

Understanding Legal & Regulatory Compliance for NGO's : Overview of Key Legal Frameworks and Why They Matter

Speakers:

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Moderator :

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Q1. What is the difference between Section 12A, 12AA and 12AB?

Section 12A laid down the conditions under which an NGO could secure exemption from income tax. Section 12AA provided the procedure for obtaining registration, which was permanent once granted. However, since April 2021, Section 12AB has replaced 12AA. Under 12AB, registrations are now valid only for five years, after which renewal is mandatory. This ensures greater scrutiny and accountability in the sector.

Q2. Can the registration under Section 12AB be cancelled?

Yes. Registration may be cancelled if the organisation utilises income for purposes outside its stated objectives, fails to maintain separate books of accounts for incidental business, engages in non-genuine activities, or violates the conditions of registration. Non-compliance with other laws such as FCRA, CSR regulations, or labour laws may also invite cancellation.

Q3. What challenges do grassroots organisations face when moving from 12A to 12AB?

Large organisations usually have access to legal and technical experts, which makes compliance easier. Grassroots NGOs, particularly those in remote areas, struggle to keep up with frequent regulatory changes. They often lack the resources and professional guidance to update processes, making compliance burdensome.

Q4. How does Section 80G work, and why is it significant?

Section 80G allows donors to claim tax deductions on contributions made to eligible NGOs. This provision enhances donor confidence and transparency. However, like Section 12AB, 80G registration is now valid for only five years, which means NGOs must plan their renewals carefully to avoid losing donor support.

Q5. Does GST apply to NGOs?

GST applies when an NGO's aggregate turnover exceeds the threshold of ₹20 lakhs in a financial year. Many NGOs assume that being charitable exempts them, but this is not always the case. Only specific charitable activities notified under GST law are exempt. Importantly, interest income and rental income also count towards the aggregate turnover, making GST applicable to more organisations than commonly assumed.

Q6. What mistakes do NGOs make regarding GST?

A common mistake is assuming that all charitable activities are exempt. In reality, income from training fees, consultancy, or renting property may attract GST. Another error is failing to include exempt income, such as interest, when calculating aggregate turnover. NGOs must also avoid registering for GST without proper need, as registration creates an obligation for regular reporting.

Q7. What are the risks of ignoring GST obligations?

Ignoring GST obligations exposes NGOs to heavy penalties, which most cannot afford. Non-compliance in one area can also trigger scrutiny under other laws. Given that financial data is now available online and easily cross-verified by authorities, organisations run a high risk of being flagged if they neglect GST requirements.

Q8. What are the key compliance requirements under FCRA?

FCRA regulates the acceptance and utilisation of foreign funds. NGOs must ensure that foreign contributions are received only in the designated SBI account, maintain separate books of accounts, and strictly avoid mixing domestic and foreign funds. Sub-granting is prohibited, and administrative costs cannot exceed 20% of total foreign contributions. Annual returns in Form FC-4 must be filed by 31 December, without fail.

Q9. How can NGOs distinguish between foreign and domestic contributions?

The key factor is not the currency but the citizenship of the donor. Contributions from Indian citizens, even if sent in foreign currency, are considered domestic. Conversely, funds received from foreign citizens or entities, even if remitted in Indian rupees, are classified as foreign contributions. To avoid confusion, NGOs should obtain a declaration from donors about their citizenship.

Q10. What are the common reasons for FCRA cancellations?

Cancellations often result from mixing foreign and domestic funds, using funds for purposes beyond approved objects, failure to file annual returns, or lack of proper documentation. Even small errors, such as outdated board member details or incomplete records, can lead to cancellation. Non-compliance with other laws can also trigger scrutiny of FCRA registrations.

Q11. Should NGOs purchase assets with foreign contributions?

Although permissible, it is risky. If an NGO's FCRA registration is suspended or cancelled, the government may freeze or even take over assets purchased with foreign funds. Given this risk, many organisations now avoid purchasing immovable property with foreign contributions.

Q12. What internal governance compliances are often overlooked by NGOs?

While NGOs usually prioritise income tax, FCRA, and CSR compliance, they often neglect state-level labour laws such as Provident Fund, Professional Tax, ESIC, gratuity, and Shop and Establishment requirements. Ignoring these not only attracts penalties but also damages organisational credibility, especially during audits or donor assessments.

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