

**LAWFOYER INTERNATIONAL**  
**JOURNAL OF DOCTRINAL LEGAL**  
**RESEARCH**

**(ISSN: 2583-7753)**

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**Volume 1 | Issue 3**

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**2023**

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# ADMINISTRATION OF A NON-GOVERNMENTAL ORGANISATION

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## I. ABSTRACT

A Non-governmental organisation is a voluntary association of people who engage in some social works. The Ngo's do not concentrate on the profits. The Ngo's are formed based on an objective; these objectives are basically welfare oriented in nature. These Ngo's have their own rules, regulations and bye laws based on which they carry out their affairs. The financial support for these Ngo's are rose through collecting funds from public, donations from various companies, funds from various international organizations and etc. In recent trends the Ngo plays an important role in the political and economic sphere of a nation and these Ngo's have a role to play in the international politics as a pressure group or as an interest group or as the voice of public i.e public opinion, in India it is considered to be an effective tool in raising issues in the name of public opinion. The typical structure of an Ngo is similar to that of the company where a group of people known as trustees/boards hold the position similar to that of the directors. The non-governmental organization has a detailed delegation of their authority from the top board to the member of the organization. The Ngo's are recognized as a citizen in India and possess the rights to file a writ petition. The growth of Ngo as a whole has seen a tremendous impact in the way of governance and in the minds of the people. This proved to be a 4<sup>th</sup> branch of the government in the modern world.

## II. KEYWORDS:

Non-Governmental organizations, Trusts, Societies, Section 8 companies, Public interest litigation, Delegation, Natural justice, Board of directors, Foreign contribution (regulation) act 1976, Foreign exchange management act 1999.

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### III. INTRODUCTION:

The Non-governmental organizations in India are mostly in the form of societies, trusts and non-profit organizations i.e section 8 company. These organisations have a well-renounced position in the society and a key role in the political arena. Government often ties up with these organizations to enhance the implementation of social welfare schemes. These Ngo's have become part and parcel of development. Each Ngo is formed with an objective and the programmes of the Ngo are oriented to their objective. The concurrent list in entry 28 includes charitable institutions, charity, religious and charitable endowments, and religious institutions. The first Ngo was registered in India in 1917 by Gaganendranath Tagore<sup>2</sup> (nephew of Tagore) to promote weavers and artists of the Kolkata handloom as 'Bengal home industries association' registered under section 26 of companies act. The number of NGO'S and their active participation has been increasing since then in every arena.

#### A. HISTORY OF NGO'S:

During the medieval era the concept of Ngo was not totally absent, it was present in the form of DAANA (giving) and SEVA (service). The daana and seva was concerned with promotion of culture, education, health and natural disaster relief. The growth of these institutions saw setback during the initial British regime. During the late 19<sup>th</sup> century the British government was compelled to look into the growing Ngo's. The Ngo's that were developed during this period includes: **Friend-in-need society (1858); Prathana Samaj (1864); Satya Shodhan Samaj (1873); Arya Samaj (1875); The National Council for Women in India (1875); and The Indian National Conference (1887)**. The British to regulate these Ngo's introduced an act SOCIETIES REGISTRATION ACT 1860<sup>3</sup> to confirm the legal status for the non-governmental organisation. The Societies registration act finds in place even in modern India.

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<sup>2</sup> Mintage world, <https://www.mintageworld.com/media/detail/11512>, 26 September 2023

<sup>3</sup> Societies registration act 1860,no.21,acts of parliament 1860 ( India)

#### **IV. CONSTITUTIONAL VALIDITY OF NON GOVERNMENTAL ORGANIZATIONS:**

The Article 19(1)(c) to form associations or unions; of the Indian constitution empowers the private individual to form associations or groups on their own this paved way for creation of Ngo's by private individuals. These association or union formed are recognised and treated as a legal person by the law. Further the Article 43 of the Indian constitution strengthens the position of the Ngo's, Article 44 of Indian constitution states "State shall endeavour to promote co-operative in rural areas"<sup>4</sup> which provides for the state to encourage Ngo. The list 3<sup>5</sup> of the Indian constitution which highlights on the concurrent list provides for both state and central government to implement laws on charitable institutions, charity, religious and charitable endowments, and religious institutions. These provides constitutionally validates the formation of the Ngo's and provides support to these organizations. There are several statutes which derive their authority from these provisions.

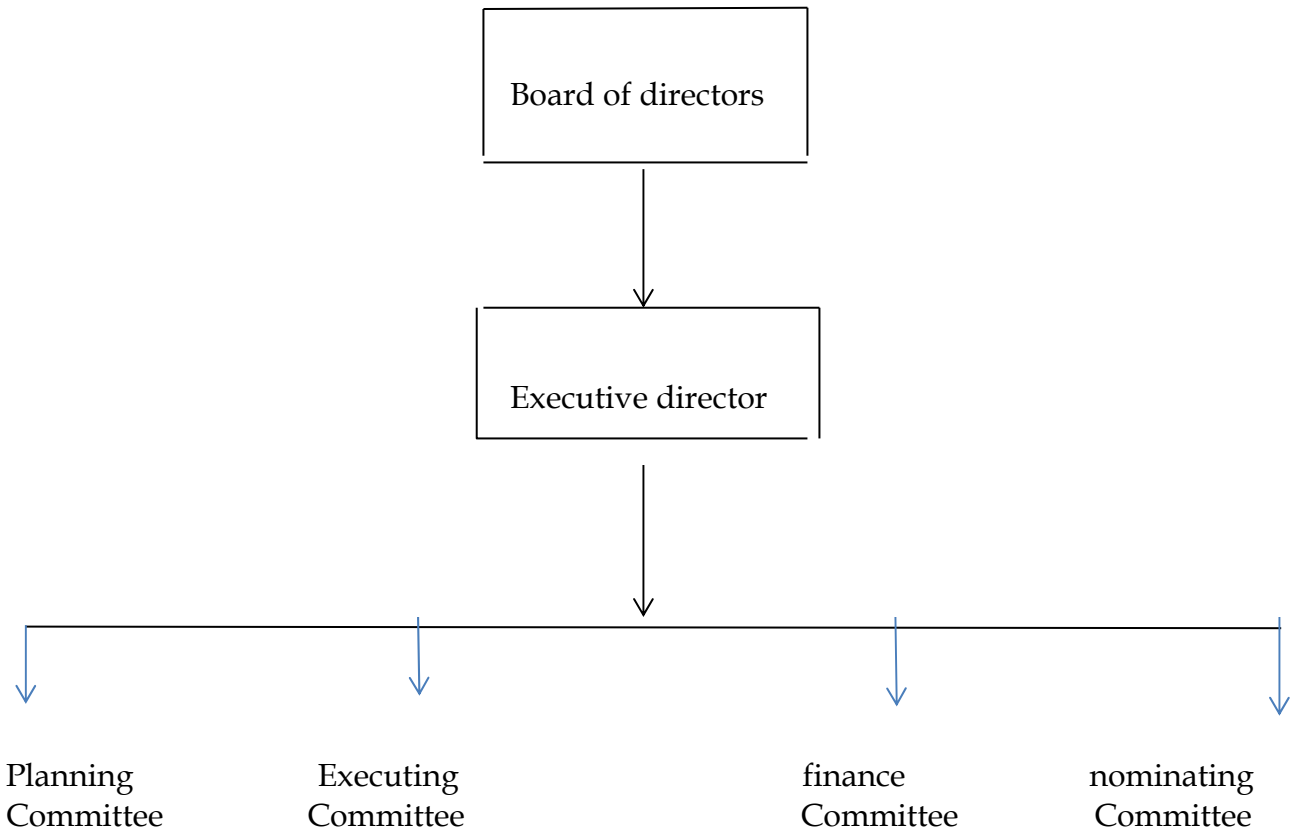
#### **V. ADMINISTRATION OF A NON-GOVERNMENTAL ORGANIZATION:**

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<sup>4</sup> INDIA CONST.art.44

<sup>5</sup> INDIA CONST.art.246

### ❖ STRUCTURE OF AN TYPICAL NGO:



This is a basic structure of a Ngo. The committees are usually formed according to the objective which the Ngo strive to achieve. The rules, regulations, duties, functions and responsibilities of the Ngo is specified in their internal document i.e., articles of association or constitution of the organisation in whatever name it is referred as . In this structure the highest body consist of a group of persons who form the Ngo right from the registration to its affairs. This body decides the object of the organisation, their motive and the outline of the action which is to be done by their Ngo for a period as specified. The board of directors unlike the promoters of a company is not paid any salary or is not given a share in the profit. One among the directors will be elected to look into the day to day affairs of the Ngo. The executing director is paid (differs in different Ngo) a very minimum amount of salary. The board of directors hold regular meeting in order to discuss the agenda regarding the programmes, mode of raising fund and plan of

execution. These are recorded and these are the tools guiding the day today working procedure until the next meeting is held. In some Ngo's, there exist an advisory committee who stands between the board of director and the executive director. The advisory board gives advices to the board of directors based on the reports regarding the financial resource, their achievements through the years, current position of the society, impact and the consequences of their past acts and etc. The advice of this committee is discretionary in nature.

#### ❖ **REGISTRATION OF A NON GOVERNMENTAL ORGANIZATION:**

Trust, society, non-profit company or any other type can be utilized to register the company under the trust act, society act, company act (2013), or by any other means.

##### ➤ **TRUST:**

A trust is an important charitable unit with an objective to promote the welfare of living beings. Trust is created by the trustee with the properties acquired from the original owners with the object to provide benefits to society in general. The public trust acts has been introduced in few states of India, they are Few Rajasthan, Maharashtra, Gujarat and Madhya Pradesh. Minimum two members are required to start a trust. The registration of trusts is done in accordance with the Indian Trust Act of 1882<sup>6</sup>. A trust deed has to be submitted to the registrar. The formation of a trust essentially requires a settler or author or donor of trust and trustee or done of trust and a group of people as beneficiary who changes according to the objective of the trust. The trust which is registered is eligible to apply to get land from the government and is also eligible to apply for 80G deductions certificate benefits.

##### ➤ **SOCIETY:**

The other important unit is the societies which are formed carryout philanthropic activities. In order to form a society seven or more person is required. The objects of societies are literacy, scientific or charitable purposes under section 20 of the Societies

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<sup>6</sup> The Indian trust act,no.2, Acts of Parliament,1882(india).

registration act 1860. The society is a group of people who work toward the welfare objective. These societies are registered under the Societies registration act 1860<sup>7</sup>. The society is to be registered with the registrar of societies for legal identity. For registration the documents like:<sup>8</sup>

- Signed application of request by subscribers for registration of society.
- Memorandum of associations.
- Rules and regulations.
- Affidavit of president stating relationship of subscribers
- Proof of registered office premises.

are to be submitted with the registrar to complete the process of registration.

➤ **SECTION 8 COMPANIES:**

The non-profit organizations can also be registered under the Company act of 2013<sup>9</sup>. These companies are popularly known as section 8 companies. These non-profit organizations can have their objectives like commerce, arts, science, sports, education, Research, protection of environment, charity, religion and social welfare. The non-profit company is to be registered with the registrar of companies. The licenses to these companies are to be granted to it by the central government. These companies can alter their memorandum of association with the prior approval of the central government. These companies can be converted into a private, public or other company by fulfilling all the required procedures. It is also provided by company act 2013 that the existing companies can also convert into a non-profit company in the same manner as is required to start a non-profit company. The name of the company need not contain the phrases like “ltd” (or) “Pvt ltd” (or) any such suffix, but when the company is to be converted to a other company it needs to have the suffix as stated. A firm is even allowed to be a

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<sup>7</sup> Societies registration act 1860, no. 21, acts of parliament 1860 (India)

<sup>8</sup> Abraham anitha, FORMATION AND MANAGEMENT OF NGO 12 (4<sup>th</sup> ed. 2015).

<sup>9</sup> The companies act, no. 18, Act of parliament, 2013 (India)

member in these companies. The profits arising from section 8 companies are to be used for the fulfilment of the object of the company. Extreme power is given to the central government to even revoke the license. The company can be compelled to wound up and can also be directed to amalgamate with other such companies with the same objectives. The assets that are remaining after the wounding up of a company is to be handed over to any company registered under this section with the same objective.

## **VI. CASE LAWS:**

### **1) ECUMENICAL CHRISTIAN CENTRE V. COMMISSIONER OF INCOME-TAX<sup>10</sup>**

The Karnataka high court held that the company with the objective of diffusion of useful knowledge, publication of journals, books, running of hostels, and promotion of search for truth is directly inclined to the education. Therefore the company was provided with tax concession.

### **2) CHARTERED INSURANCE INSTITUTE V. LONDON CORPORATION<sup>11</sup>.**

The court held that the objective being benefit of members does not amount to charitable trust.

### **3) NADIR PTY LTD V. F.C. OF T<sup>12</sup>.**

The assessee were carrying on activities for the purpose of profit or gain to its individual members as in the distribution of profit in the time of wounding up would be within the power of the shareholders to appropriate.

#### **❖ BENEFITS OF A REGISTERED NGO:**

- I. Under the section 10(23c)(iv) of income tax act 1961<sup>13</sup> the Ngo is entitled to tax exemption. This is provided to an Ngo with a view to

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<sup>10</sup> (1983) 139ITR

<sup>11</sup> (1957) 1 WLR 867

<sup>12</sup> (1973) 47 ALJR 303

<sup>13</sup> The income tax act, no.43, Acts of parliament, 1961(India)



encourage the participation of the Ngo in the society. This also provides for investing and pooling the money for general and public good.

- II. The foreign contribution (regulation) act 1976<sup>14</sup> regulates the acceptance of grants from foreign countries. The application to receive these grants should be sent in form FC-8 along with registered documents to the home affairs ministry, prior approval is also held valid.
- III. The Foreign exchange management act 1999<sup>15</sup> further elaborates the regulations regarding the foreign funds and contributions.
- IV. There is no requirement of minimum share capital to function independently; they can function with the fund that they receive as charity.
- V. They are considered as a legal person and has right to have ownership of a property. They are given right to open bank account. As a legal person they are eligible to institute suit and in turn they can also be sued.

#### ❖ DELEGATED LEGISLATION IN A NGO:

The delegation in an Ngo which is carried on internally is not visible clearly. The decisions in an Ngo are taken by a board of members who frame the outline of the achievements to be achieved in that particular span of time. The board of directors are delegating their works and responsibilities to the executive who may be elected among them or who is employed in the organization to look after the particular task. The ways and methods to achieve those objects are to be done by the executive. The executive

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<sup>14</sup> The foreign contribution (regulation) act,no.49, Acts of parliament,1976 (India)

<sup>15</sup> The foreign exchange management act,no.42, Acts of parliament,1999 (India)

frames an elaborative structure that is to be carried on for a span of time. This elaborated structure is produced to various departments and workers who carry on the task.

The other way of delegation found in the international organizations in recent time is that there is an elaborated structure running from the head office to their local offices. These Ngo have their constitution which is the basic guiding document for them. The constitution of the Ngo provides basic rules for delegation and the bye laws that are created for internal organization serves as a main document for delegation. These international Ngo's are to be registered under as trust, society, Section 8 Company or as any in India. The international Ngo delegate their authority to the head office that is located in each country, these head offices further delegate their authority to regional offices. This delegation continues till their local offices that are the real on field workers. Ex: the lions club international is registered in India under the Companies act 2013, having its head office in Mumbai. And has regional office in Chennai with branches in various parts of Chennai. The organization has regional offices, zone offices and clubs where the authority is delegated in steps. The CARE India organization is a non-profit organization which is found in India. The head office of the CARE India is located in New Delhi with its branches in various parts of the country. The authority is delegated from its head office ( New Delhi) to its regional branches.

#### ❖ **NGO'S AND NATURAL JUSTICE:**

The Ngo's in India are accustomed to follow the principles like equity, fairness, general welfare and etc., which are included in the natural justice as its elements. The social welfare activities in India are carried on with in a fair manner. The Ngo has an independent internal committee to regulate its internal working in accordance with the natural justice. The interference by the court in the internal management is prohibited ultimately to the exclusion of few instances like fraud on the members of the Ngo, carrying out illegal activities and etc.

#### ● **CASE LAW:**

### 1) NOEL HARPER VS. UNION OF INDIA<sup>16</sup>

The central government through an amendment restricted the NGO's from obtaining funds from foreign countries. The Ngo's challenged this amendment. The Supreme Court held that the amendment is necessary to tract the potential misuse of fund to threaten national security, thus the court emphasized on the natural justice of fairness in this case.

#### ❖ NGO AS A CONFLICT RESOLUTION AGENT:

The Ngo's in the modern day is playing the role of an agent in conflict resolution. There are special qualities inbuilt in them to make peace building, especially through their particular insights into different cultures, their relationships with local partners and their understanding of the links between crisis management and long term sustainable development. All these elements are essential to develop effective methods in peace building and strategies to deal with specific conflicts. They act as an agent of people in placing their grievances to the legislators and to the courts. In turn they help legislators to make laws with reference to the people's need and Ngo's helps in implementing them without any disturbances in the country; through this it acts as an agent to resolve the conflict between the government and its subject.

#### ❖ ADMINISTRATION IN AN NGO:

The internal administration of a Ngo is managed and regulated through its internal documents like articles of association, trust deed and etc. The international Ngo's have their own constitution which acts as a guiding force for the Ngo's created subordinate to it. The constitution specifies the object and the reasons for its existence. The management is carried on by board of directors or managers or by governing or trustees. The management in the section 8 companies is carried by the terms of the company act 2013, for societies the society registration act 1860 imposes few restrictions and the Indian trusts act also imposes very few restrictions on the management of trusts. The mode of succession is usually through election of members in the company and society while the

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<sup>16</sup> Noel harper v union of india , writ petition (civil) no.566 of 2021.

succession in trust is through appointment. The meetings in a non-profit company are similar to that of a normal company. The societies conduct two meeting one is annual meeting according to the provision of law and governing body meetings as prescribed in rules of the society. The provisions for holding meeting in a trust are not provided in law. The company has been provided with a full legal status, while the society and trust are having a limited legal status. The companies have exhaustive statutory regulation while the societies have a limited statutory regulation whereas the trusts have a nominal statutory regulation. Transfer of membership is possible in company but is not possible and applicable in the society and trusts. The admission of members to company is controlled by general body or board through issue of capital. In societies it is controlled by the governing body.

## VII. INDIAN LAWS ON NGO:

- i. **ADCOCATES ACT 1961:** Provides comprehensive method to inculcate the spirit to promote and regulate voluntary legal activity by the Indian practitioner. And it also provides for promoting free legal aid as incorporated under the Article 39A under directive principle of state policy of the Indian constitution.
- ii. **THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2000:** The state government empowers the Ngo's to establish observational homes for the reception of the juvenile during the pendency of the inquiry. And provides an Ngo through agreement to start special homes for reception and rehabilitation of juvenile.
- iii. **THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT 1989:** The Ngo's are encouraged to participate in welfare activities for the scheduled castes and schedule tribes.

- iv. **WILD BIRD AND ANIMAL PROTECTION ACT 1912:** The Ngo's and volunteers who have their objective as protection of the birds and animals are playing an active role along with the government to protect these animals and birds.
- v. **NATIONAL POLICY ON THE VOLUNTARY SECTOR:** The national policy on the voluntary sector was approved by cabinet ministers on India in May 2007. The motive behind this policy is to evolve a new relationship between the government of India and voluntary organizations. The government has implemented this policy to encourage, enable and empower voluntary organizations to perform diverse functions in the field of social, cultural and economics. The government has incorporated the ideas of the these voluntary organizations to find innovative solutions to poverty, deprivation, discrimination, and exclusion. The objectives of this policy are:
- ✓ To create a better environment for the Ngo's.
  - ✓ To enable the Ngo's to legitimately mobilise financial resources.
  - ✓ To build up a relationship between the government and the voluntary organisations based on the principles of mutual trust and respect with shared responsibility.
  - ✓ To persuade these organizations to have a transparent and accountable internal management.

This policy of the central government compels the state government to reduce the formalities for the registration of the Ngo's.

### VIII. NGO'S AND PIL:

The supreme court in the recent times have overcome their traditional principle of 'locus standi' which allows only the aggrieved party to reach court and public wrong cannot be redressed by the court. But the courts have evolved the principle of Public interest

litigation which allows any person out of the group to file a PIL for promoting general welfare. The Ngo's are also allowed to file PIL. The first PIL is **HUSSAINARA KHATOON V. STATE OF BIHAR**<sup>17</sup> in 1979 where the attention was on the Bihar under trials who were pending in trial for long term than that of the term charged for the offence. As a result around 40000 persons were released.

- **CASE LAWS:**

- ✓ **KRISHNA KUMAR BIRLA V. RAJENDRA SINGH LODHA**<sup>18</sup>

The court held that the husband in this case is an executor and not a trustee; in order to become a trustee, he should have completed the administration of trusts.

- ✓ **Lt GOVERNOR OF DELHI V. V.K.SODHI**<sup>19</sup>

Even though the council resemble state by coordinating the education and it depend on the funding of the state it is held not to be a state under the article 12 of the constitution. It is held to be a society.

- ✓ **NOEL HARPER V. UNION OF INDIA**

The constitutionality of the foreign contribution (regulation) act 2010 was challenged. The union government's recent amendment to the act increased the scrutinising for receiving foreign contribution. Through the amendment the government the government barred the Ngo's to sub grant the foreign funds to another Ngo. It also restricts the Ngo to spend only 50% to 20% on the administrative expenses. And the last one is that the amount received through foreign funds should be received through the state bank of India's headquarters situated in New Delhi. Various Ngo's challenged this amendment, but the honourable Supreme Court held that the amendment of 2020 is a necessary step to track the misuse of the fund in respect of threatening national security. The court also encouraged the Ngo to depend upon the Indian donors for their funding.

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<sup>17</sup> (1979) AIR 1369

<sup>18</sup> (2008) AIR SCW 2557

<sup>19</sup> (2007) AIR SC 2885

**IX. RECEND ISSUE:**

The ministry of Home affairs cancelled and refused to renew the registration under the foreign contribution (regulation) act 2010. Almost 6000 non-government organizations suffered due to this. The Supreme Court dismissed the plea of the Ngo's and upheld the cancellation of the registration. Following this the ministry refused to grant reasons for the cancellation of the registration. The RTI filled in June 2023 was also dismissed by the government.

**X. CONCLUSION:**

The growth and impact of NGOs in modern India has been remarkable. From humble beginnings in the early 20th century, the number of registered NGOs in India now exceeds 3 million. This proliferation speaks to the vital role NGOs play in Indian civil society. NGOs serve many critical functions, from delivering social services to advocating for policy changes. Their positioning outside of government allows NGOs to be more nimble and target specific community needs. Many NGOs have had substantial positive impacts, whether improving healthcare access in rural areas or providing legal aid to the poor. At the same time, the NGO sector faces ongoing challenges. Many smaller NGOs struggle with limited funding and organizational capacity. Larger NGOs must work to maintain transparency and accountability. The government retains significant discretion to regulate and restrict NGO activity as well, as evidenced by recent controversies regarding foreign funding. Overall, NGOs will continue to be crucial players given India's immense diversity and socioeconomic needs. The true potential and sustainability of the NGO sector will depend on building constructive government-NGO relationships based on mutual trust and shared objectives. NGOs must also prioritize accountability and impact assessment as they scale up operations. With thoughtful regulation and capacity building, NGOs can thrive as catalyser's of inclusive development in 21st century India. Hence, while Indian NGOs have seen remarkable growth since independence, fully realizing their potential will require strengthened organizational capacity, funding diversity, transparency, partnerships, and supportive government

policies. By addressing these needs, the Indian NGO sector can continue expanding its vital contributions to civil society.