

Registering and Managing Voluntary Organisations

Since time immemorial, India has an ancient and rich tradition of philanthropy. There are virtually hundreds of thousands of charitable organizations (registered and unregistered) operating all over India. *In Maharashtra alone, there are over four lakh charitable organizations registered with the office of the Charity Commissioner.*

"Charity" being a State subject allows different states in India have separate Acts to govern and regulate charitable organizations. For example, all public charitable trusts in the state of Maharashtra are governed by the Bombay Public Trusts Act, 1950. The same Act, with minor changes, is also operational in the state of Gujarat. Rajasthan, too, has a trusts Act of 1959, while Madhya Pradesh has an Act of 1951. In certain southern states like Andhra Pradesh, there are endowment Acts, while a number of northern and north-eastern states in India have no trust Act at all. Even the capital of India- New Delhi-has no trust Act.

The Societies Registration Act, 1860, however, is an All-India Act, with each state adopting certain modifications.

What is the difference between a Trust and a Society

Trust: A trust can be established by two or more individuals and registered under the Trusts Act of the State. The main instrument of trust is the trust deed which is executed on non-judicial stamp paper. Trustees generally hold office for life, unless otherwise provided in the trust deed. New trustees are generally appointed by invitation by the surviving trustees. The minimum and maximum number of trustees should be specified in the trust deed. A trust is generally irrevocable.

Society: A society, on the other hand, can be established by seven or more individuals and registered under the Societies Registration Act, 1860. *In Maharashtra and Gujarat, all societies must also simultaneously be registered as trusts under the Bombay Public Trusts Act, 1950.* The main instrument of a society is the memorandum and articles of association which need not be executed on stamp paper.

Members of the managing committee/governing body generally hold office for a certain period of time and may stand for re-election, if necessary.

A society may also be wound up if three-fifths of the members of the general body of the society so desire.

A society, in other words, is a more flexible and democratic set-up.

A charitable organization may also be registered as a section 25 company under the Indian Companies Act, 1956 by seven or more individuals.

Whether a trust, society or a section 25 company, the Income Tax Act gives all three categories equal treatment, in terms of exempting their income u/s 11 and 12 and granting 80G certificate.

How to Register a Charitable Organisation?

In India you can register an NGO in 3 ways:

1. As a society under societies act

For national level society you need at least 7 persons from seven different states. It can be registered at New Delhi OR For state level society/NGO there are some certain rules

and state society acts.

2. As a Non-profit company under section of 25 of Companies Act.

3. As a Public Trust.

For registration of public trust there are some different acts and procedures.

You must be specific, what is your aim to form an NGO and the area of operation and the state you live in.

Place of Registration

The registration of a society is to be done under the Act wherever obtaining the registration and not in the State where the benefit is claimed. Once the person proposing to form a society has decided upon the name of the society and has prepared drafts of Memorandum and Rules and Regulations of the society, procedure adopted in following paragraphs may be adopted for getting the society registered.

Signing of Memorandum of Association

All the subscribers (minimum seven) should sign each page of the memorandum and the signatures should be witnessed by either an Oath Commissioner, Notary Public (Rs. 3/- Notarial stamp duty affixed), Gazetted Officer, Advocate, Chartered Accountant or 1st Class Magistrate with their rubber / official stamp and complete address.

Persons desirous of forming a society should also become members of the first governing body. An outsider cannot become member of the governing body in the first instance.

Signature on Rules and Regulations

The Rules should be signed by atleast three members of the governing body. Following certificate should be given at the end of the rules and regulations: "Certified that this is the correct copy of rules and regulations of the Society".

File the required documents with the Registrar of Societies

Following papers should be filed with the Registrar of Societies for registration of a society under the principal Act or corresponding Acts enacted by various State Governments:

Covering letter requesting for registration stating in the body of letter various documents annexed to it. It should be signed by all the subscribers to the memorandum or by a person authorised by all of them to sign on their behalf

Memorandum of Association in duplicate along with a certified copy (as per Sec. 3 of the Principal Act). It should be neatly typed and pages serially numbered

Rules and Regulations / Bye-laws in duplicate duly signed

Affidavit on non-judicial stamp paper of appropriate value sworn by the President or Secretary of the Society stating relationship between the subscribers. The affidavit should be attested by an Oath Commissioner, Notary Public (Rs 3 Notarial Stamp affixed) or 1st Class Magistrate.

Documentary proof such as House Tax receipt, rent receipt in respect of premises shown as Registered Office of the society or no objection certificate from the owner of the premises

Registration Fee

Normally fee of Rs 50/- is payable as registration fee of a society and it should accompany the request for registration payable in cash or by Demand Draft. In Union Territory of Delhi the Registrar intimates the applicant society by a letter

stating that all the formalities have been completed and the documents filed are acceptable. The applicant society is required to deposit the registration fee after receipt of this letter. Formalities of registration and requirement of documents etc. may differ slightly from State to State. The applicants may, therefore, contact in advance the Registrar of Societies having jurisdiction.

Registration Certificate

On receiving the documents mentioned above the Registrar shall satisfy himself about the compliance of the provisions of the Act and correctness in his hand that the society is registered under the Principal Act 1860 or other corresponding Acts.

Presumption of Registration

Presumption that the society was duly registered under the Act arises not on the Certificate of Registration granted by the Registrar but on the copies of the Rules and Regulations and Memorandum certified under Sec. 19 which constitutes them prima facie evidence of the matters therein contained.

Why register as an NGO?

Registration of a charitable organization has several advantages. It adds to the general credibility and reliability of the organization and aids in formalising a corporate identity.

Complexity in Registration

Unfortunately, there is complexity and bureaucracy around this process and charitable organizations often feel burdened and stifled by the various legislation and authorities governing them.

- At the state level, it is the Charity Commissioner or the Registrar of Societies which registers a charity
- At the federal level, it is the Income Tax Act which has the authority to register a charity
- If the organization receives foreign contribution, the Home Ministry also begins to exercise its jurisdiction.

Also, the various Trusts Act and the Societies Registration Act have, to an extent, become dated. *For example, the Societies Registration Act is even older than the Indian National Congress and has been a product of the historic Revolt of 1857.* Both the Acts are not designed to cover the wide and varied activities of modern developmental organizations.