India

Expert: Noshir Dadrawala
Institutional Affiliation: Centre for Advancement of Philanthropy
With contributions from staff at the Indiana University Lilly Family School of Philanthropy

QUICK FACTS

Legal forms of philanthropic organizations included in the law: Trust, Society, Limited Liability Company

Five main social issues addressed by these organizations: Higher Education, Primary and High School Education, Basic Needs, Animals, Human Rights

Average time established by law to register a philanthropic organization: 31-60 days

There are multiple levels of registration:

1. To register as trust or society in certain states of India could take up to 90 days;

2. Tax exemption & tax deduction licenses could take an additional 90 days; and

3. Obtaining a license to receive foreign funds could take additional 90 days.

Average cost for registering a philanthropic organization: US $500

Professional fees charged by lawyers and accountants to register POs could vary between US $500 to US $1,000, even though the registration fees are only about US $15.

Government levels primarily regulating the incorporation of philanthropic organizations: Central / Federal Government, State Government

Charity in India is a State subject under the constitution. Hence, registration of a trust or a society is at the State level. However, income tax is under Central or Federal law and the Central government regulates tax exemption and deduction.

Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	3.3	3.5	2.7	3.5	3.0	3.21

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.0

Two or more individuals may form a trust or a nonprofit company, while seven or more members may form a society. Broadly speaking, a PO may be set up to provide services related to relief of poverty, education, medical relief, environment, preserving national monuments or any other object of general public utility. The registration process is somewhat demanding, requiring moderate time and resources. However, the governing body is consistent and apolitical; their activities are somewhat transparent, as they provide data and information to the public via their websites. There is, however, no requirement for them to do so.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 3.0

In general, POs are 'regulated' but not 'controlled' by the government. POs set up for charitable activities enjoy the freedom to carry out their activities throughout the Republic of India, provided proper accounts are kept and financial returns are filed annually with the registering authorities. However, POs involved in advocacy work often face restrictions, especially where receipt of foreign funding is concerned. Thus, dozens of POs have been backlisted and their registration cancelled by the government due to failing to comply with the requirements of the Foreign Contribution Regulation Act 2010 (FCRA).

Question 3: To what extent is there government discretion in shutting down POs?

Score: 3.0

A trust is generally irrevocable; to voluntarily terminate it the trustees would need to obtain an order from the court, which would cost money, paperwork and time. A society or company can be voluntarily terminated by a resolution passed by a General Body of Members meeting if three-fifths of its members vote in favor of the dissolution.

A PO may be involuntarily terminated only if its objects or activities are against National or public interest. In some cases, tax exemption and deduction licenses could be withdrawn – for example if the income is not applied to charitable purposes. In the case of advocacy, POs that are seen as "trouble makers" by the government and that have licenses to receive foreign contribution under the Foreign Contribution Regulation Act (FCRA), could be suspended or terminated by the government.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.0

Income of a PO is 100 percent tax exempt provided that: 1) it complies with regulatory norms, which include use of income only for charitable purpose in India; 2) the accounts are properly maintained, audited, and returns are filed; 3) board members do not derive any personal benefit; 4) the funds are not invested in speculative investments; and 5) at least 85 percent of the income is used for activities during each fiscal year.

Donors are entitled to a 50 percent tax deduction on contributions made, with up to 10 percent of their gross income liable to tax if the donations are given to POs that possess an 80G certificate. Furthermore, donors are entitled to 100 percent tax deduction on donations given to POs registered under 35AC. In-kind donations do not qualify for tax deductions.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

As stated earlier income of a PO is 100 percent tax-exempt as long as it complies with the regulatory framework set under income tax law. The process of obtaining tax exemption could take more than 90 days, and the revenue officer may ask for a number of documents and proof of charitable activities.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 2.4

One of the criteria for tax exemption is the application of the PO's income for charitable purpose in India only. Grant donations sent to countries outside India must meet two criteria. 1) It must have prior approval of the Central Board of Direct Taxes (CBDT), which requires the PO to note the intended destination and purpose of the funds; and 2) it must be for a purpose in which India as a country (by policy or by government notification) is interested. For example, during the earthquake in neighboring Nepal in 2015 CBDT issued a notification that it would "fast track approvals" for donations with the subject of earthquake relief sent by POs to Nepal.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 3.0

Funds can be received from "foreign source(s)" by POs only after receiving prior approval or registration under the 2010 Foreign Contribution Regulation Act (FCRA). The Ministry of Home Affairs could take 90 days or more to process the application, which includes an inquiry by an officer of the Central Bureau of Investigation. The Ministry of Home Affairs will only grant permission if the applicant is registered with the central government and agrees to channel the donation through certain designated banks. The Ministry of Home Affairs also requires POs receiving money from abroad to separately track incoming funds and record how they are used. Advocacy organizations generally face a lot of scrutiny and difficulties in terms of receiving the permission of receiving foreign contributions.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 4.0

There is high level of public-private partnership (PPP) between POs, companies, and the Government in the education and healthcare sector. In fact, POs play a significant role in filling gaps in the government's delivery system in these fields. Although there is good collaboration between the public and philanthropic sectors, some tensions have been observed between the government and foreign funded POs (VANI, 2014, ICNL, 2016). In 2014, the Information Bureau submitted a report stating that foreign funded POs are negatively affecting the country’s economic growth. Furthermore, the FCRA 2010 and recently the Finance Bill 2017 might negatively influence the work of POs that receive foreign funding.

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 3.0

The state collects their revenue (taxes) for welfare and development but they have poor delivery systems. POs fill that gap, but few avail of government funding on account of excessive bureaucracy or lack of information. However, corporate social responsibility (CSR) is now mandatory under the Indian Companies Act 2013; the government often influences companies to contribute to government schemes like 'Clean India' or the Prime Minister's Relief Fund.

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 3.0

India has a tradition of 'Daana' (giving) that goes back to 4,500 BC. The Vedas (Hindu scriptures) speak of all kinds (money, grain, clothes) and levels of giving, from altruistic giving to giving for self-gratification. People in India still give more and often blindly to temples and churches.

Individuals often prefer to give directly to the poor or needy and do not quite understand the work of POs. Though POs have become quite professional and many are transparent and accountable, there are old and often unfounded prejudices against POs.

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

The state of Philanthropy in India is reasonably good. According to the Central Statistical Institute of India there are 3.3 million POs registered in India. Also, today India has more high net worth individuals (HNIs) and ultra high net worth individuals (UHNIs) than it has ever had in history. Under the Indian Companies Act 2013 CSR has been made mandatory. Act 2013 requires companies to spend 2 percent of their average net profit between 2014 and 2016 on CSR and to publish their contribution in their annual reports.

POs are getting more and more professionalized and building their own capacity to scale and demonstrate impact.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The Indian Companies Act 2013, which came into force 1st April 2014, requires companies meeting certain criteria of turnover, net-worth, or profit to frame a CSR policy, to form a CSR Committee, and to disclose CSR-related activities in the annual report;

- The notification related to the Lokpal Act (issued June 20, 2016), which required board members of POs receiving government grants of more than INR 10 million (approximately US $145,000) or foreign funds in excess of INR 1 million (approximately US $14,500) to disclose their personal assets in the public domain. With intense lobbying, the implementation of this law has been deferred; and

- The Finance Bill 2017 has prohibited one PO from transferring giving to another PO by way of a corpus or a capital grant. It has also restricted cash giving to no more than INR 200,000 (approximately US $3,000) for tax deduction. Contribution of more than INR 200,000 (approximately US $3,000) should be by check or a bank wire transfer. It has also given revenue officers wide-reaching powers to physically 'search' any PO's office.

Future development trends in the philanthropic landscape

Crowdfunding is growing and getting more popular but it is yet unregulated. There is growth of social enterprises, some of which are for-profit while others are nonprofit. Donors, especially young and new donors, are inspired to contribute to social enterprises over traditional charities like schools, hospitals, or orphanages. Arts, crafts, and sports still find funding a huge challenge.

Three key recommendations to improve the environment for philanthropy

- The Foreign Contribution Regulation Act does not enable free flow of foreign funds into India, especially for civil society and human right organizations. The government of India upholds freedom of expression and assembly by POs, but is always suspect of foreign agencies funding such POs. It is recommended that FCRA as a law is either repealed or is restructured to be more enabling;

- POs often undertake business activities to mobilize resources for sustainability. However, the Income Tax Act 1961 restricts business income of POs so that no more than 20 percent of their gross income originates from non-business sources, such as from donations and grants. This is restrictive and should be repealed, or the 20 percent limit should be raised to at least 50 percent; and

- Donors should be offered more incentives with 100 percent instead of just 50 percent tax deduction.