

A Brief Note on Ninth Report of Second Administrative Reforms Commission Social Capital – A Shared Destiny

Introduction

The Second Administrative Reforms Commission was constituted by the Govt. of India, Ministry of Personnel in Aug, 2005 under the chairmanship of **Shri Veerappa Moily**. The purpose of its constitution is to prepare a plan of action for a complete makeover of public administrative system. The main aim of the commission was to recommend ways to make Indian public administration more accountable, sustainable, proactive and efficient.

The Commission has, inter alia, considered the following : (i) Organisational structure of the Government of India (ii) Ethics in governance (iii) Refurbishing of Personnel Administration (iv) Strengthening of Financial Management Systems (v) Steps to ensure effective administration at the State level (vi) Steps to ensure effective District Administration (vii) Local Self-Government/Panchayati Raj Institutions (viii) Social Capital, Trust and Participative public service delivery (ix) Citizen-centric administration (x) Promoting e-governance (xi) Issues of Federal Polity (xii) Crisis Management (xiii) Public Order.

The commission till date had submitted 15 reports to the Government of India.

The Report No. 9 of the Commission titled 'Social Capital - A Shared Destiny' deals with the status of social capital which was accepted as the necessary element of development by the commission. The commission studied the social capital institutions or the third sector in the report, including the voluntary sector in detail.

Theoretically, social capital organisations are supposed to play four crucial roles in society:

- i) **The Service Role:** - It encourages people to cope with a public problem at the primary level. People tend to let non-profit organisations lead the way in responding to critical public needs. The non-profit sector thus functions as a first line of defence, a flexible mechanism through which people concerned about a social or economic problem can begin to respond, without having to convince a majority of their fellow citizens that the problem deserves a more general, government response.
- ii) **The Value Guardian Role:** - The role of the non-profit sector is to function as a "value guardian" in society, as exemplar and as embodiment of a fundamental value emphasizing individual initiative for the public good just as private economic enterprises serve as vehicles for promoting

individual initiative for the private good. In the process, non-profit bodies foster pluralism, diversity and freedom.

- iii) **The Advocacy/Social Safety-Valve Role:** - Non-profit organisations also play a vital role in mobilizing public attention to societal problems and needs. They are the principal vehicle through which communities can give voice to their concerns.
- iv) **The Community Building Role:-** Finally, non-profit organisations play a vital role in creating and sustaining social cohesiveness through bonds of trust and reciprocity that seem to be pivotal for a democratic society and a market economy to function effectively.

The report gives several ways by which the social capital can improve govt performances. First, it can broaden government accountability; government must be responsive to citizens at a large. Secondly, it can facilitate agreement where political preferences are polarized. Thirdly, it induces innovation in policy making. Finally it enhances the efficiency of delivery of many services at the local level through involvement of residents.

Accountability of the government is the most important means by which social capital influences performances. Social capital can bring convergence among different players on important issues. Social capital also leads to greater innovation and flexibility in policy making. Public service delivery can be efficiently administered, if social network groups are in operation and they mobilize people around common issues. Thus, in concrete terms, the growth of social capital leads to evolution of a healthy civil society manifesting as a distinct entity in the space between public sector and the business- often called the third sector or non profit sector.

In the Chapter 2 while discussing about the evolution and growth of the Social Capital Organisations the commission looks at the brief history behind the evolution and growth of the Social Capital Organisations in India. The report also studies in detail the laws related to Social Capital Organisations enacted before independence and their existence today and the new laws after independence.

It also discusses, how our constitution has provided space for Social Capital Organisations via article 19 (1) (c), article 43, and through Schedule 7, the union (central government), state, and concurrent lists of responsibilities are mentioned.

It also looks at the 'National Policy on the Voluntary Sector' and criticizes it for lack of clarification in defining what exactly the non-profit sector/ or third sector in India is. The report says the present definition of voluntary sector is does not differentiate between charitable organisations, social clubs, business associations, professional bodies etc. the report place sector into two different distinct categories.

The first category consists of pure member-centric Bodies. While serving some public purpose, they primarily exist for taking care of the interests, needs and desires of their own members. The examples are social / welfare clubs, business associations, labour unions, Professional Bodies and political parties. The second category consists of public-serving organisations which are formed to serve the needs of the general public. The examples are charitable grant-making institutions, religious formations, and a wide range of educational, scientific and other related service organisations whose activities may range from running orphanages and old age homes to managing advocacy groups on current issues.

The report says that this distinction is recognized formally by law in most of the countries and they are guided by different taxation provisions. The commission has recommended to follow the example of USA, where public-serving organisations fall into a special legal category – Section 501(c) (3) of the US Tax Code – that makes them eligible not only for exemption from federal income taxation and most State and local taxation, but also for tax-deductible gifts from individuals and corporations.

The report also talks about the sector being a major economic force, because of its huge number of organisation as well as huge number of people working in the sector. Although the commission knows the fact that there is lack of data on the voluntary sector.

The Chapter 3 of the report specifically discusses the voluntary sector in detail. The report also highlights the various challenges faced by the sector and also gives a set of recommendation to the Govt. of India for the smooth functioning of the sector. The Chapter deals with issues concerning Societies and Trusts in detail. The Commission has suggested drafting of a model law which could be enacted by the State Governments with minor modifications. The Report also suggests some changes with regard to registration and exemption of these Bodies under various provisions of the Income Tax Act. The Commission has also examined the Foreign Contribution Regulation Act (FCRA), 1976 and the Foreign Contribution Regulation Bill, 2006 in detail and has suggested amendments in the latter. One of the key recommendations stipulates that organisations receiving foreign contribution equivalent to less than Rs.10.0 lakh in a year (the figure to be reviewed from time to time) should be exempt from registration and other reporting requirements. The organisations, instead, should be asked to file an annual return of foreign contributions received by them and its utilisation at the end of the year. This step will allow the authorities to concentrate more on organisations receiving larger foreign funding. It is also proposed in this Chapter that there is need to set up an independent accreditation agency for the voluntary sector.

The chapter broadly discusses four major heads regarding the voluntary sector in India:

- **Legal and Institutional Framework:** In this segment of legal and institutional framework the report looked at the societies, trusts, waqfs, non profit companies and trade unions; various laws related to them and their status in the country etc. the report also compared their status to the status of the charity institutions of USA and UK, recommending a new legal framework for the sector. In the new legal framework the report recommends a 'new model law for societies and trusts' to overcome the diversity of laws across the states. The model law would: a) define charity and charitable purpose, b) new institutional mechanism in the form of autonomous body with defined functions, c) to minimize the interface with the state government, where the government would work as a facilitator and developer, giving the voluntary sector the freedom to function as per their organization memorandum.
- **Revenues of the Third Sector:** In this section, the report looks into the fund raising pattern of the voluntary sector, which is primarily from four sources viz. individuals, private foundations (both global and local), government and business houses. The report reflects that the character of funding to the voluntary organizations is highly skewed. Big organization which look at the contemporary issues and project themselves well secure the bulk of funding, leaving the small residue for smaller organizations. While talking of government funding the report also talks about the accreditation of voluntary organization based on the three principles of accountability and transparency, no ranking or ratings, and norms compatible to the sector. The steering committee on the voluntary sector for the 11th five year plan already recommended setting up of a National Accreditation Council (NAC).
- **Charitable Organizations and Tax Laws:** In this section the report discusses The Income Tax Act, 1961, which also applies to all the voluntary organizations. Broadly the act provides the benefits to the charitable organizations in the following three ways:

 - a) Certain Income are not included in the total income
 - b) Deduction to be allowed from the profit and gains of business and profession
 - c) Deduction to be made in computing total income for the purposes of calculating tax liability on the total income

To sum up there are four areas of interface between the sector and the Act; getting exemption approved section 10 (23C), process of getting registered as charitable institution under section 12 A and 12 AA, getting 80 G exemption certificate status and claiming deductions under section 35, 35 AC and 35 CCA. The report recommends that there needs to be simplification of procedure under section 12 AA and section 80 G.

- Regulation of Foreign Contribution: This section discusses The Foreign Contribution (Regulation) Act, 1976 (FCRA), the act's primary objective is to regulate and acceptance and utilization of foreign contribution. The main requirements are to: a) register itself with the Union Govt, b) agree to receive funds only through a particular branch of a bank, c) give intimation to the union govt as to the amount of each contribution received etc. The report analyses that FCRA is a rigorous scheme. The report also discusses the new bill called the FCR Bill 2006, which seeks to replace the existing act. The report suggests that the new bill will make the life difficult for the voluntary sector. Thus the report recommends a reform in the registration procedure where the genuine organization should not be harassed and rationalization of procedures, as the current procedure is long and cumbersome and causes harassment to applicants.

Summary of Recommendation given by the Commission

New Legal Framework for Charities in India

a) The Union Government should draft a comprehensive model legislation covering both Trusts and Societies in lieu of the existing laws on Societies, Trusts, Endowments and Charitable Institutions etc.

b) In place of the present charity administration consisting of a Charity Commissioner / Inspector General of Registrations as existing in the States, the proposed law should provide for a new governance structure in the form of a three member Charities Commission in each State with necessary support staff for incorporation, regulation and development of Charitable Organisations. The Chairman of the Commission should be a law officer drawn from the cadre of District Judges. Out of the other two members, one should be drawn from the voluntary sector and the other would be an officer of the State Government. In addition, the State should also have a Charities Tribunal which would exercise appellate powers over the orders of the Charities Commission.

c) The proposed model legislation should indicate a cut off limit with regard to the annual revenue of a Charity. Organisations having an annual income below this threshold will have lighter compliance requirements with respect to submission of returns / reports / permission etc. However, if irregularities are detected in their functioning, the organisations will be liable for legal and penal action. To start with, the cut off limit could be set at Rs.10 lakhs which could be reviewed for upward revision once in five years.

d) The government should set up an Inclusive Committee which will comprehensively examine the issue of defining 'Charity' and 'Charitable Purpose' and

suggest measures to “soften” charities-government relationship, particularly in tax matters.

- e) The model legislation should take into consideration the views and suggestions made above with regard to the following issues of charity administration:
 - i. Interface with the State Government
 - ii. Alteration in the memorandum
 - iii. Approval on change report
 - iv. Alienation of immovable property
 - v. Contribution by Public Trusts to the State Government

Accreditation of Voluntary Organisations

- a) There should be a system of accreditation / certification of voluntary organisations which seek funding from government agencies.
- b) Government should take initiative to enact a law to set up an independent Body - National Accreditation Council - to take up this work. In the beginning, Government may need to provide a one time corpus of funds to this organisation.
- c) The above law should provide details with regard to the constitution of the Council, its functions, its powers to levy appropriate fees from the applicants, and other related matters.

Charitable Organisations and Tax Laws

- a) Under Section 12AA and Section 80G, the registration or approval should be granted or an order rejecting the application should be passed within a period of ninety days from the date of filing of the application instead of the present one hundred and eighty days.
- b) In view of the fact that infrastructure projects are a critical component of charitable institutions, the period for accumulation of surplus which is currently five years needs to be further enhanced.
- c) The present National Committee may be replaced by four Regional Committees to recommend “deduction on expenditure” to the Union Government under Section 35AC of the Income Tax Act.

Regulation of Foreign Contribution

- a) The Foreign Contribution (Regulation) Bill, 2006 needs to be amended to include inter-alia the following suggestions:
 - i. There should be a fine balance between the purpose of the legislation on one side and smooth functioning of the voluntary sector on the other. The objectives of such a regulatory legislation should be properly enunciated to avoid subjective interpretation of law and its possible misuse.

ii. There should be a time limit for procedures falling under Section 11 (seeking registration or prior permission for receiving foreign contribution).

iii. Transparent rules/guidelines should be prescribed for inter-agency consultation particularly in respect of (a) the minimum amount of donation which would require inter-agency consultation, (b) the level of the Authority which would authorise it, and (c) setting up time limits for such procedures.

iv. To facilitate (a) speedy disposal of registration / prior permission petitions received from organisations, (b) effective monitoring of their activities, and (c) proper scrutiny of returns filed by them, some of the functions under the Foreign Contribution Regulation Act should be decentralised and delegated to State Governments/ District Administration.

v. The Bill has become a subject of intense debate and is being perceived as an intrusive piece of legislation which intends to place charities, receiving foreign donation under the subjective scrutiny of the authorities. The main arguments are:

- The aim of the Bill, as stated in the preamble is to prohibit the acceptance and use of foreign contribution for activities detrimental to 'national interest'. The term "detrimental to national interest" leaves scope for subjective interpretation.
- There are several grounds on which a certificate of registration could be refused. The words like likelihood of diversion of funds for 'undesirable' purposes or not having undertaken 'meaningful' activity or not having prepared a meaningful project for the 'benefit' of the people admit subjectivity.
- The provision for renewal every five years could lead to harassment.
- The Bill gives the executive, wide discretionary powers to cancel a certificate of registration in the 'public interest'. This is too broad, and open to subjective interpretation. Cancellation of the certificate should only be permitted upon breach of specific legal obligations.
- The powers of inspection, search and seizures may be tools for causing harassment to NPOs and puts them virtually in a position of subordination to the authorities.
- The provision for a cap of 50% on 'administrative expenses' is arbitrary and in many cases will stifle organisations working on projects which have high human resource content.
- The proposed Bill tries to place unnecessary restrictions on resources and investment of an organisation.
- The provision of the Bill prohibiting some categories of individuals from receiving foreign contributions goes against the principle of natural justice.

b) Organisations receiving an annual foreign contribution equivalent to less than Rs.10.00 lakh in a year (the figure to be reviewed from time to time) should be

exempted from registration and other reporting requirements of the law. They should be asked, instead, to file an annual return of the foreign contribution received by them and its utilisation at the end of the year. The law may provide that they may be liable to be investigated, if there is a reasonable suspicion of suppression / misrepresentation of facts, and penal provisions of the law will be used against them in case violation is established.

Conclusion

The social capital report very well highlights the present day as well as future challenges to be faced by the voluntary sector. It discusses every detail about the voluntary sector, right from its evolution and growth to the legal and institutional framework, financial framework, tax laws, and regulation of foreign contribution. It provides a set of recommendation which would help the organisation function smoothly to fulfil their goals.