "charitable

Reviewer
Score
3.8

Hudson Institute

purposes” do not include political purposes, and consequently those organizations wishing to pursue a political object or agenda must register as a political party. Similarly, any objective that could pose a potential threat to the country’s sovereignty is considered unlawful. CSOs can only engage only in charitable activities and any economic or business activity—unless incidental to the objects of the CSO—could lead to the loss of tax exemptions. Indian CSOs are also prohibited from investing their funds in shares or stocks, and may only invest in government bonds or deposit them with a local bank.

CSOs are permitted to contact and cooperate with colleagues in civil society, business and government sectors, both within and outside the country. CSOs are also permitted to participate in networks and to use the Internet and all forms of social media as they see fit. The government does, however, place conditional restrictions on certain kinds of content, and under the Information Technology Rules 2011 may limit speech that undermines the country’s unity.

Reporting requirements are fairly clear and predictable, although they vary among India’s various states. For example, while certain states like Maharashtra have a charity commissioner, others do not and are instead regulated only by the tax authorities.

Question Three: To what extent is there government discretion in shutting down CSOs?

The governing bodies of Indian CSOs are able to voluntarily terminate their operations, although some restrictions and conditions do apply. Generally a trust is required to obtain a court order before it can be dissolved, as they may not be voluntarily or involuntarily terminated. However, charities, societies, and companies can self-terminate by passing a resolution at a General Meeting with three fifths of its members voting in favor of the dissolution.

Reviewer
Score
4.0

In case of involuntary termination, notice and the opportunity to be heard prior to termination would be given by the courts, which usually—but not always—operate independent of political considerations. Upon dissolution

and after having met all outstanding liabilities (if any) the funds of the CSO may be donated to a CSO with similar objects. Assets cannot, however, in any circumstance be distributed among the Board or other members. For trusts, the order for winding up can only be issued by a civil court. For their part, societies and companies can be wound up following a successful vote from the General Body of Members.

Section Two: Domestic Tax and Fiscal Issues

The questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically. The scoring for these questions pertains to the donor and receiving entities.

Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Individuals and corporations are generally eligible to receive 50% tax deductions on donations given to those CSOs which possess an 80G certificate. Even more generous incentives are also available for those that donate to government-managed CSOs, which allow donors to receive a deduction on up to 100% of the donation. Such deductions are not, however, infinite and no more than 10% of the donor's gross total income can be deducted. Additionally, Indian law provides no deductions for in-kind donations.

Reviewer
Score
4.0

The Indian tax code also provides a number of specific deductions targeted at certain kinds of giving. For instance, section 35AC of the Income Tax Code provides a 100% tax deduction for contributions made to a CSO project or program if it is focused on rural welfare or slum rehabilitation. Similarly, donations made to certain recognized research institutions may qualify for an extremely generous 175% tax deduction provided that the institutions are approved under Section 35(1)(ii) of the Code.

The process of receiving tax benefits when making donations is quite clear and predictable. When computing an individual's income which is liable to tax, a donor can deduct 50% of the amount contributed to a CSO having

80G tax deduction certificate issued by Income tax. In most cases, no additional certification or proof is needed.

Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

While the income of a CSO is generally tax exempt, Indian tax law provides CSOs no exemption from property taxes or from VAT. Additionally, certain categories of CSOs offering services—usually related to consulting—are not exempt from service taxes.

Reviewer
Score
4.0

To attain tax exempt status, Indian CSOs must apply to the Income tax office to receive a tax exemption certificate known as a u/s 12AA. The process of receiving this certificate is relatively clear, but is frequently subject to inordinate delays. As a result, while the process can technically be completed in a week, it usually takes around four months. This delay is often due to the numerous forms and permits required by the government, and the chronic understaffing of government departments. Generally a CSO which articulates a clear “charitable purpose”—as defined in section 2(15) of the 1961 Income Tax Agreement—in its charter would be eligible for tax exemption, and CSOs whose objects include poverty relief, education, medical relief and any other object of general public utility almost always manage to qualify.

Any CSO whose registration meets the criteria defined under section 12AA of the Tax Code—which is the vast majority of CSOs—is also eligible to receive modest to large support from private donors. As intimated earlier, registration is of paramount importance for most CSOs, as a registration that complies with the statutes under section 80G or 35AC enables CSOs to respectively qualify donations for 50% and 100% tax deductions.

Section Three: Cross-Border Philanthropic Flows

The questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities. This category includes open-ended questions and ranking questions.

Question Six: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Foreign contributions received by CSOs in India are regulated under the 2010 Foreign Contribution Regulation Act (FCRA). Such foreign contributions received by a CSO are tax exempt provided that the organization has obtained tax exempt status under the Income tax law. It is important to note that no CSO operating in India whether registered or not can receive foreign contributions without first

obtaining the prior permission of the Home Ministry. The Home Ministry will only grant permission if the applicant is registered with the central government and agrees to channel the donation through certain designated banks. The Home Ministry also requires CSOs receiving money from abroad to separately track incoming funds and record how they are used.

Reviewer
Score
2.0

Question Seven: To what extent is the legal regulatory environment favorable to sending cross border donations?

Every CSO that enjoys tax exemptions is required to use its income for charitable purpose in India only. For a CSO to send funds out of India would require the permission of the Reserve Bank of India and the funds could only be used “for a cause in which India is interested”. To wire or transfer money out of India, banks usually require the CSO to complete a form with the Reserve Bank of India which requires the CSO to note the intended destination and purpose of the funds.

Reviewer
Score
2.0

Section Four: Socio-Cultural Narrative

The questions in this section will not be used in the final ranking. Instead, these questions will be used to provide a more complete picture of the philanthropic environment in the final report. In addition to the expert’s narrative, CGP will compile data from other sources, such as the World

Values Survey and the Gallup World Poll to societal perception and cultural environment of philanthropy.

Philanthropic activity is perceived with mixed feelings in India. On the one hand, there is growth in giving thanks to the country's steady economic growth. On the other hand the government continues to have a love-hate relationship with civil society.

Giving and volunteering are both part of Indian culture and can be found in many of the country's foundational and religious texts—some of which are nearly 5,000 years old. Philanthropy is represented in many of the central tenants of Indian culture, and include *Daan*—or general giving—and various forms of philanthropy such as *Anna Daan* (feeding the poor), *Shram Daan* (giving voluntary service), and *Vastra Daan* (giving clothing and goods).

Giving to religious institutions continues to remain especially popular in India, as does giving to groups concerned with education and health. There is, however, scant support for sports, the arts, and culture.

While CSOs are generally perceived as a positive force in Indian society, they are also seen as often lacking professionalism, transparency, and accountability. Nonetheless, giving and volunteerism will likely continue to grow and the country's philanthropic sector will undoubtedly expand.