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Voluntary Sector in India: Challenges Opportunities and Voices from the Field

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“It profits us to strengthen nonprofits.” *Peter F. Drucker, The Wall Street Journal, 1991*

This quote from the famous management guru succinctly stresses the importance of non profit sector in the world today and also captures the essence of the struggle for rightful place for the sector in the contemporary world. The mere numbers, spatial and thematic expanse this sector covers is enormous. There are many estimates and documents to prove this. However, if we look beyond these apparent strengths and look at the substance of the sector, it is equally impressive.

This sector many times referred to as the ‘Third Sector’ is perceived as Non-Government in the developing countries and ‘Not for Profit’ in the developed countries. In both cases, it is perceived with reference to the dominant sector in the country. In both cases it is considered ‘different’ from the dominant sector. This difference is its biggest strength. Just to illustrate the point, it is closer to the people it works with and for, its motive is development/benefit of the people, its reward is not in power or money terms, its flexible and can work according to the immediate needs of the people, directly accountable to the people. No wonder then that more than 70% of the humanitarian aid is channelled through this sector. Since 2000, the annual *Edelman Trust Barometer* has found that NGOs/CSOs outpace governments, business and the media in public trust and being perceived as a source of credible information, particularly on the environment, health, and human rights issues.

Globalisation, liberalisation, economic integration, expansion of democratic governance, telecom revolution have all added to the importance of these organisations. This sector fulfills the need of the common people for good governance and greater transparency, provides information, expert comments and advice to the legislatures and opinion leaders. It is sometimes the best viable

alternative for delivering social services to needy populations. In addition, public policy challenges ranging from environmental protection to disease control have grown more complex and the existing governmental mechanisms have been found to be insufficient to address these problems effectively. As knowledge and capacity in the non-profit sector have expanded, and as CSOs build alliances with academics, economists and other experts in their areas of interest, the expertise and capacity in civil society can be tapped for the public benefit, and may rival or even exceed the capacity of government or the private sector in a given area.

Due to deepening of democracy, the society that is emerging in most countries of the world is acknowledging the need and developing a power structure whereby the government, market and civil society should be constrained in the interests of social harmony and justice. The need for this new model of public-private partnership, transparency and supervision has also enhanced the role of the sector. Community participation for programmes' formulation, budgeting and monitoring processes being used in countries from India to Ghana that help to ensure that government funds are focused on citizens' needs, and are actually spent on the programmes for which they were intended. In sum, involvement of Third Sector in development and strengthening their "watchdog" role is now widely accepted as an important component of promoting good governance.

Many corporate especially those in the pharmaceutical, technology and energy sector seek association with this sector as a central part of their business strategy. Growing numbers of investors and consumers are also looking for products and investments that meet the corporate social responsibility (CSR) test and are "approved" by reputable NGOs/NPOs.

The World Bank's *Voices of the Poor* study also speaks of a crisis of credibility for government institutions; the study team found that CBOs are often trusted by the poor more than government to address their needs. In both developed and developing countries, recent corporate governance scandals as well as government responses to terrorism have elevated public skepticism and distrust of private sector corporations and government.

The citizens' sector is getting organised and is mainly led by what are called social entrepreneurs. They are the back bone of this sector. However, they have to depend on volunteers or professionals for support. With the increasing role of the CSO in managing the problems of society, they can no longer afford to adopt the unconventional approach to work. In other words, this sector is getting formalised, organisational structures are emerging and professionals are joining the ranks. Therefore, it is imperative that they adopt practices of efficient management to achieve their organisational goals.

Among the most common critiques are that many NGOs/NPOs are neither democratic nor transparent in their own management structures and practices, intermediary NGOs/ NPOs do not get the same trust from the poor people as do their own community-based organisations. Some intermediary CSOs may be more preoccupied with accountability to donors at the expense of accountability to poor people and local constituencies. Pressures of fundraising, weak management skills and difficulties in scaling up operations can also pose serious limits to their effectiveness and accountability. The general perception about NGOs and CBOs in India vacillate between ideal organisations for ensuring justice and equity and corrupt villains or wolves in the garb of lambs.

There have been voices, attempts and laws for regularising and regulating the sector. The pertinent questions that need to be analysed are related to the identity of this sector. Should it be allowed to retain its voluntary, autonomous, flexible and philanthropic character or should it be treated like the other two sectors that it is referenced to: Govt and Corporate? The answer to this seminal question would inform the discussion and debate on the other related questions of its relationship to the government. Should the government be allowed to make attempts to curb its autonomy of raising questions pertaining to the rights of the individual to life with dignity, independence, participation and self fulfilment in the name of accountability and financial propriety and national/public interest? Should the sector make attempts to self regulate itself and ensure transparency and accountability to the people and the system?

Due to lack of self regulation and a deep suspicion of the sector, there have been attempts to regulate them through the Foreign Contribution Regulation Act (FCRA), 1976 and its subsequent

modifications in the year 2010. There have been attempts by the Ministry of Home Affairs to regulate the foreign funding to the voluntary sector. The taxation of the sector has been modified since 2008 with changes in the definition of charitable purpose under Section 2 (15) of the Income Tax Act, 1961. This has also created a new set of challenges for the sector. The Direct Tax Code (DTC) proposed by the Government has suggested a 15% tax on charitable institutions. This proposal is still pending before Parliament. The parliamentary Sub-Committee has received the petitions and submissions to it. All this indicates a greater control over the sector, which will grow in the times to come.

There are many other questions that need to be answered and the most important being how should the government treat the sector: as trusted partner and ally for development of its people or as a necessary evil to be reigned in? The answer to this question would delineate the path that we tread in future i.e. should the government control the sector and facilitate its operations? There have been attempts by the sector for self regulation and efforts by government for accreditation. What and how needs to be discussed. It is in this context that the following objectives of the project need to be discussed for:

1. To examine the National Policy on Voluntary Sector and role of government in facilitation of the social development work of NGOs. Has enough being done so far. What more can and should be done by both the actors.
2. To assess the real strengths and weaknesses of the NGOs in playing the role of delivering social service, empowering people and making relevant policy changes. Should they limit themselves to playing the role of social welfare providers as an extension of the government and government approved programmes or should it, if need be, challenge the basis of these programmes.
3. To analyse the efforts of NGOs for self regulation and the challenges thereof i.e. amenability of the NGOs to this effort and the standardisation and recognition of the mutually agreed process.

4. To develop a meaningful policy instrument for NGOs to play a meaningful role in Public Private Partnership. To also explore the role it can play in the newly energised concept of corporate social responsibility.

Main findings of the Discussions with the leaders of the Sector on the Points Mentioned Above:

The leaders of the sector have made numerous attempts in the past three decades to bring the urgent concerns of the sector to the notice of the central government and its agencies. Numerous documents have been produced for the purpose, but not much has been achieved on the ground. The National Policy on Voluntary Sector that was adopted by the Union Cabinet in the year 2007 was in a way, the culmination of all the efforts of the sector and it has all the provisions that are useful for the sector. But, the challenge lies in its wider acceptability and effective implementation by the central and the state governments. Ironically, the same cabinet that adopted this Policy also made changes in the other laws like Foreign Contribution Regulation Act (FCRA) and Income Tax (IT) Act that were contrary to the nature of provisions of this Policy.

Rather than being guided by the spirit of Section 4 and 5 of the Policy that provides for creating enabling environment for the sector and recognises the importance of the sector in development, the changes in the said laws proved to be counterproductive to the meaningful functioning of the voluntary sector organisations and their financial sustainability.

The threat perception of the government about the sector continued and in fact deepened, resulting in stringent control. There are various estimates about the size and strength of the sector starting with UN agencies to that of Govt. of India. The estimated size varies from huge to enormous, both, in terms of contribution to GDP and number of people employed.

The fundamental challenges that should be addressed to make this vibrant sector are:

1. **National Policy on Voluntary Sector:** lack of political will and requisite public/sector pressure to implement the National Policy on Voluntary Sector 2007.
2. **Definition of Voluntary Sector Organisation and its registration:** at the moment the whole process is regulated by archaic laws that were formulated by the British Govt. in 19th century. The composition of the sector has since changed so much that there is need to separate the voluntary sector organisations that work for social development from those which are for benefit of its members. In other words the difference between organisations for ‘public benefit’ and those for ‘public service’ should be recognised by the law and tax exemptions should be given to the latter. The best example is the confusion caused by those organisations that are into education and health e.g. in the field of education, private school like Delhi Public School, which charges high fees from the students and is a profit making entity, is registered as Delhi Public School Society; similarly in health care ventures like Apollo and Escorts Heart Institute are profit making entities and not operating for charitable purpose. All the examples quoted are of those organisations that are set up for public benefit and not for public service. So, the basic law should differentiate between schools or health facility set up for public service i.e. free service for poor and disadvantaged and those set up for public benefit but operating on a standard business model. This crucial difference in the purpose for which the organisation is operating should be clearly differentiated and treated, by all the laws.
3. **Financial Sustainability of the Sector:** Most of the voluntary sector organisations depend on grants or donations to provide services to the disadvantaged people in the society. The three main sources of funding are: individual donations, project grants by the government and foreign sources and corporate funding. A look at the size of most of the voluntary sector organisations would reveal that they are small organisations that depend on grants for sustenance. In such a situation, keeping the provisions of Section 4 of National Policy on Voluntary Sector, it is apt that government defines the income of these organisations and set taxation requirements to enable them to become financially

sustainable to the extent of decreasing their dependence on grants. Under the proposed Direct Taxes Code (DTC) corpus is unlikely to be classified as income but any interest earned on it would be treated as income and liable for tax. The ultimate reason for non profit charitable organisation is based on public good for the poor and destitute and not for distribution of profit. In the long run, “organisations working for and with the poor” will need income to sustain their programmes. Conversely, they would be heavily dependent on the donor agencies. They would have to compromise work on local urgent needs with that identified by the donor agencies. Taxation would reduce the overall finances available with the organisation for good work, hence regressive.

4. **The related issues in financial sustainability of the sector are:** Traditionally grants, including government and foreign grants, donations (in case of religious organisations), interest from any corpus funds have formed the major part of fund flows to NPOs. More recently, funds under CSR programmes have started becoming available to the sector, though there is a need to look into its effectiveness. Many of the Indian NPOs have also been raising funds through sponsorships. Though there is no credible data available on availability of funds to the NPO sector, there have been studies, which have indicated increase in philanthropy in India. Bain report has indicated that there is increase in private giving¹. This trend seems to be confirmed by a World Giving Index Report 2011 brought out by Charities Aid Foundation, which indicates 14% point growth in giving money compared to previous year². Since there are no definitive studies in this regard, one has to rely on guess-estimates. Some say that funds to a number of organisations, particularly small to medium are declining. A large part of the increase in individual giving is being received by large NPOs, who have been better organized in tapping this source. While the Govt. grants are increasing, generally there are procedural difficulties in accessing government grants and corporate social responsibility funds. The government procedures are inflexible and at times budget lines are unrealistic therefore unviable option for the small voluntary sector organisations. In many states the government has started implementing the social welfare and development projects by its

¹ Bain Report estimates that ‘individual’ giving which was around 0.2 percent has gone up to between 0.3 per cent and 0.4 per cent of GDP.

² http://www.cafonline.org/pdf/World_Giving_Index_2011_191211.pdf

own departments that at many times lack requisite skills to do the work. Local political interference in the implementation of these projects is also a drawback.

The corporate sector has its own understanding and agenda of social development in any region. It may not match with that of the local voluntary sector organisation/s. These large corporate could be as bureaucratic as government departments and have a legal limitation of treating the voluntary sector organisation as a sub-contractor. If the voluntary sector organisation is treated as a service provider by the corporate then under the Service Tax Act, it is liable to pay service tax. In case a voluntary sector organisation pays large sum of money on account of TDS then they become liable for notices from the Tax department. This discrepancy in the legal process should be dealt with urgently in case government wants to implement its CSR Policy in the right earnest. Most of the Public Sector Units also when working with a voluntary sector organisation see it as giving out a service contract which is in contravention to provisions U/S 12 (A) and 2(15) of the Income Tax Act. The voluntary sector organisations are also supposed to pay service tax on the services availed by them, which is a drain on their meagre resources.

There is a general perception in the NPO community that foreign grants have declined significantly. Though the figures generated by the FCRA Dept (see adjoining Chart), indicate the opposite. It shows that since FY 2004-05 there has been a substantial increase (65%) in receipt of Foreign Contributions. This could be due to better monitoring by the Dept. and also due to excessive or duplicate reporting of foreign contribution by the Dept.

The recent trend of issuing notices and raising demands on various income-generating activities of the NPOs is undermining the limited efforts that these organisations undertake to be financially self-reliant. Putting a restriction of Rs 25 lakhs on income of an NPO is a very restrictive clause in developing any meaningful strategy for financial

sustainability of an organisation³. Recent announcement with possibility of applicability of Service Tax even on NPO services is a further dampener in this regard.

These developments go against the basic objective of 2007 Voluntary Sector policy as developed by the Planning Commission, which states ‘to enable VOs to legitimately mobilize necessary financial resources from India and abroad’.

5. **Accountability and Credibility of the Voluntary Sector Organisations:** There is lack of national statute to hold the voluntary sector accountable. Various government legislations that are currently available are all about legal and financial compliances and not about the quality of work of the sector. Foreign Contribution (Regulation) Act and Income Tax Acts are not implemented in a coordinated way. Different ministries deal with these laws and have different understanding and mechanisms. The compliances are not checked through a single window. At times, the government functionaries are either not aware or not clear about provisions in the laws. The onus of proving good governance is pushed on to the sector rather than government taking the lead. Therefore, there have been attempts by the sector to self regulate and set up social accountability standards and accredit organisations. Financial Management Services Foundation (FMSF) developed a set of 11 Social Accountability Standards and Credibility Alliance has also developed Minimum and Desirable Norms for getting accredited, these are recognised by the Planning Commission but not by the statute.

6. **Professionalization of the voluntary sector:** increasing number of professionals are joining in the sector which is essential to improve its efficiency and service standards; but, it is difficult for the voluntary sector organisations to give adequate monetary compensation to them, hence difficult to retain talent. In view of the increased pressure from the donors and government to limit administrative expenses, hiring and retaining high quality human resource is proving to be a major hurdle for the sector.

³ The amendment in the definition of ‘charitable purpose’ U/S 2(15) in the year 2008 had sweeping repercussions for business income of such organizations. VOs under the sixth limb were not allowed to engage in any incidental business activity. However, Finance act 2010 and in 2011 relaxed it up to Rs.10 Lakh and Rs.25 Lakhs respectively.

The Way Forward:

1. The National Policy on Voluntary Sector should be approved by the Parliament so that it is mandatory for all to accept, adopt and implement. Parliament should draft a law in the light of the 73rd and 74th Amendment Act outlining some mandatory provisions to be followed by all state governments in dealing with the voluntary sector organisations. These should be in consonance with the National Policy.
2. Revive the Reports of Three Task Forces⁴ were set up to under the Planning Commission Voluntary Action Cell to study: accreditation system⁵; national registration regulation and decentralised Funding.
3. There should be nodal agency at the level of Central government and respective State governments for dealing with the issues concerning the sector. It should prepare annual activity report that should be available in public domain.
4. There should be a separate law for registration of voluntary sector organisations that are into public service and social development.
5. Laws like FCRA should be revisited in the light to guiding philosophy of liberalisation. In fact the possibility of annulment this law should also be considered.
6. Tax regime of the government should treat the voluntary sector organisations in such a way that it facilitates their financial sustainability. Definition of income for the purpose of tax and rate of tax should be in consonance with the purpose of the sector.⁶
7. In view of the increased allocation of the government sector in the social welfare segment and its convention of partnership with the sector in social development along with the CSR policy nudging corporate to follow the suite; relevant changes should be made in legal procedures and tax laws to encourage the voluntary sector to partner with the other two.

⁴ http://planningcommission.nic.in/aboutus/committee/strgrp12/str_voluntary.pdf

⁵ Full report available on <http://www.capart.nic.in/final.pdf>

⁶ The recommendations of the following Committee/ Task Forces set up by govt of India: (1988) P V Krishnaswamy *Committee to Review and Simplify* Procedures for processing Proposals for Grants-in-Aid to Voluntary Agencies, Ministry of Personnel, Public Grievances and Pensions, New Delhi.; Report of the Task Force set up by CAPART which has clearly recommended annulment of FCRA and bringing voluntary sector under FEMA should be implemented immediately.

8. Either the voluntary sector organisations should be exempted from paying service tax or there should be a zero rating which means that the tax charged from the voluntary sector organisations on account of services could be claimed back
9. There should be regular forums for bipartite (Govt-Voluntary Sector Organisations) or tripartite (Govt-VSO-Corporate) interaction with the voluntary sector to better understand and coordinate collaboration with it.
10. There should be a government prescribed standards of good governance for the voluntary sector and independent agencies should be recognised to certify the organisations. The process should be simple and easy rather than bureaucratic and cumbersome. The Task Force for Accreditation set up by the Planning Commission could take upon this work.
11. Organisations with 'Good governance certificate' should be given preference for funding. Credibility Alliance gives an Accreditation Certificate for good governance to the Non-Profit Organisations.
12. There should be an autonomous body for monitoring and evaluation of the work done by the sector.
13. Voluntary Sector Organisation should form a core group which should act as a conduit between the sector and the government. It should also act a watchdog for the sector and ensure that the government treads the path paved by the Policy.
14. Comparative research on international policies and practices governing VSOs should be encouraged. Such research should also inform the policy making in India.



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