

# **Statutory Compliance Backbone of Good Governance**

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- Mahatma Gandhi's Trusteeship Approach
- Trustee holds property in trust for others
- Application of the law of God to human institutions
- Stewardship without ownership
- Not for private profit - for greatest good of all
- Responsible for proper management of properties & programs
- Neither owner nor beneficiary of Trust

- To ensure sound, proper & effective functioning of Trust
- Mandatory to follow applicable statutory provisions
- To make good losses incurred by Trust due to wilful neglect,
  - Deliberate omission resulting s into such loss
- To be recovered from personal properties of Trustees
- Duty bound to ensure proper functioning within legal framework
- To ensure adequate, appropriate & prudent use of all
  - Financial, material, intangible and human resources
  - Apply solely for achieving laid objectives

- To maintain & enhance organizational credibility
- To evolve & observing accounting procedures
- Disclosure standards & monitoring mechanisms
- To adopt & promote good governance

# Governance:

- Consistent management, cohesive policies, guidance, processes & right decision
- Follow its established processes & policies
- Monitor & record what is going on
- To ensure compliance with agreed policies
- Provide corrective action where rules are ignored or misconstrued
- Process of making & implementing decisions

## **Pillars of Governance:**

- Accountability, Transparency, Responsiveness, Consensus, Equity Inclusiveness, Effectiveness, Efficiency & Stakeholders' Participation

## **Statutory Compliance**

- Mandatory to enforce legal frameworks
- Aware of legal responsibilities, liabilities & obligations
- Numerous laws, rules, regulations, Executive Orders & notifications applicable

# Essential to understand salient features of 4 major laws:

1. Income Tax Act, 1961
2. Foreign Contribution Regulations Act, 2010
3. State Law applicable to Public Charitable Trusts  
and
4. CSR Guidelines under the Indian Companies  
Act, 2013.

# Part 1: Income Tax Act, 1961

## 1. Charitable purpose Section 2(15)

(a) relief of the poor,

(b) education,

(c) yoga,

(d) medical relief,

(e) preservation of environment

(f) preservation of monuments or places or objects of artistic or historic interest &

(g) advancement of any other object of general public utility  
General public utility not considered as charitable if involves the carrying on of any activity in the nature of trade, commerce or business, unless—

Such activity undertaken in course of actual carrying out of advancement of any other object of general public utility; &

Receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts

## 2. Registration under Section 12:

- Mandatory to get registration under Section 12 (A)
- Earlier registration under 12A was given as one-time registration
- From 1st April 2021, all new registration will be given for 5 years only
- All registrations under Sections 12 (A) and 80 (G) shall stand expired on 31 March 2026
- Mandatory to seek renewal by 31 March 2026 by Applying in Form 10AB (for post-2021 renewals) or Form 10A (for pre-2021 re-validation)
- Section 10 (23C) which permitted accumulation of Income has been merged with Section 12 (A)
- Liable to pay Exit Tax on accumulated income if renewal of registration not granted (applies when entity loses charitable purpose)
- Application - 6 months prior to expiry of registration.
- Change of objectives, re-apply for registration under section 12AB.
- Applying for Renewal under Section 80G, mandatorily to give Registration number with Darpan Portal of Niti Aayog
- Darpan mandatory for receiving grant from either the Central or State Govt (including DBCS)

### **3. Registration under Section 80 (G)**

- Renewal mandatory before 31<sup>st</sup> March 2026
- No direct benefit to charitable organizations
- Tax benefit of 50% available to donors under Old Personal Income Tax Regime
- Mandatory for getting grant from Govt and contribution under CSR
- Section 80GGA enables 100% exemption under old regime on donations made towards scientific research & rural development
- For enabling donors to get exemption – apply in Form 10 BD to Income Tax
- Receive certificate 10 BE for each donation and share with donor

#### 4. Exemption from Income Tax:

- Section 11 (1) permits carrying forward 15% total income as non-taxable surplus.
- Section 11 (2) permits carrying forward taxable surplus for 5 years without paying tax.
- File Form 10 before due date of filing return of income u/s.139(1)
- Mention purpose for accumulation of income
- Corpus Donations: Fully exempt from Tax as same not considered income; taxable when corpus is used
- Corpus is voluntary contribution made with a specific direction under section 11(1)(d)

## **5. Section 13 (Strong Tool with IT Authorities): outlines conditions where exemptions for charitable or religious Trusts are denied,**

- Prohibition for Private Religious Purposes:
- Restriction on benefits to specific religious community or caste
- Benefit to Specified Persons - for founders, trustees, relatives or entities controlled by them.
- Deemed Benefit: excessive salaries or loans to Specified Persons
- Violating can lead to the entire exemption being denied for that year, treating the income as taxable.
- Non-compliance in respect of timely submission of returns (before 31<sup>st</sup> October)

## 6. Anonymous Donation: Section 115BBC:

- **Definition:** Where NGO doesn't record donor's name, address or other prescribed details.
- **Tax Rate:** A flat tax of 30% is levied on the portion of anonymous donations exceeding ₹1,000,000 or 5% of the total donations received.
- **Applicability:** Applies to universities, hospitals, funds & registered Trusts
- **Purpose:** to prevent unaccounted cash being routed through NGOs
- To maintain detailed records (Name, Address, PAN/Aadhaar) for all donations file Form 10BD
- Religious Entities exempted from these provisions

## **7. Cash Donations:**

- **Up to Rs 2,000 when donor wants exemption under Section 80 (G)**
- **Up to Rs 2,00,000 if the donor is willing to provide address proof as well as PAN Number**
- **Till 5% of total donation or up to Rs 1,00,000 whichever is higher**
- **Better to avoid taking donations in cash more than 2,000**

## 8. Proof of Donor (Rule 18AB) at the time of Receipt:

- **Mandatory PAN or Aadhaar:** For resident donors, PAN or Aadhaar number mandatory.
- **Alternative Identification:** If PAN/Aadhaar is not available, one of the following must be collected:
  - Passport number
  - Voter Identity card
  - Driving license number
  - Ration card number
  - Taxpayer Identification Number (TIN) for foreign residents
  - Mandatory to get PAN if donation is more than Rs 10,000
- **Donor's Address:** The complete and accurate address of the donor.
- **Name of the Donor:** As per PAN or other government ID.
- **Mode of Receipt:** While not direct "donor proof," the method of payment must be recorded (e.g., Cheque, Demand Draft, Electronic Transfer).

## **9. Investment of Fund by Charitable Organizations Section 11(5).**

- **Govt Securities: Central Govt. bonds, savings certificates.**
- **Bank Deposits: Scheduled banks, Post Office Savings Bank.**
- **Public Sector: Shares of public sector companies, bonds/debentures of approved financial corporations.**
- **Mutual Funds: Units of Unit Trust of India (UTI) or other prescribed mutual funds.**
- **Other Approved Modes: Deposits with housing development authorities, equity shares of depositories (like NSDL/CDSL)**

**Note:** Govt of Maharashtra permits investment in selected shares of companies, mutual funds, units of Unit Trust. As investments are also regulated by State Public Trust Laws, Charity Commissioner Gujarat permits investments only in deposits of schedule banks and Government Securities.

Refer to List of permitted investments as issued by State Authorities controlling public charitable Trusts and registered Societies.

## **Part 2: FCRA, 2010**

- **Applicable only to FCRA registered Entities**
- **Registration/Prior Permission from Ministry of Home Affairs (MHA)**
- **Aadhaar Mandatory: for Office bearers/directors must provide Aadhaar**
- **Designated FCRA Account State Bank of India, New Delhi branch**
- **Only foreign funds to be deposited in SBI Account**
- **Permitted to open & operate Utilization Account for spending**
- **No mixing of Foreign Funds & Domestic Funds under any circumstances**
- **Foreign funds to be spent only on the purpose for which sanction has been granted by MHA**
- **No Transfers of Foreign funds to other individuals or entities – only direct spending**
- **Contributions from NRE or NRO account to be deposited with SBI as FCRA Funds**
- **Interest earning or income from FCRA Funds to be deposited with SBI**
- **No investment of FCRA Funds to be made in speculative investments**
- **Reduced Administrative Limit: limit of 20 percent**
- **Unspent Admin Expense could be spent in the following year**
- **Admin Expenses as definition given in the Act**
- **Annual returns to be filed every year till 31 December**

- **Complete details of donor with address, mobile number, Passport number etc. to be disclosed in the returns**
- **Separate books of accounts to be maintained and audited**
- **All assets, properties and moveable assets to be reflected in statements**
- **Auditor to provide duly signed and stamped report of audit in the prescribed format**
- **The authorized signatory also makes a declaration in a prescribed format and verifies signatures**
- **Separate register of moveable and immovable assets with the location of the same to be maintained**
- **Income from use of properties created with FCRA funds is considered FCRA Income**
- **Sale proceeds from sale of moveable and immovable assets to be deposited with FCRA Account with SBI**
- **Registration valid for 5 years, requiring timely renewal & compliance**
- **Receipt of contribution of more than 1 crore in year to be displayed in public domain**
- **No Trustees should be a “Public Servant” or have political affiliations**
- **Political nature of organization to be disclosed to the FCRA authorities**

**Prohibition of foreign contribution as per Section 3(1): Following entitled are prohibited to receive foreign contribution:**

- a) a candidate for election**
- b) a reporter or other professionals associated with news industry**
- c) a company associated with broadcasting of news**
- d) a Judge, Government servant or employee of a government company**
- e) a member of any legislature**
- f) a political party or an organization of political nature**
- g) an individual or association specifically prohibited**

- No Trustees should have criminal records
- Change of Trustees should be notified to MHA while filing the returns
- NGOs must disclose any criminal records or legal action
- NGOs must not publish a newsletter or take part in anti-national activities or anti-government campaigns
- The MHA has inherent powers to get accounts checked or get forensic audit of an FCRA registered NGO conducted.
- MHA has power to check for fictitious entities during renewal
- MHA has power of suspension or cancellation of registration for violation of the provisions of the Act
- Any NGO of a political nature or company engaged in production and broadcast of audio- or audio-visual news or current affairs have been placed in prohibited category
- Any person whose request has ceased shall be able to prefer a fresh on-line application only after six months from the date of cessation of the previous application.
- Any person who knowingly gives false intimation and seeks prior permission or registration by means of fraud, false representation or concealment of material facts, shall, on conviction by Court, be liable for imprisonment for a term which may extend to six months or fine or with both.

## Part 3: State Trust Laws:

**Legal Options:** Any services-oriented organization in India can be constituted under one of 3 Acts:

### 1. **Key Features of Section 8 Companies** under Indian Companies Act, 2013

**Charitable Objects:** Must focus on specific beneficial objectives like education, arts, science, or social welfare.

**Profit Reinvestment:** All profits/income must be used solely for promoting its objectives, not distributed as dividends.

**No Dividend Distribution:** Members cannot receive dividends.

**Name Flexibility:** Can omit "Limited" or "Private Limited" from their name.

**Licensing:** Requires a license from the Central Government (MCA) at incorporation.

Registered under the Ministry of Corporate Affairs (MCA)

Subject to Companies Act, 2013, Income Tax Act, and GST regulations.

Must file annual returns and maintain books of accounts.

#### **Revocation of License:**

Central Govt can revoke license if it acts fraudulently, violates Act, acts against public interest, or misuses its objectives.

Revocation can lead to winding up or amalgamation with another similar company.

## 2. Indian Societies Registration Act, 1850

- An Act for the Registration of Literary, Scientific and Charitable Societies
- For promotion of literature, science, fine arts, or diffusion of useful knowledge
- A legal framework granting legal entity status
- Enabling them to own property
- Sue/be sued, and operate independently via Memorandum of Association & Byelaws
- Requiring registration with a Registrar
- Annual filings of managing bodies and audited financial statements
- Providing for dissolution
- Promoting public welfare by formalizing groups with common goals.

### 3. State Public Trust Act (it varies from State to State)

- a) All entities carrying out our charitable activities need to register under State Public Trust Act.
- b) Most charitable entities in India are registered as Public Charitable Trusts or Registered Societies or both.
- c) In Gujarat, both types of entities are monitored and controlled by the Charity Commission
- d) Core Characteristics are:
  - **Public Purpose:** solely for charitable aims like education, healthcare, poverty alleviation, or general public utility, not private gain.
  - **Indeterminate Beneficiaries:** Benefits an indefinite section of the public, not specific individuals.
  - **Non-Profit Motive:** Cannot operate for profit; all surpluses must be used for charitable objectives.
  - **Trustee Governance:** Managed by trustees who hold assets for the public benefit, with specific duties outlined in the Trust Deed.
  - **Perpetual Succession:** Continues to exist beyond the lives of its founders, ensuring long-term impact.

## Legal & Regulatory Aspects

- **Governing Laws:** Subject to state-specific Public Trusts Acts (e.g., Bombay Public Trusts Act) and the Indian Trusts Act, 1882.
- **Registration:** Requires formal registration and documentation (Trust Deed) with relevant authorities.
- **Regulatory Oversight:** Overseen by Govt bodies (like the Charity Commissioner, Registrar & Attorney General)

## Benefits & Advantages

- **Tax Benefits:** Income tax exemptions (e.g., 12A/80G in India) and can receive foreign contributions (with FCRA registration).
- **Credibility:** Enhances public trust and attracts donations and grants.
- **Resource Pooling:** Gathers assets for large-scale philanthropic activities.

## Key Documents & Roles

- **Trust Deed:** The foundational document detailing name, objectives, trustees, and operational rules.
- **Trustees:** Key figures responsible for administration, though beneficiaries (the public) have no direct legal claim against them, relying on Competent Authorities for oversight.

## Points to Remember:

- I. Mandatory to confine activities in consonance with objectives
- II. To file change report whenever property or assets are acquired or there is change in Trustees
- III. Amendment of rule & regulations and objectives as per procedure prescribed under the Act
- IV. All changes will be effective once recorded in Public Trust Register
- V. File annual returns along with audited financial statements before 30 September every year
- VI. Take permission for the sale of property or assets
- VII. Investment as permitted by the Authorities
- VIII. Pay administrative charge as per rule every year
- IX. Authorities have power to inspect records, take Suo Motto action and supersede Trust under certain conditions
- X. Closure of Trusts not permitted, only option to merge with any other Trust having similar objects through by following a definite procedure and with the permission of authorities

**All disputes among the Trustees or other authorities are subject to jurisdiction of competent authorities**

# Part 4: Corporate Social Responsibility – Section 135 of Indian Companies Act, 2013

## A. Criteria for CSR Eligibility: 3 criteria

1. Net worth Rs 500 crore or more
2. Turnover Rs 1000 crore or more
3. Net profit of Rs 5 crore or more

**Note:** These criteria are likely to be diluted to expand scope of coverage

## B. Permitted Areas of Intervention:

**Schedule VII - Poverty, Food, Health, Nutrition, Water, Sanitation, Education, Gender, Vulnerable Groups, Environment, Art & Culture, Youth & Sports, Research & Development, Rural Development, Disaster Management**

## C. Mandate for Companies:

- To appoint CSR Committee
- Develop CSR Policy
- Upload CSR Policy and application form
- Report on CSR expenditure in Annual Report, website and ROCs
- Conduct impact assessment through 3<sup>rd</sup> party when grant is more than 1 crore
- Deposit unspent funds in Escrow Account with option of spending in 3 years
- Surrender unspent funds to designated funds like PM Care fund within 6 months of close of year

**d. Option for companies for spending money:**

- **Through its own Foundation**
- **Directly**
- **Thorough registered NGOs**
- **Through other Corporates**

**e. Mandate for NGOs**

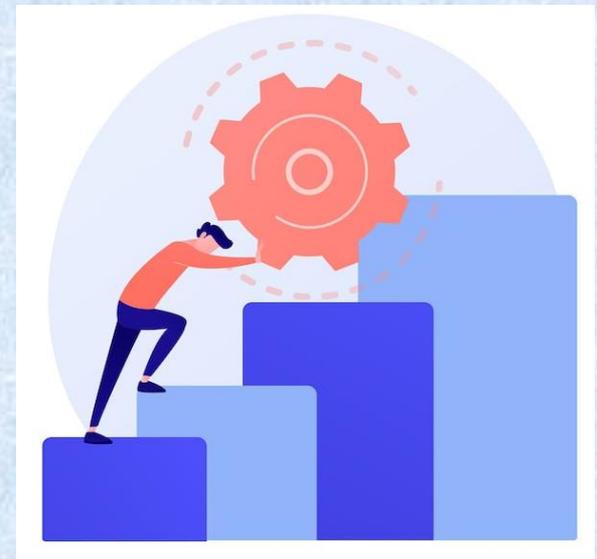
- **Have valid Trust/Society/Section 8 Company registration**
- **Have valid registration under Section 12 (A) and 80 (G) of IT**
- **Have CSR certificate under Ministry of Corporate Affairs**
- **Have valid registration on Darpan Portal of Niti Aayog**
- **Have constitution of Trust and list of Trust**
- **A valid project for areas covered under Schedule VII**
- **Capacity to spend funds before 31<sup>st</sup> March**
- **Spend allocated funds by 31 March**
- **Provide Utilization Certificate and list of beneficiaries**

**f. What is not CSR: Spending money on:**

- **Business-related activities of the company**
- **Political parties**
- **Staff welfare**
- **Activities outside Schedule VII**

## **g. Key Leanings**

- **CSR is an excellent opportunity for seeking support for capital as well as recurring expenses**
- **NGOs need to enhance capacity for report writing, managing funds and following statutory guidelines**
- **CSR is not a donation – it is an expansion of your coverage**
- **NGO Need to understand and follow newer guidelines**
- **Important to win the confidence & Trust of corporate**
- **Do not depend upon CSR for survival of your organization**
- **It is add-on support to services preferred by Corporate**
- **Must maintain timeline of spending and reporting, otherwise Corporate may be put in embarrassing position**
- **Seek support only for such activity which you can perform effectively in a time bound manner**
- **Do not depend upon a few companies, keep on expanding scope of your activities and identifying new CSR partners**



## Challenge:

- Target of seeking *“growth through highest level of credibility and good governance”* is doable and achievable
- There are number of shining examples of achievement through good governance and statutory compliances
- Choice is yours whether you want to remain where you are or make the sky your limit in your pursuit for achieving unparalleled growth for your organization