

Chapter 13

Third Sector Governance in India

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The third sector in India is unique because it represents a public space where social aspirations converge in a vast, complicated and heterogeneous terrain through the work of incorporated bodies, unregistered organisations, informal groups and non-formal community initiatives. The best organized and most familiar forms of voluntary initiatives include the cooperatives and non-government organisations (NGOs), whereas self help groups, community organisations and associations of indigenous people are less formal, unregistered but have a wide geographic and functional coverage. The third sector in India has a long history, varied sizes and diverse structure and functions—complementing the vastness and cultural intricacies of the country.

The growth of the third sector in India has a lot to do with the socio-religious features of the country. Faith-based giving has been deep rooted in the Indian culture. In India, the concept of *Daana* (giving/charity) goes back to the Vedic period. The *Rig Veda* (a sacred ancient text) makes ample references to charity as a duty and responsibility of the citizen and the benefits that one earns through an act of charity. The first half of the nineteenth century in Indian history witnessed the emergence and rise of social reform movements with the advent of the British rule¹.

Immediately before and after the independence, a favourable government attitude towards the voluntary agencies existed in India promoting the activities initiated by the followers of Gandhi. There was also enthusiasm of the bureaucracy to contribute to the development process which gave impetus for the formation of the third sector organisations (TSOs) during the post-independence period (1950s). Although in the early years of independence, there was recognized space for the TSOs allowed by the government, the space disappeared very soon. The government and the third sector were in a virtual confrontation during the late 1970s because the latter was perceived to be supporting the anti-government movements. The situation began to improve again in the 1980s, and in the Sixth Five Year Plan (1980–1985) the federal government made budgetary allocations to provide financial support to voluntary organisations. The government identified new areas in which voluntary organisations as ‘new actors’ could participate. Under the Seventh Five Year Plan (1985–1990),

¹For more see, ‘Philanthropy and Third Sector in India’, in www.asianphilanthropy.org.

the Indian government envisioned a more active role for voluntary organisations in making the communities as self-reliant as possible. This was in tune with the participatory and empowerment ideologies, which were gaining currency in the developmental discourse at that time. The phenomenon continued in the Eighth Five Year Plan (1990–95), where a nation-wide network of voluntary organisations was sought to be created. The proactive state support to the TSOs, through a series of Union (federal) and State legislative measures, enlarged the reporting needs. The Constitutional provision for right to association ensures that the voluntary organisations enjoy adequate autonomy in terms of their management and governance.

In the ground, as a result, there is a kaleidoscope of TSOs. There are traditional associations like the caste associations, ethnic associations, kinship associations and modern associations such as the professional associations of lawyers, doctors, engineers, nurses etc. There are also informal and unincorporated community initiatives and associations of indigenous people. These TSOs coexist with the NGOs providing services to the needy and poor. Public advocacy, research and support organisations also exist in various forms (PRIA, 2000).

The exact number of the TSOs and the scale of their operations in India are not known. It is very difficult to make an estimation of the third sector in India because of the size, variety, informal nature and uncertain life span of the TSOs. A study conducted by the PRIA (2002), however, estimates that there could be as much as 1.2 million TSOs in India of different types and characters with nearly a half thought to be unincorporated. Those which are registered under any of the existing legislations generally fall under the category of trusts, societies, trade unions, cooperatives or joint-stock companies.

The third sector in India is predominantly rural based. More than half of the known initiatives in the country operate in rural areas. The vast majority of them are small, with only volunteers or one or two paid staff (PRIA, 2002). Given the fact that the TSOs' contribution in terms of monetary gains and development achievements is very large, the role of the TSOs is increasingly seen to be important in the recent past. With the declaration of the Millennium Development Goals (MDGs), the space for TSO activities has widened and has become more pronounced than ever before. The TSOs have a crucial role to empower people to participate in the democratic political processes and to be part of the decisions that have a bearing on their lives.

Because of the recent restructuring of social systems with the global integration of Indian economy, the activities of the third sector are more visible now. The state and the business sector in India have started attaching greater importance to partnering with the third sector. At present the third sector is considered to be an equal partner in the process of development with tri-sector collaboration being the *mantra* of the policy makers.² This has on the one hand made the functioning of the third

²The Agenda Bangalore Task Force, a committee formed by the government in collaboration with the third sector and the corporate sector representatives to work out the urban infrastructure development and to address the migrant population problem, slum clearance and security issues was a planned tri-sector partnership. The success of this partnership has been tried out in other cities too.

sector acceptable in the public realm, while on the other the need for and interest in the issues of accountability and credibility of the third sector has also considerably increased. Therefore it is pertinent to inquire into the governance practices of the TSOs to understand their social validation in terms of sustainability and survival in the public space.

This chapter is divided into five sections dealing with different aspects of TSO governance in India. The section following this introduction highlights the major aspects of the legal environment for the third sector. The discussion deals with the incorporation under, implementation of and the compliance with the legal provisions, and the implications of the legal environment on TSO governance in India. The next section briefly reports the main aspects of the key informant survey on the study focusing on the respondents' perceptions about TSO governance, indicators of TSO governance, supervisory nature and responsibility of TSO governance in India, and the TSO managing committee or boards' responsibilities in India. This discussion follows two sections dealing with the structure and functioning of the TSOs in India, and the TSO governance structure, process and issues in India. The last section deals with some observations and conclusions.

Legal Environment for the Third Sector Governance

India is a common law country, and has a legal system largely influenced by the British laws. There have been amendments and replacement of laws, nonetheless the basic structure and premise of legal framework remains largely similar to the British colonial laws. Further, the Indian Constitution (1950) has enshrined 'rights to association' as a basic right of all citizens.³ These two factors seem to have tremendous influence on the structuring of the laws related to the third sector.

Multiplicity of legislations is an important feature of the Indian legal system. It provides various options for TSO incorporation based on the nature and functions of the organisation, and the type of management system the members/promoters wish to have. The variety, however, leads to complexity in understanding the legal requirements, and forming a TSO.

Incorporation Under, Implementation of and Compliance with the Legal Provisions

The laws related to the incorporation intended to provide a legal personality for the TSOs are varied and include statutes on societies, co-operative societies, non-profit companies, trade unions, trusts, endowments and *wakf*. Legislations like the Income

³The Constitution provides that any group could freely form associations and the legal bodies will not intervene until there is evidence of breach of code of citizenship by such associations.

Tax Act and the Foreign Contribution Regulation Act are important as fund-regulating legislations. A brief overview of the major provisions and the thrusts of these legislations are presented in Table 13.1. The table provides a platform to understand how the law influences the governance of TSOs in India.

In the case of almost all the legislations, for incorporation or fund regulation, the implementing agencies are generally administrative officers appointed by the government. The registration process emphasizes that the competent authority has to be satisfied that all the conditions of registration are fulfilled. The requirement of periodic submission of reports, details of activities, accounts and audit statements ensure documentary provision for scrutiny by members or interested persons. This requirement guarantees transparency, and helps combat various types of oppressions and abuses through timely intervention by the implementing agencies. The policy makers devised implementing machinery with adequate safeguards against abuses. The implementation process, however, depends on the persons in the implementing agencies, and varies with changes in the personnel. The empirical data gathered from the field survey highlight this issue. The Societies Registrations Act 1860 (a federal or Union Act) provides a very loose skeletal framework for incorporation. This act does not detail the control mechanisms to be adopted. In view of its very wide scope and generic nature, all the states have passed State Acts within the wide framework of the Union Act. The state laws and rules provide for detailed controlling mechanisms.

The regulations under the state society registration acts are also nominal, for example the minimum number of members required to form a society is prescribed but the upper limit is not. The state acts nevertheless provide for details of conducting annual general body meetings (AGM) and roles and responsibilities of the members. These clauses envisage that the societies' purpose compliance is dependent on members' democratic participation in the society. In our study, nearly 40% of the societies did not have members other than the board members. These board members often have been holding positions (being re-elected every year) for many years since the inception of the organisation.⁴ All TSOs under the survey hold general meeting once a year to elect board members, scrutinize and approve the financial statements, etc.

Worth noting is that in about 50% of the member-based societies, only a few members attend the AGM though no serious deliberations are held at the meeting, anyway. In the other 50% member-based societies, the members are allowed to contribute to the major deliberations of the TSOs. Irrespective of the member influence in organisational deliberations, many societies (95%) did have sleeping or inactive boards where the secretary was responsible for making and implementing all decisions. Having a board and filing of annual income tax return are mandatory for the societies; it was, however, observed that at least one society had no board and four societies did not file their income tax returns. With all the above facts and data, it can be concluded that the compliance of societies' governance responsibilities, and its monitoring have been slack.

⁴The re-election provides a façade treatment of a legal requirement that the board has to be reconstituted periodically.

Table 13.1 Legal Tools for Third Sector Governance in India: Scope, Administration and Applicability

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
1 Charitable trust acts						
1.1 Indian Trust Act, 1882	Registration/incorporation Rights and duties of trustees and beneficiaries	Private trusts – either for charitable or other lawful purposes	Creation of trust, duties, liabilities, rights and powers of trustees Rights of the beneficiaries (not applicable to Jammu & Kashmir wakf)	Beneficiaries can compel trustee through legal proceeding to execute the trust and avoid breach of trust	–Facilitates creation of trusts-codifies rights and duties of trusts and beneficiaries –Less state control	–Lack of remedies outside the courts –Lack of state supervision
1.2 Charitable Endowments Act, 1890	Vesting and administration of property held in trust for charitable purpose	Public trusts for charitable purpose	–Defines charitable purpose –Constitutes treasurer for charitable purpose	Treasurer can use trusts property for the purpose of trust deed	State's involvement in ensuring proper use of trust property	Skeleton like legislation without elaboration for peoples' participation
1.3 Charitable and Religious Trusts Act, 1920	Effective control over charitable and religious trusts	Charitable and religious trusts	–Trustee to disclose object, income and value of trust	–Judicial interference in proper management	–Transparency by disclosure clause –Judiciary remedies breach of trust	–No extensive administrative control –Preventive mechanism is inadequate

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Table 13.1 (continued)

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
1.4 Bombay Public Trusts Act, 1950	Detailed measures for governance of public trust in the state of Maharashtra	Public trusts	<ul style="list-style-type: none"> -Superintendence of public trust by charity commissioner -Quasi-judicial adjudication by charity commissioner 	<ul style="list-style-type: none"> -Suspension or dismissal of trustee by charity commissioner for injurious acts -Prevention of waste, damage or improper transfer of trust property -Special audit 	<ul style="list-style-type: none"> -Transparency -In-built checks by charity commissioner -Purpose compliance is effective -Economically more effective 	<ul style="list-style-type: none"> -Not much insistence on democratic governance -Workload on charity commissioner -Over dependence on charity commissioner
2 Society acts						
2.1 Society Registration Act, 1860	Regulation, incorporation, improving the legal condition of societies	<ul style="list-style-type: none"> Societies registered for the promotion of literature, science, fine arts, diffusion of knowledge, education, charity, political education, libraries -Non-profit bodies 	<ul style="list-style-type: none"> -Requirements for registrations -Annual returns about governing body -Legal personality of society 	<ul style="list-style-type: none"> -Purpose should be lawful -Alteration of purpose or dissolution only by general body by special vote 	<ul style="list-style-type: none"> Least intervention by the State -Facilitative role of law recognized 	<ul style="list-style-type: none"> -Loosely refers to democratic framework -Purpose compliance mechanism and financial discipline scheme ineffective

2.2	Andhra Pradesh Societies Registration (SR) Act, 1959 Karnataka SR Act, 1960 Madhya Pradesh SR Act, 1973 Meghalaya SR Act, 1983 Rajasthan SR Act, 1958 Tamil Nadu SR Act, 1975 Travancore-Cochin Literary, Scientific & Charitable Societies Act, 1955 Uttar Pradesh SR Act, 1976 West Bengal SR Act, 1963	Regulation, incorporation, improving the legal condition of societies within the state.	Societies established for promotion of charity, education, science, literature, fine arts, sports, foundation or maintenance of libraries, reading room, collection of natural history –Non-profit bodies	–Requirement for registration –Democratic framework of managing committee –Authority vested with general body –Control over transfer of property or use of funds –Extensive power of the registrar –Financial discipline	–General bodies' control and accountability –Annual audit and other reports to be placed before general body –Registrar's power of enquiry, investigation, surcharge and superseding appointment of administrator –Judiciary or registrar's power of dissolution and cancellation of registration	–Systematic democratic organisation –Well-conceived financial discipline –Effective scheme for purpose compliance –Laws are both facilitative and regulative	–Excessive governmental intervention amounting to regimentation –Freedom to disassociate is difficult to exercise
3	Co-operative society acts	Facilitating voluntary formation and democratic functioning of co-operative societies with membership from various states	Federal co-operative societies and multi-state co-operative societies	Registration, authority with general board of directors from and able to general body, registrar's power of enquiry and surcharge	–Democratic functioning –Financial discipline –Central registrar's power of supervision	–Effective purpose compliance effective, financial discipline and economic efficiency –Emphasis on education on co-operation	Arbitrators' qualification not prescribed –Higher state control

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Table 13.1 (continued)

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
Conventional						
3.2 A) Andhra Pradesh Co-operative Societies Act, 1964	Organizing the co-operative societies as democratic institutions and achieve the object of equity, social justice and economic development	Co-operative societies for promoting the economic interests or general welfare of its members or of the public	Registration, authority vested with general body, committee from and accountable aid to general body, free and fair election, and registrar's extensive powers	<ul style="list-style-type: none"> -Purpose of social justice insisted -Democratic functioning -Registrar's power of supervision 	<ul style="list-style-type: none"> -Regular, free and fair election -State aid -Democratic governance -Financial discipline -Dispute settlement through arbitrator 	<ul style="list-style-type: none"> -Excessive state control -Government actions encroach autonomy -Arbitrators' qualification not prescribed
B) Karnataka Co-operative Societies Act, 1959						
C) Kerala Co-operative Societies Act, 1969						
Mutual Aid type						
3.3 A) Andhra Pradesh Mutual Aided Co-operative Societies Act, 1955	Recognition, encouragement and voluntary formation of mutually aided, wholly owned self-reliant and self-help co-operative societies	Co-operative societies and federal cooperatives	Registration authority with general body, elected board of directors, no state aid, control by federal cooperatives, financial disciplining, co-operative principles well articulated	<ul style="list-style-type: none"> -Simple procedure for registration -Democratic framework -Dispute settlement by arbitrator 	<ul style="list-style-type: none"> -Conducive to liberal economy -More autonomy -Self-reliant -Less state intervention -Supervision by democratic body -Emphasis on cooperative education and equal participation 	<ul style="list-style-type: none"> -Arbitrators' qualification not prescribed
B) Karnataka Southardha Sahakari Act, 1997						

4 Religious endowment acts

4.1	Religious Endowment Act, 1863	Transfer of government's power of management to trustees	Endowments of mosques, temples and other religious establishments	Rights of trustees, appointment of regional committee members, members of regional committees, trustees duties,	<ul style="list-style-type: none"> -Trustees to give accounts -Committee to supervise -Suits for breach of trust 	<ul style="list-style-type: none"> -Autonomy to endowment -Concept of elected body of the committee -Control over trustee 	<ul style="list-style-type: none"> -Life tenure of committee member
4.2	A) Madras Hindu Religious and Charitable Endowments Act, 1951 B) Travancore-Cochin Hindu Religious Institutions Act, 1950	Administration and governance of all Hindu public religious institutions and endowments in the concerned state	Hindu public religious institutions and endowments including Mutts	Formation, rights and duties of trustees, powers of authorities	<ul style="list-style-type: none"> -Supervising powers of authorities -Religious qualifications and duties of trustee -Financial accountability for proper use 	<ul style="list-style-type: none"> -Systematization in temple administration -State authorities in purpose compliance 	<ul style="list-style-type: none"> -Lack of democratic framework for devotees' participation
4.3	Andhra Pradesh Charitable and Hindu Religious Institution and Endowment Act, 1966	Administration and governance of all Hindu public religious institutions and endowments in the concerned state	Hindu public religious institutions and endowments including Mutts	<ul style="list-style-type: none"> -Registration -Vesting of property in the institution -Appointment of board of trustees, rights, powers, duties and dis-qualifications of trustees -Powers of authorities 	<ul style="list-style-type: none"> -Requirement of giving accounts, audit and budget -Regulation on investment of funds and use of surplus funds 	<ul style="list-style-type: none"> -Trustee chair elected by the board -Elaborate measure about Tirupati Temple 	<ul style="list-style-type: none"> -Lack of democratic framework for devotees participation

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Table 13.1 (continued)

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
4.4 Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997	Administration and governance of Hindu public religious institutions and endowments in Karnataka other than Mutts and institutions of religious denominations	Hindu religious institutions and charitable endowments other than Mutts and denomination institution	<ul style="list-style-type: none"> -Formation of committee for each notified institution -Advisory committee at state level -Powers of authorities 	<ul style="list-style-type: none"> -Requirement of giving accounts, audit and budget -Regulation on investment of funds and use of surplus funds -Power to suspend improperly working committee -Proper administration of common pool fund 	<ul style="list-style-type: none"> Extensive measures for financial discipline 	<ul style="list-style-type: none"> -Exclusion of Mutts and religious denominations -Lack of democratic participation of devotees
4.5 Wakf Act, 1995	Better administration of wakfs, superintendence and control of wakfs	Wakfs or permanent dedication by a Muslim, of any property for any purpose recognized by the Muslim law as pious, religious or charitable	<ul style="list-style-type: none"> -Formation of Wakf board -Distribution of power between Wakf board and Wakf commissioner -Appointment of executive officer of Wakf board -Restrictions on powers of mutawalli 	<ul style="list-style-type: none"> -Restrains on powers of mutawalli -Restriction on misuse of property -Executive officer's role -Wakf tribunal's interference 	<ul style="list-style-type: none"> Semi-democratic composition of Wakf board -Protection against misuse of mechanism for purpose compliance is effective 	<ul style="list-style-type: none"> Beneficiaries are not given any opportunity in decision-making

5	Trade union act		<ul style="list-style-type: none"> -Wakf tribunal -Prevention of misuse or improper transfer of property -Arrangements and requirements about registration of trade unions -Immunity from civil suits and from criminal liability -Funds, amalgamation dissolution 	<ul style="list-style-type: none"> -Registrar's power to cancel registration -Annual returns -Access to registrar -Scope for election of office bearers and democratic framework -Competence to involve in collective bargaining -No check against outside /political interferences -Purpose clause usually vague
6	Act related to non-profit companies			
6.1	Indian Companies Act, 1956	Registration of non-profit companies/institutions	<ul style="list-style-type: none"> -Arrangement and requirement about registration -Corporate entity -Privileges of limited company 	<ul style="list-style-type: none"> -Acts done in violation of memorandum of associations are invalid, directors are answerable -Enables a corporate personality -General body meetings control policies and leadership
Section 25				

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Table 13.1 (continued)

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
7 Fund regulating legislations						
7.1 Income Tax Act, 1961 (relevant provision)	Exemption from tax liability for business activities of non-profit organisations B) Tax treatment to voluntary contribution	Non-profit organisation	Activities for promoting public utility service or for earning profit to be used for charitable purpose are entitled to tax exemptions, and contribution to Charitable Trust (CT) is eligible for tax exemption, if the contribution forms the part of the corpus of CT	Income tax authorities are bound by mandatory duty Mandatory application of Income Tax law	Supports charitable acts Supports charity	
7.2 Foreign Contribution Regulation Act (FCRA) 1976	Exemption from tax accorded to foreign contribution to definite associations	Associations having definite cultural, economic, educational, religious or social programme, which are recognized by the central government	Permission to receive and exemption from tax, provided all particulars are furnished	Mandatory application of the Act	Supports charity	The process of recognizing association as fit for getting statutory benefit is cumbersome and not transparent

The cooperatives and endowments have been performing much better in accomplishing governance responsibilities. The Co-operative Societies Act and the Endowment Act under the Trust Registration Act provide for directions for financial management, detailed job descriptions of supervisory positions, as well as detailed directions for day-to-day activities of the organisations. Our sample TSOs, which are registered under the Co-operative Societies Act, notified and formed as charitable and religious endowment trusts did not show any deviations from the regulatory provisions. Their number is less than that of the societies, and there have been periodic monitoring by the competent authorities, which could be the reasons for better compliance.

Under the Company's Act (Section 25), non-profit distributing private business entities can be formed for promoting charitable and socially useful objectives. These organisations are formed as business entities and are run professionally complying with the legal requirements. Among the TSOs in our sample for this study (please see later), only one company was found to have deviated from the laws.⁵ In India, all 28 states have private trusts except for Maharashtra, Gujarat and Madhya Pradesh where trusts of public nature are also registered under the Private Trusts Act. These public trusts function like the 'societies' and maintain accounts like a 'private trust'.⁶

The trusts in our sample had 15 to 5,000 members.⁷ The trustee is required to fulfill the purpose of the trust by conforming to the directions enumerated at the creation of the trust (The Indian Trust Act, Section 11). The trusts have been very particular in observing this regulatory dimension, and in almost all (13 out of 16) trusts the final say rests with the Board of Trustees.⁸ All of these trusts have bank accounts and follow manual or computerized accounting system. Nine out of the 16 trusts, however, provide regularly (or if sought) financial details to the beneficiaries and general public, the rest do not.⁹

The absence of a central legislation for public trust covering all states has left a gap in the provisions of forming and controlling public trust. To overcome this, some states have enacted state legislations (e.g. Bombay Public Trust Act, Madhya

⁵The organisation does not hold AGM, though there are about 300 voting members. Nor does it provide the members with the details of meetings and other documents of the proceedings. This is a gross violation of the Law because the members have legal rights to have access to all the documents by paying a stipulated fee.

⁶The Indian Trust Act 1882 (ITA) is essentially applicable to Private Trusts. In the absence of a 'Public Trust Act' in many states, a large number of non-profit initiatives seek registration under this Act. Section 3 of the ITA clearly distinguishes between the public and private trusts, but does not mention the controlling mechanism for them.

⁷The ITA is silent about the minimum and maximum members of a trust.

⁸In three trusts, in our study, the founder still has the final say.

⁹These two are major transparency requirements for the trust. 'A trustee is bound a) to keep clear and accurate accounts of the trust-property, and b) at all reasonable times, at request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust property' (The ITA, Section 20).

Pradesh Public Trust Act). The Public Trust Act (PTA) passed by different states works as an improvement over the ITA in checking and streamlining the Trusts' dealings. For those states where there is no separate act, an organisation working on or for the public has to register under the ITA, but they will be referred as public and charitable trusts.

Since the Bombay Public Trust Act (BPTA, 1950) is a pioneering and time-tested legislation, the other states, while enacting public trusts act borrowed the BPTA in its totality with some minor variations to suit the specific state needs. Public trust includes a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act 1860 (The BPTA, 1950, Section 2–13). It is due to this clause, five out of 18 organisations under this category in our survey, had registration both as a trust and a society. The size of membership of the trusts in our sample varies from zero (in 13 trusts) to 150,000.¹⁰ This is a positive development in the working of the trusts.

Availability of agenda to the board members before the meeting is a legal requirement and 16 out of 18 public trusts circulate the agenda to the members before board meetings. All the 18 public trusts noted that on an average, more than 80% of the board members attend the board meetings. The written objectives and its fulfillment are very important for a public trust's formation and continued existence. Accordingly, 17 out of 18 trusts had written objectives. The government is very keen on ensuring the trustworthiness of the trust and has a Charity Commissioner (CC) to monitor and enforce the legal regulatory provisions. The CC can declare a trust closed, if it fails to fulfill the objectives it was set for, the trusts are aware of this and abide by the legal requirements. Thus the TSOs appreciate a sincere purpose complying regulatory body, and abide by the rules.

The Trade Union Act (TUA) regulates the incorporation and organisation of the trade unions, and their rights and liabilities. Seven or more members of the TU may, by subscribing their names to the rules of the TU and by otherwise complying with the provisions, apply for registration as a TU (TUA, Section 4). No TU, however, shall register under any other societies, cooperative or company acts¹¹. The TU members, however, can form separate societies and cooperatives for the welfare of the members (TUA, Section 14).

In funds management, the Income Tax Returns (IT) and the Foreign Funds Clearance (FC, FCRA) are two important legislations that are used to very closely monitor the TSOs' accounting procedures. Hence, most TSOs have clear records pertaining to the IT and the FC. All the above noted incorporated bodies, except the non-profit companies have an open-ended provision. It could be either an Instrument of Trust or Societies Memorandum or the Rules Book of the TU. All these instruments give wide scope for the initiators to state what they really want to

¹⁰The BPTA 1950 does not indicate anything specifically about the membership and their rights.

¹¹These include The Societies Registration Act 1860, The Co-operative Societies Act, 1912, The Companies Act, 1956, etc.

do, how, and with what mechanism. Whatever is stated in the instrument is binding on the trustees and the members. The only open clause is that this instrument of trust, memorandum of societies and the rules book should not be against the interest of the beneficiaries and the law of the land. This indicates that the state has been providing enough space for the TSOs to function.

Legal Implications on Governance

The legal environment governing the third sector in India has donned the mantle of facilitative, protective and regulative roles by virtue of the country's inherent inclination for welfare democracy and orientation towards human rights. Although its interventionist posture is on the higher side and rather frustrating, the possibilities of abuses of organisational strength, especially because of the absence of countervailing forces, have called for an extensive framework of regulation. In-built mechanisms ensuring social justice, human rights and democracy have given both legitimacy and justification for the functioning of the regulatory system. The Indian system avoids the unhealthy extremes of both regimentation and licentious liberty. The analysis of different legislations and their provisions and empirical details pertaining to actual compliance with these laws and governance practices of TSOs reveal the following:

1. There exist multiple legislations, giving a wider choice for TSO incorporation.
2. TSOs can function without incorporation; incorporation increases opportunities of getting support from the government and donor organisations.
3. Relevant legislations address practically all aspects of governance such as democratic structure, participatory decision-making, financial accountability, external reporting mechanisms etc.
4. Implementing machinery is in place for all legislations (with substantial power – appointed mostly by the states) like for example, the Commissioner of Charity, Registrar of Societies.
5. The implementing agencies cannot pursue the compliance mainly due to inadequate number of staff to deal with proportionately large number of TSOs.
6. The implementing agency and/or judiciary investigate compliance failure only when a complaint is lodged.
7. Compliance with the provisions of the legislations is to ensure good governance. There are loopholes through which many TSOs can demonstrate their technical compliance without following the spirit of the law.¹²

¹²The Society Registration Act indicates that the board be formed by electing members from among the general members group and lays down the minimum size of the board; thus the spirit of the law is highly democratic. But many organisations have dishonored this spirit by limiting the membership to the minimum number of people required to form the board. In such situations the board members continue in the same position for a very long time.

8. The legislations give adequate space for the general public to keep an eye on legal compliance of the TSOs and to voice irregularities.
9. There are wide disparities in the adherence to the provisions of law partly because of the complexities of the provisions and partly because of the casual approach by the TSOs.
10. There is a need for streamlining the legal environment mainly to deal with complexities created by multiplicity of legislation.

On the whole, ‘choose a straight line of valid purpose, and sincerely follow it’ is the loud and clear message of the law to the third sector. Appreciation and internalization of this message both in letter and spirit tend to enhance TSO’s credibility.¹³ The Indian states seem to be keen to address the issue of TSO governance more through a policy framework than legislative mechanisms. Therefore, a National Policy for Voluntary Sector¹⁴ is drawn by the Voluntary Action Cell, Planning Commission, Government of India and is placed for the approval of the government and is expected to address many of the issues of governance for formally structured institutions.

Perceptions About Governance

As a part of our study, an attempt was made to understand how people who are associated with or have the capability of influencing the third sector perceive TSO governance. The key informants¹⁵ were asked to comment on their perception of governance, their thoughts about TSO governance responsibility, the extent of the government’s supervision and control, and the role of any managing committee/board trustee’s responsibility in TSO governance.

Conception of Governance

Majority of the key informants felt that understanding ‘governance’ in the context of a vast country like India is a difficult task. They are of the view that governance may mean different processes to different types of organisations. Governance is generally

¹³Yashavantha Dongre et.al. 2005. TSO Governance in India: Internal Governance Practices and Issues for Capacity Building, Paper presented at the UN Conference on Engaging Communities, Brisbane.

¹⁴This Policy is a commitment to encourage, enable and empower an independent, creative and effective voluntary sector, with diversity in form and function, so that it can contribute to the social, cultural and economic advancement of the people of India. <http://planningcommission.nic.in/data/ngo/npvol07.pdf>.

¹⁵Forty one knowledgeable people randomly chosen from across the country including the CEOs of some TSOs and third sector leaders were interviewed for this purpose. For details of the methodology please see Chapter 1 of this Volume.

recognized as an exercise of political, economic and administrative authority in reaching the identified goals or objectives (34%). Majority of them (52%) felt that organisational efforts are always challenged by conflicts existing within various groups, which undermine the legitimacy of the efforts to deliver and they should be minimized. The fulfillment of this condition might lead to good governance.

The key informants conceptualized governance generally in an abstract manner, focusing on certain qualities such as responsibility and accountability (89%). It was noted by nearly 40% of the key informants, that the concept of governance should include within itself economic equity as well as human dignity. It emerged from the discussions that governance must relate to the issues pertaining to entitlements and autonomy of groups and individuals along with the descriptive and normative concerns (61%). Governance to 41% of the key informants is not just governing document (i.e. the constitution, statutes or by-laws) but also the relationship among people and parts of the organisation.

Governance is also understood as a process by which communities move towards a more humane condition leading to democratic participation of people in matters concerning their life (58%). The key informants were of the opinion that along with the existence of issues like transparency in thought and action at all levels, accountable, responsive and responsible leadership becomes the basis of governance (83%). Devising effective means of achieving the goals and objectives of a TSO is an integral aspect of governance (81%).

Most of the key informants (86%) felt that governance is the capability of the people or the group to exercise socio-political power to increase the potential of achieving the long-term goals and at the same time minimizing the contradictions and tensions in an accounted manner. Eighty-one per cent identified the mode of accounting as the key element in governance. Public responsibility, integrity, social binding and moral commitment are noted as more important than sheer record maintenance. Governance, to many key informants (71%), is the process which provides equity, social justice and human dignity. Many respondents also noted that the mechanism adopted to empower people is governance. It emerges through the discussion that governance can also be understood as the process involved in public decision making about the use of public resources for public good.

Perceptions of key informants who are familiar mostly with large NGOs bring forth the idea that governance for the third sector is nothing, but the way corporate governance is understood and operationalized. To them it is the existence of a board and functioning of this board according to the laid down conditions (22%). It was noted that governance refers to an economic, legal and institutional environment that allows organisations to diversify and grow so that they reach larger groups who need their support.

The key informants were generally of the opinion that, 'governance' is highly subjective and time and space specific in nature. Therefore, it is very important to note that there cannot be a common capsule indicator workable for evaluation of governance in all patterns of organisations. It is felt that the indicators of good governance for the TSOs need to be evolved based on the type and target groups of the organisations.

TSO Governance Responsibility

In order to have efficiency and effectiveness, there has to be someone to own the governance responsibility in the TSOs carrying out the major policy making tasks shaping the TSO orientation and programmes. This responsibility may rest with a group or with a particular individual. Thirty-two per cent of the key informants were of the opinion that the board should have this responsibility, and 31% noted the CEO/leader. Some mentioned that the target groups (16%), staff (11%) and the organisation as a whole (10%) should be responsible for TSO governance. None of the key informants considered that either the government or the funding body should be vested with such a responsibility. The key informants, however, think that in reality, however, in India TSO governance responsibility lies mainly with the leader/CEO (50%), or the board (19%).

Extent of the Government's Supervision and Control

The government may involve directly with the functioning of the TSOs by being on the board and participating in the decision-making and implementing activities or may involve moderately by giving external support. The degree and nature of the government's direct involvement in TSO governance is dependent on the type of incorporation (sometimes being non-existent). Thirty-two per cent of the respondents noted that the monitoring and supervisory involvement of the government is of a 'great deal' in cooperative, 'moderate' in a society, and 'hardly at all' to 'non-existent' in the case of a trust. Twenty-six per cent respondents noted that the government moderately monitors the activities of the TSO. Eighteen per cent of the respondents were of the opinion that the government hardly monitors the activities of the TSOs.

Managing Committee/Board/Trustees

Board/committee/trustees occupy an important place in the present day TSOs. Most of the TSOs have board/committee/trustees. Only those TSOs which work as unincorporated entities do not require a board/committee/trustees to function. In our survey, 84 per cent of the key informants noted that board/committee/trustee do exist in the TSOs they are familiar with. Five per cent did not have any idea about it. Nonetheless they all felt that the board/committee/trustees have a major role to play in the governance of the TSO.

Existence of a board/committee/trustee in a TSO in India to a large extent depends on the legal requirement under which a particular organisation is incorporated. Some legislations, for example the Societies Registration Acts and the Public Trust Acts, clearly stipulate the need for a board/committee/trustee, and its functions. Eighty-two per cent of the respondents reported familiarity with this legal requirement.

It is important to note that the key informants' perception of 'governance' and the responsibility of governance in the TSOs are as diverse as the sector itself. It is true that the legal environment has its influence in determining many of the operational issues, but there is no consensus that it is the primary determinant of mode of governance. This phenomenon becomes much clearer when we look at the governance practices of the TSOs in our study, discussed in the next section.

Structure and Functioning of the Surveyed TSOs

In this section, we will provide a brief overview of the various issues related to the structure and functioning of the TSOs surveyed for this research in India. These trends are not based on any statistically validated sample survey, but are to be taken as explorations of trends available in the organisations studied by us. In all we have studied 98 registered organisations. Of these, 56 organisations were suggested by the key informants as well performing and the rest were chosen randomly. Further these organisations are drawn from the urban, semi urban and rural areas of different parts of the country.¹⁶ This section deals with field of activity that TSOs are involved in, age, and staffing and funding of the TSOs.

Major Fields of Activity

TSOs are found to be operating in almost all the fields to make people's lives more meaningful. They provide education and health care facility, work as support groups to the aged and the children, support the labour force and raise voice against injustice. They provide entertainment to all age groups and run drama houses and stage educative street plays. They run religious institutions and provide places for worship. They often work with the government and provide services on behalf of, or complementing, the government. They are also found operating in areas where they have to question and resist the course of action taken by the government (Lyons, 2001). For the purpose of this study, we have used the International Classification of Non-profit Organizations (ICNPO)¹⁷ categories and classified the TSOs into eight fields of activity. They are Art and Culture (5%), Business and Profession (7%), Education (12%), Environment issues (4%), Law and Advocacy (13%), Religious bodies (9%), Socio-economic development (22%) and Social service (27%).

The TSOs do not generally work with one field of activity. In our study only five TSOs have one field of activity. Ninety-three TSOs work in a minimum of four

¹⁶For details of the research methodology, please see Chapter 1 in this Volume.

¹⁷The International Classification of NPOs developed by the Comparative Non-profit Data Project of the Johns Hopkins University. We added cooperatives to the original list.

fields of activity and of these 12 TSOs are engaged in as many as nine fields of activity each. Almost all the organisations in the study including some religious bodies have education, social service, and development and health issues as their important areas of work. The second set of popular functional area is issues related to women and children and HIV/AIDS. In case of about 20% of the TSOs, the fields of activity were not closely linked to one another. Different funding bodies sponsor each activity and the functioning and governing mechanisms depend on the activity and the requirements of funding agencies. Five TSOs were working as subagents for larger TSOs, which would take all the decisions pertaining to the course of action and assign the implementation work to these TSOs. Thus, these are nothing but the paid agencies for discharging the work for others, like paid labor force on contract. As against this trend, most (93%) unincorporated organisations¹⁸ have been found to be working in a single chosen functional area. This fact indicates a possibility of the TSOs moving towards the functional areas for which funding is available, rather than focusing on a particular area of their concern and strength. Unregistered/informal initiatives do not look for outside funds and hence are more committed to and focused on a single activity.

Age of the Organisations

We have noted earlier that the third sector activity has a very long history in India. It would be difficult to identify the oldest TSO working in the country. There are organisations and initiatives, which have been active for hundreds of years. Among the organisations studied an unregistered TSO was 140-year old. However majority (72%) of the TSOs in our sample are in the age group of 11 to 50 years (34% fall within 11–19 and 38% in 20–49 categories.) Of the 26 TSOs with social service as the main field of activity, 30% are in the age group of 20–49. The presence of a driving force for the organisation is more pronounced in the age groups 10–19 (41%) and the 20–49 (39%) as against the younger TSOs, that is between 1–10 years of age (8%).

Staffing and Funding

The surveyed TSOs depend heavily on the paid staff (80%) to carry out the work. While 13% of the organisations depend on the members to carry out the works of the organisation, only in 3% cases, most work is done by volunteers. It is important to

¹⁸The study uses data drawn from 14 unincorporated TSOs to provide insights into different processes of governance practices, a study undertaken to understand the governance practices of unregistered initiatives in India by the Third Sector Research Resource Centre (Unpublished.).

note that even though they are paid staff, the staffs working in voluntary organisations, in general, are called volunteers. Obviously, the salary paid to them would be much less compared to that paid to those working in the for-profit organisations.

It seems very difficult for the TSOs in India to depend on only one source for funding. Only 7% TSOs receive funds from a single source. Fifty-six per cent of the organisations covered under the study receive funds from foreign sources (more than one-third of the total income for 36% of the TSOs come from foreign sources). Financial support by the government is received by 51% of the TSOs surveyed (more than one-third of the total income for 23% of the TSOs is made up of government funds). It is interesting to note that as opposed to the above two categories, domestic funds raising for 53% TSOs have been very successful with more than one-third of their total income constituting this source (though 69% raise funds domestically). Equally impressive is the fact that 81% of the TSOs under survey earn a reasonable income from 'other sources' (i.e. funds raised through membership fees, service charges etc.), while 58% collect more than one-third of their income from this source.

In fact, unincorporated initiatives to a great extent depend on domestic funding sources and member contribution. Eighty per cent of the unregistered TSOs in our survey raise funds from different domestic sources and supplement it with the membership fees, provision of services and sale of goods. Most unregistered organisations (75%) do not receive funds from the government. Flow of funds from the 'domestic' and 'other' sources have been growing as well. Sixty-seven per cent of the unincorporated TSOs have noted an increase of their funds in the last three years. This indicates that generation of funds domestically is very much possible, if the agenda on hand is convincing.

Seventy-four per cent of the TSOs in the study noted that their funds had grown in the three previous years, while 22% did not see any change in funds inflow. Four per cent of the TSOs faced a decrease in funds during that period, and were considering restructuring and changes in the field of activity, at the time of the survey, to secure the support of the available donors.

Most organisations hesitate to disclose the sources of funds.¹⁹ The issues of transparency, extensive competition to get funds, government interference and desire of the funding sources to remain anonymous are some of the reasons for this hesitation. As majority of the unincorporated organisations depend on the membership and other sources of funds for their activity, they were not as secretive as the incorporated TSOs, and were more open and willing to disclose their financial information.

Maintaining a steady flow of funds for the third sector was seen as a main problem by 72% of the TSOs. Still government funds seem to be unattractive. Ninety-three per cent of the TSOs noted that they go to the government, only if they cannot raise funds adequately from other sources. Fifty per cent of the organisations that

¹⁹ Asking questions about the size and source of funds was the most sensitive part of our field survey. Five TSOs (incorporated) were very annoyed with the research team for asking the sources of funds and threatened to end the interview if the information was insisted upon.

receive funds from the government expressed the despair and pain that they undergo in dealing with the government funds. They claimed too much interference from the government officials. Twelve per cent of the TSOs noted that many government officials claim undue advantages including the demand for being included in the TSO board as a precondition for processing the approved grants.

Growth in Activities

It is interesting to note that nearly 90% of the incorporated organisations noted that their activity has increased in the last three years; whereas 8% noted no change. All unincorporated TSOs recorded growth in activity as well. In case of about 80% of the organisations studied, there was a positive correlation between increased funding and increased growth in activities. Interestingly, the data also reveal that in most cases where the funding has increased, the domestic sources, revenue from sale of goods and services and membership fees have contributed more than the foreign funds. But, in our study the age of the organisation and the activity growth do not register any significant correlation. Thus it seems that the outcome and the network, not the age, matter in funding growth.

Governance Structure and Process

In this section we present some of the key issues related to the structure and process of internal governance practices of the TSOs studied. Practices related to decision making, funds management, role of board, external relations etc. are analyzed here.

Decision-Making and the Driving Force

The survey found that, usually, board members or trustees (85%) play the key role in decision-making. In 15% of the TSOs, the chief executive officers (CEOs) have the final say. Nevertheless the decision-making process in the TSOs varies widely. In our sample, of the 96 TSOs with board, only one organisation noted that the board did not meet regularly. But what is important to note is that in 55% of the TSOs, the board members meet only once a year. The key role played by the intermediary level staff is seen to be present in 60% of the TSOs where the board generally agrees to the proposals and ratifies them. It is found that only in 22% TSOs the board works as a unit, with all members of the board actively taking part in the decision-making activities. Nonetheless, only in 14% of the TSOs the board follows exemplary governance practices. The board, having the final say, has created an effective rapport with the staff and the volunteers in many TSOs. The board members are

highly informed and are not alienated from the ground realities. Hence, the policies and the decisions taken are more need based.

In 85% of the TSOs, board members take part in evaluating the performance of the organisation against the annual budget, and in 66% TSOs they actually take part in annual budget preparation. Eighty-nine per cent TSOs have board members involved in the evaluation of the efficacy and effectiveness of the organisation and in 43% TSOs board members negotiate around political system on behalf of the organisation. In nearly 55% cases board members do not get involved in fund raising or seeking funds for the TSO. They expect the CEO to attend to the fund-raising activity. Forty-three per cent of the TSOs noted that the 'organisation was known' to the public not through the board but through the individuals in the board.

In our study, we tried to understand who in the TSO is the driving force and may have the final say in all decisions. Sixty-seven per cent of the TSOs under study have the driving force, and in 52% of the TSOs it is the founder. The CEO or the chairperson is seen to be the driving force in 30% and 18%, respectively, of the TSOs surveyed. Expertise and competence of the person has been noted as the characteristic feature of the driving force in 31% of the TSOs under the study. Charisma and moral uprightness are noted by 12% and 11% TSOs, respectively, as the forces behind the driving force. Interestingly, lineage, wealth and political connections are noted by only 1% of the TSOs. None of the surveyed organisation noted fund raising as the main character of the driving force.

Planning and Financial Management

Planning activities depend on a clear 'Vision and Mission' of the TSO. The study reveals that 96% of the incorporated organisations have formal planning mechanism. A written Mission Statement is available in 74% of the TSOs. However, our field observations revealed that in case of 30 out of these 82 organisations many board members and staff did not clearly understand the Mission. Irrespective of the legal status, geographical location and the size, most TSOs undertake planning. The planned proposal for the major project gets circulated before the board meeting in 71% organisations, while 29% do not do so but orally notify the issue to the members of the board. The scene is the same with the unincorporated organisations. These organisations depend heavily on the oral mechanism. The empirical data reveal that a written statement of Mission or Objectives is not very common among the TSOs but planning of some sort is invariably found in most of these TSOs.

In our study not all but two organisations followed formal financial procedures. Of 12 unincorporated organisations 83% have formal financial procedures. Further, 92% of the incorporated TSOs prepare annual budget and 8% of them prepare a budget as and when they get the projects, and not an annual budget. Among the unincorporated organisations, those who have formal financial procedures also follow the annual budgeting practices while the other two TSOs make financial budgeting as and when the funds are available. The preparation of the monthly cash flow

budget was noted to be practiced by 71% of the incorporated organisations and 63% of the unincorporated TSOs. Preparation of the annual financial statement is undertaken by 97% of the organisations and 3% prepares it on a quarterly basis to submit it to the funding agency. They compile the quarterly reports and submit the same to the government annually. All the unincorporated organisations prepare the annual financial statements but follow different practices.

The financial statements are audited by qualified auditors in 99% of the incorporated organisations (one TSO undertakes internal auditing). Five unincorporated organisations undertake auditing by qualified auditors, six have internal auditing by members and one undertakes public auditing. In case of the incorporated organisations, the details of the financial statement are made available to members by 88% of the organisations and 53% make it available to the general public as well. Ten out of 12 organisations provide the financial details to the members and undergo public auditing where all the financial accounts are made public, and both members and the public can scrutinize the same. Involvement of the board in the preparation of the annual budget is found in 63% of the organisations and 37% noted that it is the CEO who needs to attend to it. The board in 92% of the TSOs reviews and approves the annual financial statements, while in 5% of the organisations board never gets to see the annual financial statements for reviewing or for approving. The CEO attends to it and informs the board about it. In 83% of the unincorporated TSOs, 'board' like structures take part in the preparation and reviewing of the financial statements.

External Reporting

Ninety-six per cent TSOs report their activity to people outside the organisation using different methods of reporting. The most popular methods are the paper hand-outs, public displays and the folk singing and street plays. Though 86% of the TSOs produce annual reports it is only for the official purposes, which never reach the public (and the public they interact with can hardly understand the financial and activity report in the written format). Even among the unregistered organisations, 50% produce annual report and other written reports, though mainly for internal use. Public reporting and external relations become very important when the TSOs start looking for funds through outside support especially from government and foreign funding sources.

Observations and Conclusions

The term governance seems to have become familiar to the third sector players in India through the international funding agencies and the corporate houses. With more funds flowing from large funding houses and more corporate houses establishing

foundations to support the TSOs, governance in the TSOs seems to look similar to the corporate governance code of conduct.

There is a tendency of the TSOs to formalize their structure and functioning modes to come within the brackets of these established codes of governance. This notwithstanding, there are still a large variety of governance practices pursued by different types of TSOs. These are more pronounced in the informal or unregistered organisations. Thus we may infer that the registered TSOs are increasingly falling in line with the corporate governance model when it comes to following certain procedures and maintaining documents. Nevertheless, there still exist informal modes of governance in actual practice, even among many of these TSOs.

There are wide disparities in the adherence to the provisions of law partly because of the complexities of the provisions and partly because of the casual approach by the TSOs. The implementing agencies cannot pursue the compliance mainly due to the inadequate staff size to deal with a large number of TSOs. The judiciary in India gets in to action only when there is an explicit case made out against a particular TSO in regard to violation of the provisions of law. It is however important to note that the judicial activism has been on the increase and the judiciary some times on its own initiates proceedings on TSOs not complying with the law.

Governance as a concept is perceived to be comprehensive but also complex and time and space specific in nature. Therefore, there cannot be a common capsule indicator workable for evaluating governance in all types of TSOs. Indeed there can be diverse and multiple approaches to governance. It is time we look in to them and take governance discourse away from 'corporate governance paradigm' and 'structure centered' approaches. This is especially relevant in the context of pluralistic societies like India. It is therefore necessary that we generate more extensive data on the informal/unregistered TSOs in India and examine their governance practices. This might help us in evolving an indigenous mode of governance which could be a more suitable model in the Indian context.