

# AccountAble™

Registered Society–

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## Overview

Most needs of the human society mean an economic opportunity. Entrepreneurs rise to take these up. This makes life easier to live and contributes to strength of the society.

Some needs may not be urgent. Or there may not be enough people who will benefit *directly* from these. Or people may not be able or willing to pay for these. Naturally then, entrepreneurs will not take interest in these needs.

Non-profit organizations form to fill this gap. The most common form of non-profit organizations in India is a society.

## What is a Society

A society is formed when some people come together. They have some common purpose and want to do something. The purpose must be legal. Mostly the purpose should be to do something useful for others.

A society should generally not get into profit-making activities. But if it does, then the profit must be used for some charitable purpose.

What is a charitable purpose? Mostly it means helping the poor, sick or the helpless. Philanthropy, altruism, humanitarianism are similar concepts.

Charitable *purpose*<sup>1</sup> of your work and charitable *approach*<sup>2</sup> to the work can be two different things. Most laws are concerned with the purpose of your work. You are free to choose the approach – which may be charitable, developmental or some other.

A society must be registered<sup>3</sup> for it to enjoy full legal status.

## Registration

You are registered when your name is entered in a register<sup>4</sup>. The person who enters your name is called a registrar. This sounds very simple. However, you must meet some requirements before you can be registered.

Requirements vary from state to state. Mostly, you must file a memorandum of association and your bylaws<sup>5</sup>. You must also deposit a fee.

Registration (as a concept) probably started thousands of years ago in ancient Egypt or Greece. It is mostly done by Government agencies.

Registration is sometimes viewed as a status symbol.



The Society Registration Act was passed to improve the 'legal condition' of societies. How does this improvement occur?

## Registered Society

A registered society is viewed as an independent 'person'. It is different from the people who form it. This means:

1. It can purchase and hold property.
2. It can file legal cases.
3. It has perpetual succession<sup>6</sup>.

And even more important:

<sup>1</sup> Objective

<sup>2</sup> Method

<sup>3</sup> This discussion is mainly based on Societies Registration Act, 1860.

<sup>4</sup> The root of 'register' is the Latin word 'registum', which means a list.

<sup>5</sup> Rules and Regulations

<sup>6</sup> It can continue even when the original members pass away.

4. It can get exemption from income tax.
5. It has limited liability.

### Unregistered Society

An unregistered society is not recognized as an independent person under law. Therefore, it does not enjoy the five benefits (listed above).

### Limited Liability

A registered society has limited liability<sup>7</sup>. 'Limited liability' means that the liability of the society is limited to assets of the society. The liability does not extend to personal assets of its members or Governing Body. What does this lead to?

Well, suppose you organized a fund-raising event. You ordered furniture, food, arranged cultural programs, and printed pamphlets. The total expenditure came to Rs.8 lacs. However, at the end of the event, your ticket income comes only to Rs.2 lacs. You have lost Rs.6 lacs. This money is payable to various persons.

You sell off all the assets of the society. This gets you Rs.1 lac. After this, you still have to pay another 5 lacs. What happens now?

It depends on whether your society was registered or not. If the society was registered, nothing much happens. The society simply goes bankrupt. But if the society was unregistered...

You will wake up one day to hear drums beating under your window. These drums will be announcing the auction of your personal assets, such as house, car, furniture....



The money raised this way will be used to pay off the creditors of your unregistered society.

### Memorandum

Most people forget things as time passes. This means that after a few years, members of a society may also forget its original purpose.

To prevent this, we have a memorandum<sup>8</sup>

of association (MOA). It contains the conditions on which the members have come together (associated).

The MOA must have three very important things:

1. Name of the society
2. Objects of the society
3. Details of the Governing Body

The first two are discussed below:

#### Name

When a baby is born, the parents spend a lot of time deciding the name. It should be easy to pronounce. It should sound good. People should not be offended by it. Hopefully, it should also contain clues to the child's character. If the name is long, then you also need a shorter name<sup>9</sup>.

Similar ideas apply to selecting a society's name. Additionally, the registrar should not object to the name. The registrar may object if the name misleads people. For example, names containing words like government, ministry, bank, etc. are not allowed.

#### Objects

Objects clause is the most important in a Memorandum. But this sound like a lot of legal words strung together. Therefore, no one ever reads the objects clause.

Objects define what the society can do or cannot do. If the objects were not clear, a problem may arise. The society could get into many things. It could keep changing the nature of its work. This may lead to misunderstanding among the members. Some of them could become unhappy with the new activities. They may say: look here, this is not what we wanted to do. We don't want to waste our time and money doing this.

To prevent this, the object clause lays down all the things the society plans to do. All the members agree to these and sign the memorandum. New members who join are also clear about this. No one can then complain.

Apart from the above, the objects clause is also important for another reason. This is

<sup>7</sup> Section 8 of Societies Registration Act, 1860; also K.C. Thomas v. R.L. Godeok AIR 1970 Pat 163

<sup>8</sup> The word 'memorandum' comes from Latin word 'memor', which means 'mindful'.

<sup>9</sup> Sometimes called a 'pet name'. People often convert the long name of a society into a short name. To do this, they pick the first letter of each word. The new word formed this way (e.g. UNESCO) is known as an 'acronym'.

called the doctrine of 'ultra vires'<sup>10</sup>. Ultra vires simply means 'beyond the power'. Anything done by the society outside its objects clause could become ultra vires. This means the court will treat it as never having been done. Why? Because the society couldn't have done it, as it was beyond its powers.

What does this mean in practical terms? Well, suppose your memorandum does not allow you to build or run hospitals. Yet you<sup>11</sup> spend 20 lacs on constructing a 40-bed hospital. What happens now? You may have to repay the entire money to the society! Incidentally, you won't get title to the hospital, either.



Such an action<sup>12</sup> cannot be approved, even if all the members agree to it.

### Rules & Regulations (bylaws)

If memorandum is like your character, bylaws are like your manners. Memorandum defines the powers, and bylaws lay down ground rules for conduct of the society.

Good bylaws lay down clear rules. Clear rules do not have to be rigid. Most people adopt standard rules from an existing society. This is fine. But before doing this, you should read the rules carefully. Try to understand each rule. Change the ones you feel may not be suitable<sup>13</sup>.

Bylaws should also look forward in time. For example, in many societies, the rules say that cash in hand will not be more than 50 rupees; or that the Treasurer will authorize all payments. This causes problems later when the Society becomes bigger.

Sometimes you may do something, which is not allowed by the bylaws. What happens then? The members can ratify it.

But what happens if you don't follow the rules quite often? Mostly it doesn't affect your practical work. However, it can lead to serious problems. If you have intelligent

'enemies', they may argue that the society is mismanaged. Courts may also agree with them. In some states, this means that the government can appoint an administrator to look after the society.

There is also a hierarchy involved here. If there is a conflict between bylaws and the memorandum, then memorandum will prevail. Similarly, if the memorandum goes against the Society Registration Act, then the Act will be followed.

### General Body

Unlike natural people, a society is blessed with two bodies: one is the General Body; the other is the Governing Body.

All the members of the society are part of the General Body. Together, they form the supreme authority over the society. They elect Governing Body members. They decide on alteration of name, objects, rules and regulations. Their consent is necessary to dissolve the society.

In practice, many societies have only seven or eight members of the General Body. All these people also get elected to the Governing Body. Therefore, many people think both are the same.

### Who can be a member

Generally individuals who are competent to contract<sup>14</sup> can become members. Some societies lay down additional qualifications (such as moral character) for members.

Foreigners can also become members of a society registered in India. In fact, it does not matter<sup>15</sup> if all the members are foreigners. The society will still be known as an Indian society.



A limited company can become a member. A partnership firm can also become a member. Even a registered society can become member of another society!

### Admitting new members

Most societies reserve the right to admit members. This means that you can't just walk up and insist on being taken as a

<sup>10</sup> Pronounced as 'wyreez'. The Latin word 'vires' means strength or force.

<sup>11</sup> As a governing body member

<sup>12</sup> Which is beyond the memorandum

<sup>13</sup> You may wish to consult a lawyer or CA later for suggesting suitable language.

<sup>14</sup> Persons of unsound mind and minors are not competent to contract.

<sup>15</sup> However, this may cause problems in getting FCRA registration.

member. Generally, the Governing Body has the power to admit members.

Admitting members can sometimes be a little dangerous.

### Take-overs



If the new members have bad motives, they can try to take over the society. This is sometimes done by 'packing'<sup>16</sup> the membership.

### Types of members

Some societies have three or four types of members. These could be founder members, associate members, honorary members, normal members, etc. The bylaws also define different rights and duties for these members.

### Voting Rights

Sometimes, one or other type of members is not given voting rights. However, the Society Registration Act<sup>17</sup> does not recognize<sup>18</sup> this. According to the Act, a person is a member if he or she:

1. Has been admitted to membership;
2. Has paid the dues or signed the members' register;
3. Has not resigned.

This means that all members have equal voting rights. They all have an equal say in elections, dissolution or other matters.

### Disqualification

Disqualification means that the member cannot do a particular thing. This thing may be attending a meeting or voting or some similar thing.

If a member's subscription is overdue for more than three months, the member is automatically disqualified<sup>17</sup>. This means he or she cannot vote or be counted as a member.

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<sup>16</sup> The person starts bringing in members who are loyal to him or her. Then through a series of strategic changes in Governing Body, the society is taken over.

<sup>17</sup> Section 15

<sup>18</sup> Rules and regulations, which are inconsistent with the Act, are invalid. Filing these with the Registrar does not make these valid.

### Removing members

Disqualification does not automatically lead to removal. Procedure for removal of members is given in bylaws. This must be followed properly. Principles of natural justice should also be followed.

Normally, this means that the member is given a show-cause notice. The member's reply should also be considered. A decision about removal should be taken after this.

Members can be removed for not paying annual dues. Other grounds can be not attending Annual General Meetings, conviction for a moral or criminal offence, or activities against the society.

### Membership fees

These can be of two types: admission fee and annual fee.

As discussed earlier, if membership fees are not paid, a member may be disqualified. You should therefore track fees carefully. Some societies maintain a register for this. Also, a receipt should always be issued when the dues are received.

In some cases, the annual fee is collected for several years at a time. Some bylaws also allow members to pay a lifetime's membership fee at one go.

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