

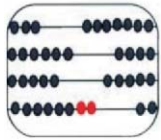
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AccountAid

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3. Misuse of fiscal incentives

This is one of the most serious challenges we face. It is also an issue about which relatively little is understood by the common person. In January 2002, 93% people voted in an internet survey to have the tax exemptions to charities withdrawn¹. This is perhaps a good example of the popular British proverb: 'Give a dog a bad name and then hang it'.

What are the real issues involved here? Mainly two. One, the tax-exemption, which is seen by most charities as a natural privilege and recognition of their non-profit character is seen otherwise by corporate tax-planners. Many see it as an attractive tax-shelter, which could help them save crores in income tax or wealth tax². This leads them to set up shell-charities, which could be used to park tax-able funds.

In order to upset their plans, and to prevent loss of revenue, the Government needs to walk a fine line. It wants to ensure that genuine charities are not inconvenienced, while making sure that shell-charities are unable to use the tax-exemption for saving tax or laundering funds. This leads to a gradual narrowing of the financial management space available to the genuine charity. An example of this is the gradual increase in the minimum expenditure requirements from 60% to 75% and thence to the current 85%.

The second issue is the tax incentives offered to donors who contribute to charities. Such a

Real charities are not really involved in any significant way in this tax-evasion.

donor could deduct an amount ranging from 50% to 125% of the amount donated from their taxable income. This means that for every rupee donated, they could save anything from 15 paise to about 40 paise in tax payment. However, they would still have to shell out a net amount of 60-85 paise. How wonderful would it be if they saved the tax, and yet did not have to give a donation at all? They could do this by either finding an obliging charity (which is not easy). Or they could ask their tax adviser to set up charity, which would just issue paper receipts, without any money changing hands.

We can see, therefore, that real charities are not really involved in any significant way in this tax-evasion. However, they end up taking all the blame, because of the invisibility of the real culprits.



¹ AccountAid Capsule 61, 9-Jan-02, www.AccountAid.net; Economic Times 'ET Insta Poll' of 8-Jan-02 at <http://economic-times.indiatimes.com/>; The Times of India, New Delhi, 9-Jan-02, p.15]

² See AccountAble 91 (www.AccountAid.net) for more on this

4. Lack of transparency and accountability

This is, by far, the most common accusation against charities. And no doubt, there is a significant amount of truth in it. Most charities that one comes across are reluctant to open up their accounts or share financial information with the public. In recent years, there have been some systematic moves³ to change this, but these have not met with any real interest on part of charities.

However, we also need to understand the reasons for this reluctance. Most charities do not see any real utility in sharing this information—in fact many feel that it would be an invasion of their privacy. From this perspective, lack of transparency does not really stem from a desire to hide information, rather from an inability to appreciate the need for it.

Yet another aspect is that this demand for transparency and disclosure often comes from their most vocal critics—this leads to fears among charities that their financial information will be used to tar them with black. A prime example of this fear psychosis is that of the Church bodies coming together in 2002 to force the Government to withdraw tax provisions requiring publication of accounts for larger charities⁴.

With regard to accountability, the issue is much more complex. Strictly speaking, it is not correct to say that charities are not accountable. They are very much so in principle and in practice—most donor agencies ask for audited accounts, even conducting their own audits, to ensure that their partners are honest. Yet, the accusation is made again and again.

How does one resolve this paradox? It seems that there could be two reasons that drive this popular perception. One is that the attitude towards accountability varies from one agency to another. While some are very strict, others do not bother at all. Second, the effectiveness of the accountability system is as good as the audit techniques that support it. Auditors need to revisit their audit techniques, and assess whether the current techniques of paper-based audits are good enough.

5. Outdated

The legal structure regulating philanthropy sector in India is very old and is now showing its age. The registering laws were introduced nearly 150 years ago, and have remained more or less unchanged in approach. The fiscal laws have seen more changes, but have failed to consider the massive socio-economic changes that have occurred in the last decade.

These have tended to merely tinker with the old structure instead of trying a new, bold approach.

As a result, the laws are mostly out of tune with reality of the philanthropy sector. For instance, the Societies Registration Act was designed for small organisations, consisting of friends or colleagues, contributing a little bit of money periodically to run the society. Today's societies are spending crores of rupees, raised from the Government, agencies or the public, using the same basic structure. It is a little like using a bi-cycle to transport a rhinoceros!

6. Lack of vision

However, today the most critical problem the sector faces in terms of regulation is lack of a vision on part of the Government, for the sector's growth and role. For instance, we have not seen the kind of regulatory innovations in this sector, as were seen in exports or in information technology. As a result, the sector has remained dependent on foreign institutional funds. This aspect has created its own downstream dynamics in terms of image, independence, program direction and sustainability of the philanthropic effort.

³ These include *Put your Accounts on Internet* at www.AccountAid.net, and Credibility Alliance campaign for good governance and public disclosure through 'Transparency Profile'. Also see Give Foundation's fund raising strategy involving internet disclosure of annual financials of supported NGOs.

⁴ AccountAid Capsule 84, 1-March-02



Another unique feature of Indian legislation has been a uniquely discriminatory approach against religion-based charities. Across the world, Governments do not discriminate against religious charities—quite often they are provided additional facilities or privileges. For instance, in USA, churches (and other non-Christian denominations) are allowed to keep their accounts confidential, whereas other charities must make these available to the public. In Germany, the Government helps collect funds on behalf of the Christian churches. Sweden, which had recently given up collecting church taxes, is planning to start collecting again. In almost all the Western countries, donations made to churches or other religious institutions, are treated at par with other public-benefit charities. However, in India, religious donations are not eligible for tax-incentives⁵.

This distinction between religious and non-religious groups has also led to a divide in the sector in operational terms. Public-benefit charities in India rarely interact or cooperate with religious charities. This weakens the sector as a whole, and also creates distrust. Further, NGOs are also unable to assess and use successful charity models developed by religious groups.

A Regulatory Framework

What kind of a regulatory framework do we then need for India's philanthropy sector? It is not within the scope of this essay to lay out a detailed prescription for reform. We will, therefore, limit ourselves to identifying three key features that could be woven into the legislative fabric so far as the philanthropic sector is concerned:

1. Public versus Private

Structurally, we need to make a distinction between public and private in at least two ways:

One, whether the charity's benefit is open to gen-

eral public or is restricted to a few persons. This distinction will then drive the nature of facilitative legislation. Clearly, where the public good is being served, we could offer more facilitation, more fiscal incentives to encourage the work.

Two, whether the work is supported with public funds, or with private funds. In the first case, more regulatory oversight is called for. In the second case, very little is required.

This would essentially mean that a public-benefit charity, supported with public funds, would get more incentives and be guarded more closely against misuse or mis-governance. On the other extreme, a private benefit charity, supported with private funds would get little or no tax incentives and would not be subject to much oversight.



2. Geographic Footprint

The second aspect is one of geographic footprint. The present system of regulating charity through state borders or national borders has really become redundant, in this age of globalization and electronic media. In such a situation, we need to look at more porous state borders within the country, so far as philan-

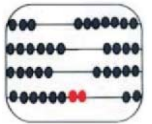
thropic work is concerned. This would allow charities to provide their expertise and skills across state borders, without any legal obstacle.

We also need to look at allowing Indian charities to spend money abroad, without any tax or fiscal prohibitions. This would allow them to share their culture and understanding with the rest of the world. This is also what is perhaps meant by '*Vasudev Kutumbkam*', the Indian mantra of universal family.

3. Religious or Secular

Third, we need to do away with the legislative prejudice against religious charities. All religious groups (irrespective of their religious affiliation) should be

⁵ Except for some, based on popularity or importance of a shrine.



allowed to raise tax-deductible funds in the same manner as the rest of public-benefit charities. After all, it is religion itself, which pioneered the concept of giving in the first place! And as we all know, charity knows no religion.

This is unlikely to increase the real amount of funds being raised by such groups, as tax-incentives have little effect on religious giving. However, this move will bring such donations out of the hawala channels into the account books, thus allowing religious groups to introduce more transparent ways of managing their finances.

Conclusion

Indian philanthropy has a glorious and long history. However, over the ages, it has forgotten itself, and is today seen as dependent on foreign funds. This is far from the truth. Yet it is also true that we need to rediscover the true Indian spirit of giving, defined so succinctly in *Shreemadbhagwad Geeta*

as *sattvic dān*⁶.

Will the law help us in this journey? One doesn't know, but it's useful to go back to Khalil Gibran for his inspiring thoughts on the laws that chain the people of Orphalese:

"You who travel with the wind, what weather-vane shall direct your course?

What man's law shall bind you if you break your yoke but upon no man's prison door?

What laws shall you fear if you dance but stumble against no man's iron chains?

And who is he that shall bring you to judgment if you tear off your garment yet leave it in no man's path?

People of Orphalese, you can muffle the drum, and you can loosen the strings of the lyre, but who shall command the skylark not to sing?"

⁶ दातव्यमिति यद्दानं दीयतेऽनुपकारिणे ।
देशकाले च पात्रे च तद्दानं सात्त्विकं स्मृतम् ॥२० ॥
Shreemadbhagwad Geeta Chapter 17, verse 20.

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अकाउण्टेबल हिन्दी में 'लेखा-योग' के नाम से उपलब्ध है ।

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