REGULATORY COMPLIANCE

A HANDBOOK TO UNDERSTAND THE LAWS OF VOLUNTARY SECTOR

VANI
Celebrating 30 Years
VOICE OF THE VOLUNTARY SECTOR

DRAFT

Preface

As a change maker and pillar of growth, Voluntary Development Organizations have been tackling with social challenges that have restricted the development of people in India. The Indian voluntary sector is highly diverse in nature, size catering to various social development issues, acting as the direct interfaces with the people and partnering with the Government of India. However, despite their contribution they are regulated under diverse laws which lack uniformity and contribute to difficulty in their understanding of various provisions.

In recent times, the voluntary development sector has raised serious concerns regarding the new and existing laws, their procedures and applicability. Several amendments have been made in various laws over the period of time that concern the voluntary development sector. This have created a state of confusion among the voluntary organizations. Additionally, the sector faces restrictions in understanding the language of complex laws thus affecting the compliance. The big organizations at national level who have the resources and means are still able to comply with laws. But the organizations at grassroots suffers the most.

In this situation, the manual will help the organizations to effectively comply with various laws via following the procedures and provisions. I would like to thank Ms. Shruti Sharma, Programme Officer, VANI for preparation and documenting the manual and Mr. Arjun Phillips, Programme Manager for overall guidance. I would also like to extend my gratefulness to Civic Engagement Alliance for supporting the study.

Introduction

The Indian legal system was established to secure the constitutional rights and development of every citizen. But there are various social challenges that endanger the fundamental rights and development of people. These challenges are addressed by the Government of India which is considered the primary force for the growth of people and country. Amidst this the contribution of voluntary development organizations cannot be denied in eliminating the developmental hindrances and improving the lives of people.

Voluntary Development Organizations in India have been actively working since pre and post-independence. Since decades they have been an important growth pillars in the development of country. The voluntary sector is known for their vibrancy, innovativeness and research-based advocacy. Due to their vast experience, expertise and community connect, VDOs stand out with their different approaches. Voluntary organizations in India are vast and heterogenous in nature with different sizes, geographic location, basis (membership based, religious institutions, network or support based). They are also varied in terms of issues they address which ranges from health, education to right based advocacy, capacity building etc.

However, these legal frameworks were designed to support the working of voluntary sector, instead the laws have been controlling the civic space and civic sector. The sector faced restrictions in understanding the language and procedures of the law and moreover every law has different procedures to be followed which makes it more complex. Thus, this makes voluntary organizations struggle to comply with these procedures and laws which in turn impact their legitimacy and working.

To abridge this gap, the manual will cater to the requirements in understanding the laws and procedures in a simple manner. The uniqueness of this manual is that it is written in a story form to create a connect with the readers. The story captures not only the law and its applicability but also the context which will be relatable to

Organizations. This manual will help the voluntary organizations to effectively comply with the provisions of regulatory laws especially the grassroots organizations who find it difficult to comprehend and comply to different process of the laws.

Title: Compliance with the Laws

Once upon a time, in a town lived a group of four best friends Ashish, Neelam, Mohini and Neeraj. Growing up together, they all had different choices which they want to pursue in life. Ashish who was already preparing for Government Jobs, got selected in Ministry services at a very nice position. Neelam since childhood loves numbers and chose to be a Chartered Accountant. Mohini decided to work for a private company and Neeraj became a teacher. But both Mohini and Neeraj shared a common passion to do something constructive for their people and society. Although belonging to different work fields, they used to help one another when in need. All of them shared their life happenings and old days tale whenever they use to meet. The life was moving at its own pace in the town which was not a big metropolitan city but a small city with rural-urban set-up. The life and people of the town were simple and a little behind the fast pace of city life.

Amongst the hustle-bustle of job routine, Mohini noticed that the status of women was terribly bad in the town majorly due to their economic dependency on family or male counterparts. She decided to observe the whole situation more closely for a while and in due course learned that despite the government’s programs and various initiatives, the issues still persist at grassroot level which affects women of all age groups in the town. Mohini shared this observation with her friend Neeraj and explained that due to women’s economic dependency they do not have any say or decision-making power in family/ societal dynamics which not only affects their mobility and status but also lessens their say in matters of education, health of their children especially girl child.

Over a period of time they both observed the situation of women and decided to help improve their status in the town. However, due to no knowledge from where to begin this journey, both friends decided to seek advice. They went to their friend, Ashish who warmly greeted his friends and asked the purpose for a sudden visit. Mohini explained the scenario which she observed about women in town and shared the idea of helping women in town. Ashish who was working with Government, explained that there are various levels of doing social service.

- First, at individual level through volunteering;
- Second running a campaign which is a short-term activity for a particular cause;
- Lastly if a group of like-minded people joins and form an organization through which they manage and plan activities for the betterment of community which requires a formal set-up for implementing those plans and activities.

After several days of reading, researching, talking to different actors and people they decided to set out on this venture to start an organization. Soon they discovered there are other people who support this idea. They proposed them to join their mission and collectively agreed on the decision to start a Voluntary Development Organization (VDO).

Ashish knew about all the provisions that are required to start an organization. He explained that opening an organization is not an easy task, there are various process and regulations that have to be kept in mind. The legislations are made to hold VDOs accountable for their activities towards betterment of people and society. The Friends asked him to enlighten them more regarding the process of starting an organization. Ashish explained that in order to open an organization, one has to get registered. There are three types of Registration Laws for Voluntary Organizations: Societies Registration Act; The Indian Trust Act; The Companies Act. He explained in brief about the laws for friends to take the decision of registration of their organization.

He started explaining *Societies Registration Act*— all the societies which are to be registered under this act are nonprofit making entities. The law gave a legal standing to such societies and organizations. The act gave freedom to all kind of organization to get themselves registered under this act. Section 20 of the Act includes different types of societies registered under this act are charitable which includes societies, science, literature, fine arts, societies established for maintenance of libraries or societies for public museums and galleries. Both individuals and institutions can be the member of the society.

The Indian Trust Act— the act was for management of private trusts. The Act has different categories which includes- (i)Creation of trusts; Duties and liabilities of trustees; (iii) Their rights and powers; (iv) Their disabilities; (v) The rights and liabilities of the beneficiary; (vi) Vacating the office of trustee; (vii) The extinction of trusts and; (viii) Certain obligations in the nature of trusts. The India Trust Bill was introduced in Lok Sabha to amend section 20 to restrict private trust registered under this act for any lawful purpose.

Non-Profit Companies under Indian Companies Act— this act allows companies to obtain non-profit status under section 8 of the Act. According to Section 8 (1) (a) of the Indian Companies Act, 2013, a Section 8 company can be established for promoting commerce, arts, science, education, research, social welfare, religion, protection of environment etc. This increases the scope of work for Section 8 companies as it includes the promotion of objects like education, research, social welfare, protection of environment which had not been specified in the earlier Act. This indicates that the central government is also committed towards promoting social development. A Section 8 company must apply its profits, if any or other income to the promotion of its objects and prohibits payment of any dividend to its members.

Societies Registration Act

Ashish suggested Mohini and Neeraj to get their organization registered under Societies Registration Act. Upon agreement to his suggestion Mohini asked to brief them about the procedure and the other important aspect about the Act that needed to be clarified. Ashish explained to them in details how and who can form society, to what this act will apply and what are the other requirements for fulfilling the compliance of the Registration Act. Ashish described the process of the act, he explained for registering under this act, one has to—

- Decide the cause and mission of the Organization

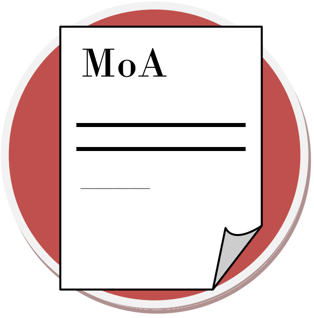
Reflecting the purpose, its goals, the target group and its objectives.

- Set up the Board of Directors/ Members

Board members hold the authority and responsibility to ensure the fulfillment of an organization's mission.

- *Decide the name of the Organization*

Name is a requirement for any organization and should not be similar to any Government Body, Board or Ministry, or any other registered company or VDO.



➢ *Memorandum— Article of Association/ Incorporation*

Every organization is legally required to document a trust deed/ Memorandum of Association/ Bylaws. It contains the name and address of the VDO, mission and objectives, details of governing body members, staff information, rules and regulations, administrative laws and procedures.

➢ *Getting VDO Registered*

Registration of an organization is important as it provides organization a legitimate identity and a legal status. Once all the documents are ready, application form and the required fee is submitted, VDO can be registered.

Societies Registration Act

An Act for the registration of literary, scientific and charitable societies

WHEREAS it is expedient that the provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, [the diffusion of political education], or for charitable purposes

To what societies Act applies?

The following societies may be registered under this Act:- Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, [the diffusion of political education], the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

Who all can form a society? A society can be formed by “Any Seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as described in Section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with registrar of Joint Stock Companies form themselves into a society under this Act”.
What are the documents required for registration of a society? Documents required for registration of a society are: 1. Request letter to register a society under Societies Registration Act 1860 2. Two sets of Memorandum of association including list of proposed Governing Body and lis of desirous persons 3. Two sets of Rules and regulations framed for the functioning of the organization 4. Affidavits (on Rs.2/- stamp paper from p[resident/Secretary of the Society regarding the name/title of the society 5. Copy of residence proof of all desirous persons 6. Proof of ownership of the registered office of the society and no objection certificate(on rs. stamp paper)
What is a memorandum of Association of a society? The memorandum is the charter of the society. It contains the: • Name of the Society • The objects of the Society • The names, addresses and occupation of the members of the governing body • The place of the registered office of the Society The memorandum also contains the names, addresses and full signatures of the seven and more persons subscribing their name to the memorandum of association

Mohini and Neeraj get their organization “Saathi” registered by following the process and fulfilled all the requirements to run an organization. Mohini was made the Chief Executive Officer with the mutual agreement of all the board members. The organization focused particularly on empowering women economically through enhancing their existing skills and building new skills as well. The purpose was decided based on the research and observation done by Mohini and Neeraj— there was local skills of craftsmanship among women. The objective was to utilize and enhance those skills among women to create a market for their craft.

Income Tax

Mohini and Neeraj worked hard to generate the resources for the NGO's working as finance plays an important role in implementation of the activities/ programs. During the course, they learned to write proposals to raise funds from different sources—dialogued with Government and approached donors. They created a small team for implementing and monitoring the activities. A finance officer was also appointed to keep a record of finance and activities. Every year, Annual report of the organization was published in order to be accountable and transparent to donors. However, at the end of the first financial year for their organization, a new challenge brewed up as the Income Tax return needed to be filed which was also applicable to VDOs. The friends asked the help of another friend Neelam, who was a Chartered Accountant. she explained how all the finance and accounts needs to be maintained and audit reports to be made by an organization. Moreover, she elaborated on provisions under which VDOs are exempted from paying tax and certain services of the VDO on which Income Tax will be applicable.

Mohini shared their organization 'Saathi' has tie-ups with shops in Delhi Haat and other craft mela where they sell the goods produced by women. She asked her doubt regarding if this income from selling goods will incur any tax. Neelam explained that selling of the goods produced by organization will attract the provisions of section 2(15). She clarified further that under this particular section of Income Tax, any activity in the nature of trade, commerce or business will not be exempted. Thus, the organization have to pay the tax on the income generated from the goods and services.

Income Tax

The legal framework which governs the taxability of income of public charitable entities (including a trust, a company registered under Section 25 of the Companies Act, 1956 a society registered under the Societies Registration Act, 1860, or such other entities) is contained in one or more of the following Sections of Act:- (i) Section 2(15); (ii) Section 2(24)(iia); (iii) Section 10; (iv) Sections 11, 12, 12A, 12AA and 13; (v) Sections 35(1)(ii) and 35(i)(iii); (vi) Section 115BBC.

Section 2(15) :- The expression "charitable purpose" has been defined under Section 2(15) of the Act to include: (a) relief of the poor, (b) education, (c) medical relief, and (d) advancement of any other object of general public utility.

Section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the 'advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of –

(a) any activity in the nature of trade, commerce or business; or

(b) any activity of rendering any service in relation to any trade, commerce or business;

for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

Section 12A :- enacts that the provisions of Section 11 and Section 12 which provide for exemption of income to such trusts and institutions, will not be applicable unless such trust or institution has made an application in the prescribed form for registration to the Commissioner or Director, and it has been registered by the Commissioner or Director.

The Finance Act 2014 has made some further amendments by stating that where Eligible trusts or institutions which have been granted registration under section 12AA of the act will be eligible for benefits under sections 11 and 12 of the Act even for any earlier year which is pending assessment on the date of such registration.

What is the rate of taxation applicable to the taxable income if any, of a charitable or religious trust or organization?

Income derived from property held under trust wholly for charitable or religious purposes, to the extent it is not exempt under Sections 11 and 12. It is liable to tax at normal rates applicable to an Association of Persons (AOP) except when the same is in the nature of anonymous donations which will be chargeable to tax at the rate of 30 per cent. Further, in cases where exemption under Section 11 is forfeited by a trust or institution on account of a default under Section 13(1)(c) or 13(1)(d) (i.e., where the trust or institution either directly or indirectly benefits its author, founder or any other person mentioned under Section 13(3), or because the funds of the trust or institution were invested otherwise than in the specified modes), income of such trust or institution will be taxable at the rate (including surcharge) applicable to the highest slab of income for the assessment year under consideration.

However, Mohini was still concerned about all the procedures to be followed and requested Neelam to enlighten the Accounts team about the procedure of 12A and 80G specifically. Being the close friend of the CEO, Neelam agreed that she will be more than happy to help her. On this account Mohini, suggested if a workshop can be organized in which not only their organization but the fellow organizations can participate to gather knowledge about the procedures & nitty-gritty of Income Tax law. Neeraj who was present, agreed with the idea that it will help the VOs immensely. Neelam thought for a while and gave her consent for the workshop the idea to help out his friends.

Mohini following the lead asked organization’s program team to send invites and organize the workshop. The team worked hard to communicate with other voluntary organization’s account departments to participate in the workshop for more clarity and discussion on the Income tax, different sections under it and the procedures to be followed for compliance. On the said day, Neelam explained the details of various section under Income Tax law relevant to the voluntary sector. She further stated that an organization can avail income tax exemption by getting itself registered under Section 12A but such registration does not provide any benefit to the person making the donations. Elaborating further on this that Income Tax has certain provisions which offer tax benefits to the donors as well i.e. Section 80G. If a voluntary organization get itself registered under 80G then the person/ organization making the donation will get tax benefits. Voluntary organization such as Mohini’s organization, can register under these two sections to attract the potential donors. During the workshop, she clarified the doubts and answered all the questions and lastly explained the procedure of 12A and 80G in a simpler way for all the participants' easy understanding.

12A Registration Procedure

A duly filled Form 10A needs to be submitted to the Income Tax Commissioner by the organization

Following documents that must be attached:

- ✓ List of names, address and PAN details of the trustees
- ✓ A certified copy of the registration certificate when the organization was established
- ✓ A certified copy of documents (Trust deed/ MoA and AoA) which is the evidence that the institution exists and is registered.
- ✓ NOC from the Landlord (where the registered organization is situated)
- ✓ Copy of PAN card of organization
- ✓ Address proof for the organization, copy of Electricity Bill/ Receipt of House Tax/ Water Bill.

Commissioner of Income Tax to verify the application and call for any documents/ information necessary to satisfy about the genuineness of the activities of the trust

The Commissioner of Income Tax to pass the order in writing either granting or refusing the registration

Section:- 80G

Under Section 80 G of the IT Act, donors to such organizations are eligible for deduction as a percentage of the amount donated by them. In most cases the rate of exemption applicable is 50 per cent of the amount donated. For a donor to claim such exemption, the trust or institution to which the donation has been made must be one which has been approved by the Income Tax Department for this purpose.

What is the procedure to be followed by a trust or institution for obtaining such approval under Section 80G?

Section 80G(5) lays down the preconditions which must be satisfied cumulatively before a trust or institution can qualify for approval under Section 80G. These conditions are summarized as under:-

(i) The income of the fund or institution would not be includible in its total income by virtue of provisions contained in Sections 11 and 12, Section 10(23AA) or Section 10(23C);

(ii) As per instrument under which the fund or institution was created and as per rules governing it, no part of its income or assets is transferable, or to be applied for any purpose other than charitable purpose. Charitable purpose here would not include religious purpose in view of Explanation 3 below Section 80G. However, Section 80G(5B) permits application upto 5 per cent of the income for the year towards religious purposes;

(iii) The fund or institution is not expressed to be for the benefit of any particular religious community or caste;

(iv) It maintains regular books of account regarding its receipts and expenditure;

(v) The institution or fund is either constituted as a public charitable trust, or a society registered under Societies Registration Act (or its equivalent legislation), or a company registered under Section 25 of the Companies Act, or a statutory university or recognised educational institution, or an institution financed by the central or state government;

(vi) The institution or fund is approved by the Commissioner (or Director) in accordance with the rules made in this behalf.

What is the timeframe available to the Commissioner of income tax to decide on an application made by a trust or institution under Section 80G?

The Commissioner of Income Tax to whom the application is made has to dispose of the application within six months (excluding the period taken by the assessee for providing the information called for by the Commissioner in the process of granting approval).

80G Registration Procedure

1. Application

Registration under 80G will be processed by the Commissioner of Income Tax after receiving the application form 10G by the applicant/ organization

2. Documents Required

The application is to be enclosed with the following documents:

- ✓ Registration Certificate and MOA/Trust Deed
- ✓ No Objection Certificate (NOC) from the Landlord (where the registered office is situated),
- ✓ Copy of PAN card of the Organization,
- ✓ Address Proof, as in the copy of Electricity Bill/House tax Receipt/Water Bill,
- ✓ Proof of the welfare activities carried out & Progress Report since incorporation or else, last 3 years,
- ✓ List of governing body board members with their contact details
- ✓ The Statement of Accounts, Balance Sheet, Income Tax Return documents since incorporation or else, last 3 years,
- ✓ List and details of donors, such as their address and PAN,
- ✓ Copy of Registration u/s 12A or copy of notification issued under section 10(23)or section 10(23C).

3. Issue of Certificate

On receipt of the application, the Commissioner may pass a written order which would effectively register the trust/institution under Section 80G of the Income-tax Act. The Commissioner is also entitled to demand further documents from the applicant if the need is felt or reject the application.

Employee’s State Insurance Scheme & Employee’s Provident Fund

To empower women and improve the situation of women in town, Mohini and her team started working and implementing the various programs with utmost dedication. The enthusiastic women and the hard work of team were leading the initiative in positive direction. But with time the work at organization was increasing, in turn building more pressure on limited human resource working in the organization. Looking at the current workload Neeraj suggested Mohini to hire more employees to balance out work among them. Mohini thought about and asked the HR of the organization to start the process for multiple post to divide the work pressure. During the course of time more staff were recruited for smooth functioning of organization’s activities.

The organization started with a small team of 10 employees, gradually had grown to 25 employees who worked at different levels. In the meantime, the question regarding the social security of employees was raised. Mohini noticed that there were no rules and policies ensuring and protecting their rights within their organization. After research on fellow VDOs, she observed that there are certain acts that exists to cover and protect the employees socially across sector, in case of sickness, maternity, disablement and death due to employment injury and to provide medical care to the insured employees and their families. Mohini being the CEO of organization proposed the idea to set up various policies amongst Board members and asked for their guidance and agreement. The members agreed with the thought of their employees’ safety and passed the resolution to implement the policies.

Employee’s State Insurance Scheme

Employees’ State Insurance Scheme of India is a multi-dimensional Social Security Scheme tailored to provide Socio-economic protection to the 'employees' in the organized sector against the events of sickness, maternity, disablement and death due to employment injury and to provide medical care to the insured employees and their families.

Employee’s Provident Fund

The Employees’ Provident Fund and Miscellaneous Provisions Act 1952 applies to the Factories engaged in Industries specified in Schedule I of the Act or to other establishments notified and engaging 20 or more employees. To facilitate easy compliance by the Big Industries, Micro, Small and Medium Enterprises (MSME), other Establishments EPFO has provided online facilities starting from the registration of the Establishments, filing of monthly returns integrated with online payment of the contributions and charges.

Who administers the ESI Scheme?

The ESI Scheme is administered by a statutory corporate body called the Employees' State Insurance Corporation (ESIC), which has members representing Employers, Employees, the Central Government, State Government, Medical Profession and the Hon’ble Members of Parliament. Director General is the Chief Executive Officer of the Corporation and is also an ex-officio member of the Corporation.

What are the establishments that attract coverage under ESI? In an area notified u/s 1(3) by Central Govt.?

Under Section 2(12) the Act is applicable to non-seasonal factories employing 10 or more persons. Under Section 1(5) of the Act, the Scheme has been extended to shops, hotels, restaurants, cinemas including preview theatres, road-motor transport undertakings, newspaper establishments, establishments engaged in Insurance Business, Non-Banking Financial Companies, Port Trust, Airport Authorities and Warehousing establishments employing 10* or more persons. Further under section 1(5) of the Act, the Scheme has been extended to Private Medical and Educational institutions employing 10* or more persons in certain States/UTs.

What are the returns/ reports to be submitted by the employer?

The Employer has to submit following records:

1 Accident Report: Notice of Accident to the concerned Branch office in Form -12 should be submitted on-line within 24 hours.

2 Abstention verification Report: It is required to be submitted to the Branch office as and when it is sought by the Branch Manager in respect of any IP.

3. Records including attendance, wages and books of accounts etc. in respect of principal employer and records of immediate employer as required by the Labour Laws.

After a while when the policies were drafted, approved and was being implemented in the organization. A news was catching high attention of all. The news channel and media highlighted a dharna and hunger strike by social activists to bring accountability and transparency amongst bureaucrats in Government. The news spread like a wildfire and people supported this agenda. As a result of the pressure a new law was introduced to combat the corruption and bring in more transparency.

Lokpal and Lokayukta Act

The Lokpal and Lokayukta Act was brought into force to challenge the corruption across public functionaries. The officials working for Government were asked to declare their assets and prescribed declaration every year to monitor corruption. Soon enough the news floated that the same act also included VDO sector as well. With this new development, Neeraj took the proactive action to gather all the knowledge about the rules and procedure of this law. He learned that three new notifications have been issued under the Lokpal and Lokayukta Act providing directions to the functionaries and office bearers of VDOs for disclosure of various information.

Mohini and Neeraj contacted the reliable source in Government to provide more information on the law and notification. The official explained various rules and orders relevant for the voluntary sector.

Lokpal and Lokayukta Act

An Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

What are the Rules and Orders notified under the provisions of the Lokpal and Lokayuktas Act, 2013?

The Rules and Orders notified under the Act so far, are as follows:-

(a) The Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014 [notified vide Gazette. Notification No. G.S.R. 501(E) dated 14-07-2014 amended vide Notification No. GSR No. 638(E) dated 08-09-2014]

(b) The Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Second Amendment Rules, 2014. [notified vide Gazette Notification No. G.S.R. 9l8(E) dated 26-12-2014]

(c) Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of Names for appointment of Chairperson and Members of Lokpal) Rules, 2014. [notified vide Gazette Notification No. G.S.R. 31(E) dated 17-01-2014].

(d) Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of Names for appointment of Chairperson and Members of Lokpal) Amendment Rules, 2014. [notified vide Gazette Notification No. G.S.R. 620(E) dated 27-08- 2014]

(e) The Lokpal and Lokayuktas (Removal of Difficulties) Order, 2014 [notified vide Gazette Notification No. S.O. 409(E) dated 15-02-2014 with subsequent amendments having been made vide Notifications No. S.O. 1840(E) dated 14-07-2014, No. S.O. 2256(E) dated 08-09-2014 and No. S.O. 3272(E) dated 26-12-2014]

Whether Government has prescribed any formats for the submission of information regarding assets and liabilities by public servants under the Lokpal law?

The form and manner in which information regarding assets and liabilities are required to be

furnished by public servants have been prescribed under the Public Servants (Furnishing of information and Annual Return of Assets and Liabilities and Limits for exemption of assets in filing Returns) Rules, 2014, as amended from time to time. A complete set of the formats and clarifications as regards the timelines for filing of such declaration and returns have been provided in this Department's OM No.407/12/2014-AVD-IV-B dated 18-03- 2015.
What are the timelines for furnishing such information specific to the years 2014 and 2015, as also for subsequent years? The timelines for annual returns required to be filed for different years is as follows: (a) The first return (as on 1st August 2014) under the Lokpal Act should be filed on or before the I5th October 2015; (b) The next annual return under the Lokpal and Lokayuktas Act, 2013 for the year ending 3Ist March 2015 should be filed on or before the I 5th October 2015; and (c) The annual return for subsequent years as on 31 March every year should be filed on or before 31 July of that year.

In July 2016, a notification was issued by Government stating that Lokpal return for Organizations and Associations will undergo a change in Reporting at a later date. After which Mohini informed about this new development to her team that Lokpal Return will be applicable after Government issues a new form.

Mohini after ensuring all the procedures are being followed for various Laws and Acts. Making sure all the compliance was being properly followed and at the same time being accountable and transparent in their actions. Amidst this in the year 2017, Government of India imposed yet another tax on goods and services which will not only affect the corporates and business, but some of the voluntary sector’s activities will also fall under its ambit.

Goods and Services Tax

The GST subsumed several taxes and levies which included: central excise duty, services tax, additional customs duty, surcharges, state-level value added tax and Octroi. Neeraj took the initiative to know all about GST and its applicability on VDOs as under GST, voluntary development organizations will also be subjected to pay Goods and Services Tax. All services provided by such entities are not exempt. There are many services that are provided by VDOs which would be under the ambit of GST. As the VDO works for economic empowerment and creating a market from selling craft goods made by women. Mohini and Neeraj were in confusion on the applicability of GST on what services. They again asked help from their friend Ashish to guide them. To bring his friends out of this state of confusion Ashish explained all the provisions, process of GST and cleared out the rules and ambits under which their VDO services could be charged.

Goods and Services Tax

When an NPO sells goods and services to anyone outside its state, the NPO must register for GST. In such circumstances, aggregate turnover with the threshold of Rs. 10/ 20 lakh for exemption does not apply.

What is the section under which charitable activities have to register?

Entities registered under Section 12AA are exempt, but it is subject to a condition; services can be exempted only if they are charitable in nature.

What are the charitable activities defined under GST?

Charitable Activities means:

- public health by the way of:

<A> care or counseling of— (i) terminally ill persons with severe physical or mental disability (ii) persons afflicted with HIV/ AIDS (iii) persons addicted to a dependence- forming substance such as narcotics, drugs or alcohol

<B> public awareness of preventive health, family planning or prevention of HIV infection

- advancement of religion, spirituality and yoga

- advancement of educational programmes or skill development relating to: (i) abandoned, orphaned or homeless children (ii) physically and mentally abused and traumatized persons (iii) prisoners (iv) persons over the age of 65 years residing in a rural area
- preservation of environment including watershed, forests and wildlife.

What are the conditions under which services by NGOs are exempted?

Services by NGOs are exempted from GST only if following conditions are satisfied:

(a) Entities that are registered under Section 12AA of the Income Tax Act
(b) Services or activities by the entity are by way of charitable activities as listed in notification.

When will be GST applied?

GST will be applicable when it involves cash donation with benefits and advantages. This includes—

- promoting or advertising sponsor's/ donor's name
- Promotion on apparel such as T-shirts
- Having events after the name of sponsor
- Same applies for donation in kind
- Fundraising events

Which charitable activities are not exempted?

The following charitable activities and services are not exempted:

- If the trust is running a school for the purpose which is not covered within the scope of charitable activities as defined in the notification, income from such activity will not be exempt under notification no. 9/2017.
- Transportation of students, faculty and staff of eligible educational institution.
- Catering service including any mid-day meals scheme sponsored by Government.
- Security or cleaning or house-keeping services in such educational institutions.
- Services relating to admission to such institution or conduct of examination.
- Trusts/ Institutions arranging residential or non-residential yoga camps by receiving a donation or other charges, from the participants, will not be considered charitable activities.
- If hospitals hire visiting doctors/ specialists and deduct some money from consultation/ visit fees payable to doctors and the agreement between hospitals= and consultant doctors is such that some money is charged for providing services to doctors, there may be GST on such amount deducted from fees paid to doctors.
- There is no exemption for the supply of goods by charitable trusts. Thus, any goods

supplied by such charitable trusts for consideration shall be liable to GST.
Will GST be applicable on goods sold by charitable trust? Goods that are sold by charitable trust is taxable. The charitable must pay the GST rate applicable while purchasing the supply.
What is Reverse Charge Mechanism (RCM) under GST? Normally, the supplier of goods or services pays the tax on supply. In case of Reverse Charge, the receiver becomes liable to pay the tax, i.e., the charge ability gets reversed. If a vendor who is not registered under GST, supplies goods to a person who is registered under GST, then Reverse Charge would apply. This means that the GST will have to be paid directly by the receiver to the Government instead of the supplier.
Which are the charitable activities that are not chargeable to GST under reverse-charge mechanism? The charitable trusts registered under section 12AA of Income-tax Act receive any services from a provider located in non-taxable territory, for charitable purposes, such services received are not chargeable to GST under the reverse charge mechanism.

While the organization was following every provision to abide by these laws for the smooth working of organization. Yet another challenge of diminishing funds of organization cropped up for Mohini. Generating resources locally and through Government was not an easy task. She started consulting with people from fellow organization, it was suggested to her that international funds are given by various International entities or foundations based in foreign. They further enlightened that these foreign entities are interested in the kind of issue his organization is working and will be able to provide funds for their activities. With this knowledge Mohini and Neeraj actively researched these new sources and soon learned about few foreign funders that are ready to invest in the area of interest the organization was working. They approached these foreign donors to generate resources.

Foreign Contribution Regulation Act

When the Voluntary Development Organizations were already dwindling with diminishing resources, there was yet another addition to the existing laws. This particular law focuses on foreign funding received by the Indian VDOs to regulate and monitor their activities. The news created a kind of chaos in the voluntary sector with number of license getting cancelled due to unawareness about the laws and its procedure among the sector.

Mohini and the senior management organized an emergency meeting to decide the course of action regarding the situation. They realized that the only person that can help improve and guide in this situation was Government. Thus, Mohini contacted her friend Ashish (Government official) to help out with the law. Ashish along with his other colleague who was involved and had a better understanding of law helped out Mohini and the organization about the procedure and various provisions required to fulfil the compliance.

Foreign Contribution Regulation Act (FCRA)

As defined in Section 2(1)(h) of FCRA, 2010, "foreign contribution" means the donation, delivery or transfer made by any foreign source, – (i) of any article, not being an article given to a person* as a gift for his personal use, if the market value, in India, of such article, on the date of such gift is not more than such sum** as may be specified from time to time by the Central Government by rules made by it in this behalf; (ii) of any currency, whether Indian or foreign; (iii) of any security as defined in clause (h) of section 2 of the securities Contracts(Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of Section 2 of the Foreign Exchange Management Act, 1999.

To whom FCRA, 2010 is applicable?

As per Section 1(2) of FCRA, 2010, the provisions of the act shall apply to:

i. Whole of India

ii. Citizens of India outside India; and

iii. Associate Branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India

Who can receive foreign contribution?

Any "Person" can receive foreign contribution subject to following conditions:-

a) It must have a definite cultural, economic, educational, religious or social programme.

b) It must obtain the FCRA registration / prior permission from the Central Government

c) It must not be prohibited under Section 3 of FCRA, 2010.

Who cannot receive foreign contribution?

As defined in Section 3(1) of FCRA, 2010, the following are prohibited to receive foreign contribution:

(a) candidate for election;

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; (c) Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;

(d) member of any legislature;

(e) political party or office bearer thereof;

(f) organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government.

(g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;

(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in point

(i) Individuals or associations who have been prohibited from receiving foreign contribution.

What are the eligibility criteria for grant of registration?

For grant of registration under FCRA, 2010, the association should: • (i) be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 (Now Section 8 of Companies Act, 2013) etc; • (ii) Normally be in existence for at least three years and has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised. The applicant NGO/association will be free to choose its items of expenditure (excluding the administrative expenditure as defined in Rule 5 of FCRR, 2011) to become eligible for the minimum threshold of Rs. 10.00 lac spent during the last three years. It the association wants inclusion of its capital investment in assets like land, building, other permanent structures, vehicles, equipments etc, then the Chief Functionary shall have to

give an undertaking that these assets shall be utilized only for the FCRA activities and they will not be diverted for any other purpose till FCRA registration of the NGO holds.
Whether organizations under Central/State Governments are required to obtain registration or prior permission under FCRA, 2010 for accepting foreign contribution? All bodies constituted or established by or under a Central Act or a State act requiring to have their accounts compulsorily audited by Comptroller & Auditor General of India are exempted from the operations of all the provisions of FCRA, 2010.
How to submit application for grant of registration/prior permission? Application for grant of registration / prior permission is to be submitted online in form FC-3 (A) and FC-3 (B) at the website fcraonline.nic.in
What is the amount of fee for grant of registration and prior permission and renewal? Ans. For registration the association is required to pay a fee of Rs. 5,000/- and for prior permission, the fee is Rs. 3,000/- and for renewal, the fee is Rs 1500/- only.
Can an association invest the foreign contribution received by it in profitable ventures and proceeds can be utilized for welfare activities? The associations are granted registration/Prior Permission under the FCRA Act 2010 for receiving FC for certain purpose/objectives. Accordingly, FC should be utilized for the purpose only for which it is received.
What is the last date for online filing of returns? The return is to be filed online for every financial year (1st April to 31st March) within a period of nine months from the closure of the year i.e. by 31st December each year.

Process of FCRA Registration (online)

Online Registration

Open "**FCRA online portal**"

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Click on "**FCRA Online Forms**"

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Select "**FC-3 Applicator for FCRA Registration**"

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Click on "**Click to apply online**"

↓

Sign-up for FCRA Account

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Select the "sign-up" option. Enter all mandatory details and click save. a message will appear on the screen '**User ID successfully created. Your User ID is:** '

Login to FCRA Account

Login using the ID created

↓

Click on "**I am applying for**", Select '**FCRA Registration forms**' from drop down menu click on "**Apply Online**"

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Click on **"**Click here to **Proceed New Registration**", Select "**FC-3** menu" in Title bar for further proceedings

↓

Click & open "Association Details" and enter all the mandatory details. Click on submit button to save data

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Click & open "Executive Committee" and enter all the details. Select 'Add details of Key Functionaries', information details can be edit/ delete/ added about Executive Committee.

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To add further foreign details, select checkbox of the record (suitable for organization). Click on Add/ View button. A new screen will appear, add related foreign details. This record can be edited/ deleted by clicking on appropriate option.

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Click on 'save' after entering all the mandatory details of EC.

Bank Details

In this section, bank details are needed to be given such as Bank Name, IFSC Code, Account Number, Address of the Bank etc.

Other Details

Click on Other Details option from the menu to provide all other information.

Upload Documents

All the relevant documents need to be uploaded in PDF format

(i) self-certified copy of registration certificate/Trust deed etc., of the association

(ii) self-certified copy of relevant pages of Memorandum of Association/ Article of Association showing aim and objects of the association.
(iii) jpg file of signature of the chief functionary
(iv) Activity Report indicating details of activities during the last three years;
(v) Copies of relevant audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure) clearly reflecting expenditure incurred on aims and objects of the association and on administrative expenditure;
(vi) Fee of Rs. 5000/- is to be paid online through payment gateway

Final Submission

Click on final submission from the menu bar. You have to declare the application form. Enter place and date and click on final submit.

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Once you submitted finally, a pop-up window will appear, click on OK.

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After final submission, you can't modify application details.

Online Payment

After clicking on Make Online Payment button from menu bar, the payment screen will be displayed.

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Click on Continue for Payment button in this screen, a screen will be pop up on the screen. Select the payment gateway and click on payment.

However, the new FCRA has limited the validity of the registration certificate for a period of 5 years. The provision of section 16 of FCRA, provides for renewal of registration within six months before the expiry of the period of the certificate as per the provisions of FCRA, 2010 and the Rules made thereunder. A new notification has been issued for the change in office bearers/ key functionaries of registered organization, they have to take approval from Ministry of Home Affairs through online application.

With the enforcement of FCRA, as a result the foreign contribution and foreign donors were getting scanty with time. The fund raising was of utmost importance for the organization through different mediums. DARPAN is another platform to bring about greater partnership between government & voluntary sector and foster better transparency, efficiency and accountability. Voluntary organizations can apply for grants from Government through this portal. With the competition rising among the sector it was necessary for Mohini to look out for other ways to raise resources for the organization.

Corporate Social Responsibility

To generate more funds for the organization's activities, Mohini decided to take the route which she did not approached before. The corporate sector which are willing to provide funds under their CSR activities. All she needed was some research about institutes and companies that support the cause of women empowerment. She and Neeraj wasted no time to contact these companies with their proposal to fund and support the activities, the organization was already carrying out. But before approaching the companies they researched and gathered all information about CSR and schedule VII and the activities to prepare themselves for fund raising.

CSR

Section 135 of Companies Act, 2013, Schedule VII of the Act and Companies CSR Policy Rules 2014 provide the broad contour within which eligible companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right earnest.

CSR provisions are applicable on which companies?

CSR provisions of the Companies Act 2013 is applicable to all companies registered under Companies Act and having net worth of Rs 500 crore or more, turnover of Rs 1000 crore or more or a net profit of 500 crore or more.

Schedule VII Activities

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

(i) Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

(ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

(iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

(iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.

(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

(vi) measures for the benefit of armed forces veterans, war widows and their

dependents; (vii) training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports (viii) contribution to the prime minister's national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women; (ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the central govt. (x) rural development projects and slum area development. (xi) disaster management, including relief, rehabilitation and reconstruction activities.
Which activities would not qualify as CSR? • The CSR project that benefits the employees of the company and their families. • One-offs events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorship of TV programmes etc. • Expenses incurred by company for fulfilment of any other Act/ regulation. • Contribution of any amount directly or indirectly to any political party. • Activities undertaken by the company in pursuance of its normal course of business. • The project or program or activities undertaken outside India.

In the initiative to enhance the economic empowerment of women, Mohini and Neeraj proactively worked through establishing the organization “Saathi” to support them. VDOs are an important pillar supporting the ambitious development goals of country through their grassroot connect and innovative approach. As an important actor of development, the voluntary sector also has to comply with certain laws. The compliance to these regulatory laws will help in sustenance and legitimacy of VDO. Further, help to keep aligned to the national interest. In the process of development, it is also important to build networks, collaboration and partnership among all the sectors.

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