

# SEMINAR ON N.G.O PRESENTS



BY  
**CA SANJAY GUPTA**

(M.COM, FCA, CS, ICWAI, LL,B)

# LEGAL WAY



## TO DO SOCIAL WORK



BY: -SANJAY GUPTA (M.COM, FCA, CS, ICWAI, LL,B)

NGO's

TO

FORMATION

FUNDING

Trust

Society

Section 25/8 Company

Legal Compliance & Registration

Reg. of 12A/ 80G/35AC  
FCRA  
&  
Reg. Gov. Ministry Etc.

Indian  
Funding

International  
Funding

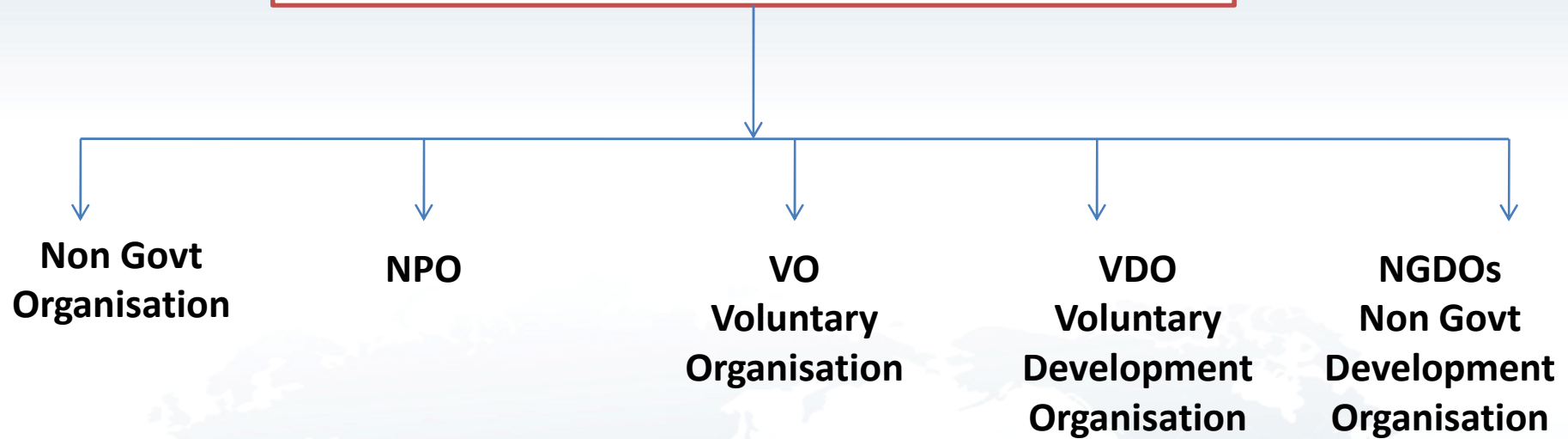
# MEANING OF NGO

**NGO means Non Govt. Organisation**



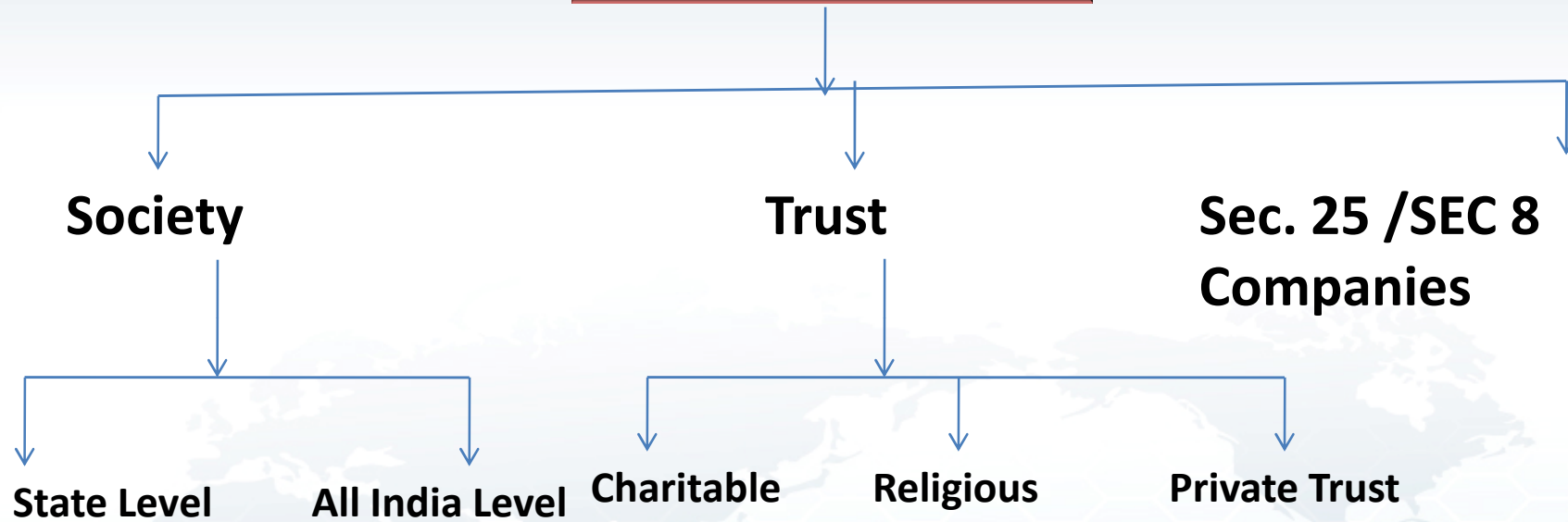
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# Other Names of NGO



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# TYPES OF NGOs



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Que. CSR through NGO set up by Company?

Ans: Rule 4(2) of CSR Rule provides as under:

- ✓ Board of a Company may undertake its CSR activities approved by CSR Committee.
- ✓ Registered Trust.
- ✓ Registered Society.
- ✓ Company u/s 8.

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# LAW APPLICABLE TO NGOS

1) SOCIETY REGISTRATION ACT,1860.

2) INDIAN REGISTRATION ACT,1908.

3) REGISTRATION OF TRUST UNDER PUBLIC TRUSTS ACT.

4) CHARITABLE AND RELIGIOUS TRUSTS ACT,1920:- (M. IMP.)

THIS IS CENTRAL ACT WHICH APPLIES TO ALL RELIGIOUS AND CHARITABLE TRUSTS. PROVIDES FACILITIES FOR OBTAINING INFORMATION REGARDING PUBLIC CHARITABLE AND RELIGIOUS TRUST.

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5) **RELIGIOUS ENDOWMENTS ACT,1863:-**

THIS ACT ENABLES THE GOVT. TO DIVEST ITSELF OF THE MANAGEMENT OF CERTAIN RELIGIOUS INSTITUTION.

6) **INDIAN TRUST ACT,1882:-**

THIS ACT GOVERNS PRIVATE OR FAMILY TRUSTS AND EXCLUDES FROM ITS AMBIT WAKFS AND CHARITABLE OR RELIGIOUS ENDOWMENTS.

# IMP. PROVISIONS:-

- Whether Foreigner can be the member of the society?

Yes, Foreigner can be the member of the society but society registered in India is known as “Indian Society”.

- Whether other than individual can be the member of the society?

A Registered Society/ Company/ Any other legal entity can be the member of society through its constituted attorney.

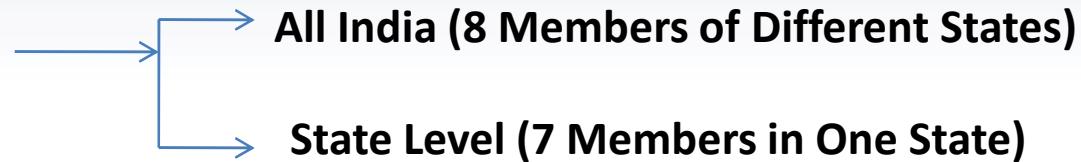
# SOCIETY



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# (I) REGISTRATION PROCEDURE

## i. Society:-



### Requirements:-

1. Covering Letter.
2. MoA.
3. Rules & Regulations.
4. Affidavit of President stating relationship of subscribers
5. NOC from Premises owner of registered office.
6. Proof of Registered Office.
7. Power of Attorney in our Favour.
8. ID Proof of all desirous persons (Self Attested) .
9. Registration Fees
- 10.

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**III. NAME OF SOCIETY:-** REGISTRAR CONSIDERS THE “EMBLEMS AND NAME(PREVENTION OF MISUSE ACT,1950) & SO **REGISTRAR CAN OBJECT:-**

- (A) THE NAME OF THE SOCIETY ALREADY EXIST.
- (B) REGISTRAR WILL OBJECT TO NAME CONTAINING WORDS LIKE GOVT., MINISTRY, BANK, ETC.
- (C) NOC FROM GOVT. DEPARTMENTS.

**IV. MOA:-** SEE SPECIMEN COPY.

**V. COURTING THE SOCIETY:-** THE COURT INTERFERES ONLY TO PREVENT UNFAIRNESS OR OPPRESSION AND TO ENSURE BONAFIDE EXERCISE OF POWER.

# WHY SOCIETY SHOULD BE REGISTERED IN DELHI

☐ **PERMANENT REGISTRATION**

☐ **FILING ONLY ANNUAL LIST**

☐ **NO CHARITY COMMISSION**

☐ **GOOD WILL**

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# TRUST



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# Registration of Trust

**Private Trust**

**Religious Trust**

**Charitable Trust**

**Settlor or Author of  
Trust**

**Beneficiary**

**Trustee of Trust**

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# TYPES OF TRUSTS

## a) Private Trust

If a trust is created for the benefit of family members, it is known as **Private Trust**.

## b) Charitable Trust

If a Trust is created for the benefit of general public irrespective of caste/ religion/ community than it will be known as **Charitable Trust**.

## c) Religious Trust

If a Trust is created for the benefit of particular Religion/ Caste/ Community, it will be known as **Religious Trust**.

# REQUIREMENT FOR REGISTRATION OF TRUSTS

- 1) AS PER JURISDICTION OF S. R.
- 2) 2 PHOTO OF MT & TRUSTEE.
- 3) 2 WITNESS WITH ID PROOF.
- 4) REGISTERED OFFICE PROOF.

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5) RS.1100 REGISTRATION FEES.

6) STAMP DUTY = 8% OR RS.100, WHICHEVER IS HIGHER.

7) RENT AGREEMENT.

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# IMPORTANT PROVISIONS

Trust deed is most important for Charitable Trust. some provisions should be inserted in every trust deed.

- 1) All the surplus fund will be invested as per Sec.11(5) of I.T Act.
- 2) At the time of dissolution, all the Assets & Liabilities will be transferred to other trust/ society/ institution having similar objectives.
- 3) Minority Trust should include the provision.
- 4) In case of **Minority Trust** these clause should be inserted i.e. Trust is created for the benefit of the minority communities, Muslims, Sikhs, Christians, Buddhists, Zoroastrians has been notified as minority communities under Sec 2(c) of the National Commission for Minorities Act,1992.
- 5) Trustee of the trust will not take any benefit directly or indirectly from the trust



# **CRITERIA TO CHOOSE BETWEEN SOCIETY/ TRUST/ COMPANYU/Sec 8**

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# **THE MAIN DIFFERENCE BETWEEN SOCIETY /TRUST/COMPANY U/S 8.**

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DESCRIPTION	SOCIETY	TRUST	COMPANY
ACTIVITIES ALLOWED	ANY KINDS OF CHARITABLE & PUBLIC UTILITY ACTIVITIES CAN BE UNDERTAKEN	SAME	SAME
ANNUAL DOCUMENTS TO BE FILED	THE ACT REQUIRES A LIST OF MANAGING BODY TO BE FILED EVERY YEAR. BUT DIFFERENT STATES HAVE DIFFERENT REQUIREMENTS FOR FILLING ADDITIONAL DOCUMENTS EVERY YEAR. .	NO DOCUMENTS ARE REQUIRED TO BE FILED.	ANNUAL RETURN AND AUDITED ACCOUNTS ARE REQUIRED TO BE FILED EVERY YEAR.

DESCRIPTION	SOCIETY	TRUST	COMPANY
GENERAL & BOARD MEETINGS	GENERAL & BOARD MEETINGS ARE REQUIRED TO BE HELD AS PRESCRIBED IN THE BYE LAWS OF THE SOCIETY	NO PROVISIONS ARE LAID DOWN. ADEQUATE RULES SHOULD BE FRAMED IN THE TRUST DEED, IN THIS REGARD.	SPECIFIC PROVISIONS HAVE BEEN LAID DOWN. AT LEAST 1 ANNUAL GENERAL MEETING AND 4 - 4 BOARD MEETINGS ARE REQUIRED TO BE HELD EVERY YEAR.
INCOME TAX REGISTRATION	COMPULSORY WITHIN 12 MONTHS OF REGISTRATION	SAME	SAME
AUTHORITY WITH WHOM TO BE REGISTERED	REGISTRAR OF THE SOCIETIES OF THE CONCERNED STATE	SUB – REGISTRAR OF REGISTRATION AT DISTRICT LEVEL	REGISTRAR OF COMPANY OF THE CONCERNED STATE

DESCRIPTION	SOCIETY	TRUST	COMPANY
AREA OF OPERATION	CAN OPERATE THROUGH OUT INDIA EVEN IF REGISTERED IN ONE PARTICULARS STATE. NO SEPARATE REGISTRATION IS REQUIRED FOR OPERATING IN ANOTHER STATE.	CAN OPERATE THROUGHOUT INDIA.	CAN OPERATE THROUGHOUT INDIA AS THE REGISTRATION IS GRANTED BY THE CENTRAL GOVERNMENT
PAYMENT TO FUNCTIONARIES	PERMITTED AS PER GENERAL BODY APPROVAL	PROVISION IN THE TRUST DEED SHOULD BE THERE FOR ANY SUCH PAYMENT	PERMITTED AS PER GENERAL BODY APPROVAL
TRANSFER OF MEMBERSHIP	MEMBERSHIP IS NOT TRANSFERABLE	MEMBERSHIP IS NOT TRANSFERABLE	MEMBERSHIP CAN BE TRANSFERRED. RESTRICTION ON TRANSFER CAN ALSO BE PLACED.

DESCRIPTION	SOCIETY	TRUST	COMPANY
TRANSFER OF MEMBERSHIP	MEMBERSHIP IS NOT TRANSFERABLE	MEMBERSHIP IS NOT TRANSFERABLE	MEMBERSHIP CAN BE TRANSFERRED. RESTRICTION ON TRANSFER CAN ALSO BE PLACED.
FCRA REGISTRATION OR PRIOR PERMISSION	COMPULSORY FOR RECEIVING FOREIGN FUNDS.	SAME	SAME
LABOUR & OTHER RELEVANT LAWS	TO BE COMPLIED AS PER APPLICABILITY.	SAME	SAME
FOREIGNER AS A MEMBER / TRUSTEE	POSSIBLE	SAME	SAME



# REGISTRATION (PART)

❑ BASIC REGISTRATION



❑ INCOME TAX REGISTRATION



❑ FCRA REGISTRATION



❑ MINISTRY OF STATE GOVT, & CENTRAL GOVT.



❑ OTHERS -----PLANNING COMMISSION

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# **REGISTRATION U/S 12A & 80G:-**

- All voluntary organisations irrespective of whether a Trust/ Society/ Company/ AOP are required to get themselves registered with CIT to claim exemption from Income Tax.

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**SEC12AA**

# **PROCEDURE FOR REGISTRATION**

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# **SEC 12AA-PROCEDURE FOR REGISTRATION:-**

Make Application to CIT/ DIT (Exempt).

- 1) Covering Letter.
- 2) 10A in triplicate.
- 3) 10G in triplicate.
- 4) MoA/ Trust Deed/ MoA of Company.
- 5) Power of Attorney.
- 6) Resolution in respect of Authorised to person.
- 7) 3 Year Audited Accounts.

**Receive a letter from department, the important points are mentioned below:-**

1. Justify with the bill/ vouchers of the income applied for charitable activities along with beneficiaries.
2. Please file the undertaking that there should be no infringement to provision of Sec 2(15) of the IT Act.
3. Original MoA/ Registration Certificate.
4. NOC from landlord along with ownership proof.
5. Focus area of Charitable activities/ Projection Plan for next two years.
6. Activities carried out since inception or last 3 years with supportive document evidence.
7. Please justify your claim for registration u/s 12AA & 80G.

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8. Please furnish the details of donation including corpus donation received & made giving name, address, PAN no. of donors.
9. Copy of IT Return for last 3 years.
10. A certificate from the M. Trustee that there is no change in the objectives or activities of the trust. In case there has been any change in objectives that may be pointed out [80G].
11. An affidavit from M. Trustee that there is no infringement of provisions of Sec.13 of the IT since its inception of society [80G].



The department may accept or reject the proposal.

### **APPEAL AGAINST THE REJECTION:-**

If Reject → Appeal within 60 Days in Form 36 from the date on which the order of commissioner is received.

# **IMPORTANT POINTS FOR 12A REGISTRATION:-**

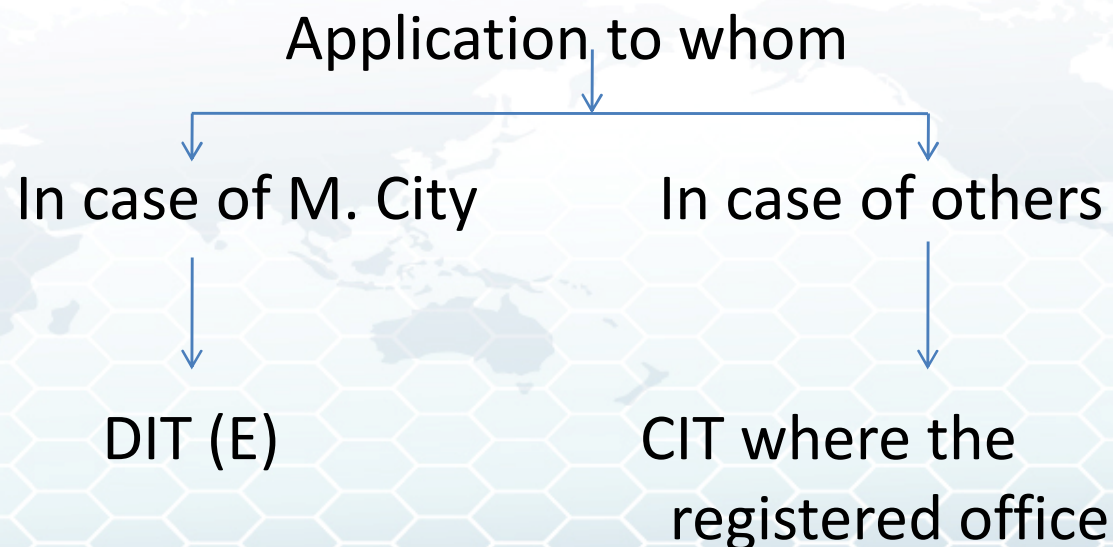
## **[BASED ON DECIDED CASE LAWS]**

1. Registration u/s 12A in itself does not entitle an organisation to claim exemption but it is only a precondition for exemption.
2. Circular no 7/2010 –the approvals u/s 1023(c) granted on or after 1.12.2006 shall be valid until withdrawn
3. Circular no 7/2010 –the approvals u/s 80G (5) granted on or after 1.10.2009 shall be valid until withdrawn
4. In other state - 1st 12A apply  
- 80G apply
3. Commissioner has no power to condone the delay of application.
4. Commissioner has power to cancel the registration if he satisfies that false information was provided.
5. Registration is not mandatory but a precondition to avail IT exemption.

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6. Activity outside India is not relevant at registration stage. AO will treat separately at the time of Assessment.
7. Private management is no bar to Sec12A registration.
8. Based on various decision CIT is only required to satisfy himself about the objects of the trust and genuineness of its activities and no more.
9. 12A can be granted to Charitable/ Religious both.

.



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**11. WHEN APPLICATION SHOULD BE MADE:-**

- WITHIN 1 YEAR FROM CREATION .
- IF LATER, REGISTRATION WILL GRANTED FROM 1 APRIL

**12. 80G- NOT ALLOWED FOR RELIGIOUS TRUST** (AFFIDAVIT FOR 5% OF TOTAL EXPENSES.)

**13. DEEMED REGISTRATION:-** DIT(E) IS REQUIRED TO TAKE DECISION WITHIN 6 MONTHS FROM THE END OF MONTH IN WHICH APPLICATION U/S 12AA IS MADE OTHERWISE DEEMED REGISTRATION.

**14. SECTION 12AA SAYS THAT IT SHALL BE DEEMED REGISTRATION HOWEVER, CERTAIN JUDICIAL PRONOUNCEMENTS SAY THAT THERE WILL BE NO DEEMED REGISTRATION**  
**[CIT V. KARIMANGALAM ONRIYA PENGAL SEMIPU AMAIPU LTD (MAD. H.C)]**

**15. 12A REGISTRATION IS GRANTED ON THE BASIS OF ACTUAL ACTIVITIES RATHER THAN PROPOSED ACTIVITIES MENTIONED IN MOA.**

**[DIT (EXEMPTION) V. MEENAKSHI AMMA ENDOWMENT TRUST (KAR. H.C)]**

REGISTRATION CANNOT BE DENIED ON THE GROUND THAT THE TRUST HAS NOT CARRIED OUT ANY CHARITABLE ACTIVITY SO FAR IN THE SHORT SPAN OF TIME AFTER ITS FORMATION

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22. Holding Doctors Conferences in 5star hotels are not ground to reject the registration  
(Heart care management vs DIT DELHI(2012))

Trustee will have here a discretion to organise, the conference at a place and in the manner which is be fitting the participant and objects.

23 Insufficient of funds cannot be a reason for Rejection.

24. Last Time rejection of application not justifiable

25. Non filling of return cannot be a ground for rejection

High court of Allahabad [CIT vs Shri Advait Ashram Society]

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## 26. commencement of activity is necessary or not for 12A registration

DIT(E) vs Meenakshi Amma Endowment Trust –[2011]

Karnataka Highcourt held that 12AA Application can be filed within a week of registration therefore activities of the trust can not be the criteria for granting registration under section 12AA

Gujrat High court in case CIT vs kutchi dasa caswal moto pariwar trust -2013, commissioner has power to call for such document or information from trust as he thinks necessary yet it does not means ie if activities of trust have not commenced,, commission has authority to reject its application for registration on ground that trust failed to convince him about –genuineness of activities.

Q. LIFE TIME TRUSTEE CAN BE THE CRITERIA OF  
REJECTION US12A

Ans. No-CIT vs Baba Kartar Singh Educational Trust

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# FCRA FOREIGN CONTRIBUTION REGULATION ACT - 1976

Presentation by  
Sanjay Gupta

BY: -SANJAY GUPTA (M.COM, FCA, CS, ICWAI, LL,B)

# INTRODUCTION

**OLD ACT – FCRA ACT – 1976**

**NEW ACT – FCRA ACT 2010(W.E.F. 1-MAY-2011)**

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# FCRA & IMP. PROVISION

**Main objective:-** To avoid the use of foreign fund and hospitality for anti-national activities.



FCRA ACT, 1976  
(w.e.f 01-05-2011 FCRA ACT 2010)



which applicable to whole of India including the state of J & K.

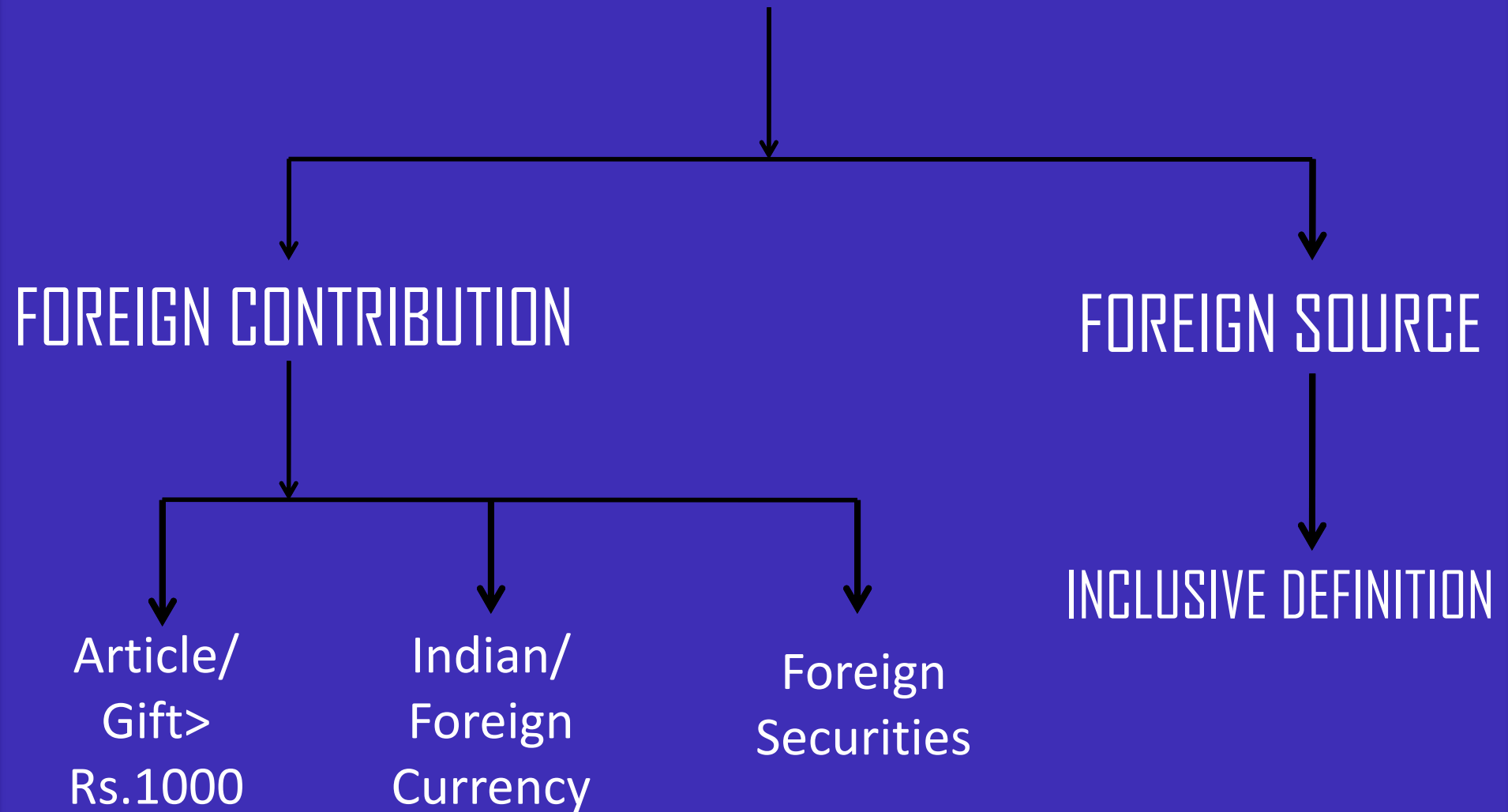


All Charitable, Educational, Social, Cultural, Religious, Political organisation, Societies, Trusts, Companies, etc. are covered under the act.



FCRA applies if foreign contribution received from foreign sources.

# TWO REQUIREMENTS FOR FCRA



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# FCRA ACT 2010



TO REMOVE SOME INADEQUACIES AND PRACTICAL  
DIFFICULTIES IN ADMINISTRATION OF OLD ACT

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## **SOME EXAMPLE:**

**1. NO TIME LIMIT FOR REGISTRATION APPLICATION**

**2. ONLY ONE BANK A/C WAS ALLOWED IN FCRA ACT 1976.**

**3. REASON FOR REJECTION**

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# APPLICABILITY OF THIS ACT<sup>2</sup>

IF ANY PERSON RECEIVED

“FOREIGN CONTRIBUTION”  
From “FOREIGN SOURCES”

# MEANING OF FOREIGN CONTRIBUTION

Actual

Deemed

Article >  
Prescribed  
limit

Indian or  
Foreign  
CURRENCY

Indian or  
Foreign  
Securities

Means, Donation, Delivery, Transaction made by any foreign sources`

# DEEMED FOREIGN CONTRIBUTION

- **INTEREST INCOME ON F.C. AND ANY INCOME DERIVED FROM FOREIGN CONTRIBUTION OR INTEREST THEREON**

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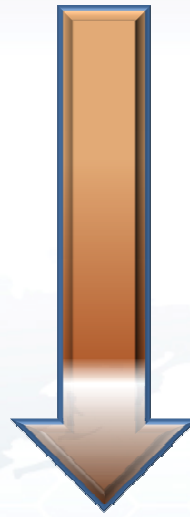
# FOLLOWING ITEMS NOT TREATED AS F.C.

- FEE (INCLUDING FEES CHARGED BY AN EDUCATION INSTITUTION IN FROM FOREIGN STUDENTS)
- TOWARDS COST OF GOODS & SERVICES RENDERED IN ORDINARY COURSE OF BUSINESS TRADE OR COMMERCE'S. WHETHER IN INDIA OR OUTSIDE INDIA.

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# MEANING OF FOREIGN SOURCE



ACT PROVIDE THE INCLUSIVE DEFINITION

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# FOREIGN FUNDING

PRIOR  
PERMISSION

PERMANENT  
REGISTRATION

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# IMPORTANT POINTS

- ONE BANK A/C SHOULD BE OPEN FOR RECEIVING FC
- MULTI A/C CAN BE OPENED FOR UTILIZATION BUT INTIMATION TO MINISTRY WITHIN 15 DAYS
- 3 YEARS OLD ORGANIZATION
- 10 LACK EXPENDITURE OVER A PERIOD OF 3 YEARS EXCLUDING ADMINISTRATION EXP.

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# PROCEDURE FOR PERMMENT REGISTRATION

- ❖ LOG ON [WWW.MHA.NIC.IN](http://WWW.MHA.NIC.IN)
- ❖ FILL UP THE FORM **FC – 3**
- ❖ ATTACHED THE FOLLOWING DOCUMENTS
  - FC – 3 DULY FILED IN TRIPLICATE
  - AUDITED ACCOUNTS FOR LAST 3 YEARS
  - ANNUAL REPORT FOR LAST 3 YEARS
  - CERTIFICATE COPY OF REGISTRATION
  - MOA

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- ❖ LIST OF MAIN OBJECTIVES
- ❖ DETAILS OF GOVERNING BODY/EXECUTIVE MEMBERS
- ❖ COPY OF ANY PRIOR PERMISSION GRANTED TO THE ORG.
- ❖ COPY OF RESOLUTION OF GOVERNING BODY
- ❖ COPY OF POA IN FAVOUR OF CHIEF FUNCTIONARY
- ❖ LIST OF PRESENT MEMBER AND OFFICE BEARER
- ❖ COPY OF PUBLICATION
- ❖ IF EARLIER APPLY THAN REFERENCE NO.

❖ DETAIL OF BANK A/C

❖ RECOMMENDATION CERTIFICATE FROM COMPETENT AUTHORITY.

❖ COPY OF 12A & 80G CERTIFICATES

❖ FEES OF 2000 DD IN FAVOUR OF “PAY AND A/C OFFICE MHA PAYABLE AT NEW DELHI”

❖ HARD COPY OF SENT TO MINISTRY WITHIN 30 DAYS.

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- VISITED BY INTELLIGENCE BUREAU
- AGAIN APPLICATION CAN BE FILED AFTER SIX MONTH FROM THE DATE OF CESSATION OF APPLICATION

### **TIME LIMIT**

90 DAYS FOR GRANT REGISTRATION OTHERWISE COMMUNICATE OF REASON OF DELAY

# APPLICATION FOR REGISTRATION

REGISTRATION  
GRANTED



For 5 years from  
the date of issue

REJECTED



1) Reason for  
Rejection

2) Appeal to H.C.  
within 60 days

A vibrant landscape featuring a bright sun in a blue sky with scattered white clouds. A single green tree stands on the left side of a lush green field.

THANK YOU

FOR ADDITION  
IN MY PROFESSIONAL KNOWLEDGE

ANY QUERY

FOR CONTACT US

SANJAY GUPTA CHARTERED ACCOUNTANT

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