

NONPROFIT LEGAL REFORM IN INDIA

A Report by Mark Sidel

Examining the Legal Treatment of For-Profit Entities and Other Approaches to the Question of Nonprofit Legal Reform

Based on research and discussions with diverse Indian civil society groups, this paper seeks to determine whether regulatory practices adopted for the for-profit sector might lighten the burden faced by the not-for-profit sector, or whether other approaches seem more resonant within India at the current moment.

“EASE OF DOING BUSINESS” HAS BEEN ENHANCED

The complex Indian for-profit (corporate) legal regime is multifaceted but has generally resulted in more “ease of doing business.” Reforms have been undertaken in diversification of allowable entities; shareholder regulations and rights; director criteria and requirements (including gender); enhanced fiduciary duties; and other reforms. The full paper discusses these issues at greater length.

“EASE OF DOING GOOD” REMAINS A MAJOR PROBLEM

The problems of the nonprofit legal regime are legion. They include complex registration and operating requirements; subjecting nonprofits to a wide range of authorities that make day-to-day work and reporting challenging; tax complexities; issues of dissolution, termination and liquidation; government monitoring of nonprofits; and the onerous Foreign Contribution Regulation Act (FCRA 2010) related to foreign funding.

OPTIONS FOR CHANGE

The full paper discusses key challenges with modeling the corporate reform approach, including the difficulty in bringing to bear a wide coalition for nonprofit legal reform, as well as civil society suspicion of corporate paths and a range of other issues. Roundtable discussions highlighted other potential approaches, including comprehensive nonprofit legal reform or piecemeal reforms to specific problems in the nonprofit legal regime, resulting in the following possibilities:

1. Seek a form of “convergence,” to make the Indian nonprofit legal regime more like the for-profit legal regime, and the more favorable and efficient newer company law approaches in India. Make “ease of doing good” look more like “ease of doing business” for donors, recipients and other nonprofit actors.
2. Seek comprehensive nonprofit legal reform in its own terms, without reference to the for-profit legal regime options, to simplify the nonprofit legal regime through an omnibus reform.
3. Seek more specific (piecemeal) reforms to particular issues in the nonprofit legal regime, such as incorporation and registration, taxation, governance and management, enforcement, permissible activities, foreign funding, and a host of other areas.