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PHILANTHROPY

Newsletter of the Centre for Advancement of Philanthropy

For Members Only

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No. 55

TRUST NEWS

The draft of the Income Tax Bill 1997, in respect of provisions applicable to charities in the existing Act, has streamlined all the provisions into new sections 8, 9, 10. All incentive to donors under the existing provisions of section 35 (in respect of expenditure on scientific research and social research), 35AC (in respect of expenditure on eligible projects), 35CCA, 35CCB (in respect of expenditure on rural development) and 80G (in respect of donations to charities) are all now covered under one new section, namely, 63. Thus, various sections of the existing Act have been compressed into 4 sections, namely, sections 8, 9, 10 and 63 in the new Bill.

Existing Section 10

Under the existing section 10, many institutions, educational, medical, sports, professional bodies, development of khadi, institutions of national importance for charitable purpose have all been telescoped into section 8(35) of the new Bill. It will be necessary to reproduce it to realise its implication.

a) Section 8(35): "any income of a scientific research association, university or other educational

institution or a hospital or other medical institution or any sports association or institution or any professional association or institution which is constituted or set up by or under any Central, State or Provincial Act or which is established or managed by the Central or a State Government or any local authority or any other institution or association which is for the purpose of this clause approved by the Central Government by a general or special order subject to such conditions as may be set out in such order;"

The implications of this change is that the income of all institutions which are established by Central, State or Provincial Act or managed by Central, State or local authority,

automatically are eligible for tax exemption. Other such institutions claiming exemption should be approved by the Central Government to be so eligible.

b) A number of trusts which were set up solely to promote education and presently enjoying exemption under section 10(22) will now lose the exemption, unless notified by the Central Government. The Central Government can stipulate conditions which will mean that the investment pattern will be as per the new section 9(5).

This amendment will therefore have a far-reaching effect on educational trusts and institutions. A large number of educational trusts and institutions will now be roped in for sorting and assessment.

Section 10 (23C)(iv) of the existing Act is scrapped.

c) Only religious trusts [for public, religious and charitable purpose] can apply for notification, under the new section, 8(44)(v).

Existing Sections 11, 12 and 13

Some of the provisions of the existing sections 11, 12 and 13 are now incorporated in the new sections 9, 10 and 11 of the Income Tax Bill 1997.

Under the provisions of the new section 9, income derived from property held under trust and voluntary contributions other than those (made by cheque

only) with a specific direction that they shall form part of the corpus of the trust, received by the trust wholly for charitable or religious purposes will be exempt, provided 60% (under the existing Act, 75%) of the income is applied to such purposes in India during the financial year or by the 30th day of June immediately following the end of the financial year.

Under the existing Income Tax Act, in case a trust is unable to spend 75% of its income in the previous financial year due to reasons such as late receipt of interest

(Cont'd. on page 4)

CROSS-SECTORIAL RELATIONSHIP

A CHALLENGE TO CORPORATE AND VOLUNTARY SERVICE ORGANISATIONS

by Prof. N.M. Kondap

"Economic development without human development leaves development incomplete and may, therefore, truncate the growth of the human being," declared Chief Justice Mr. A.H. Ahmadi on March 30, 1996 at IIM, Ahmedabad. He added, "Development divorced from human and cultural aspects has been described as growth without soul. For development to be complete, it should comprise both economic and human development. It should not be just confined to increased production of goods and services but should also embrace human values."

It is, indeed, an apt statement made by the Chief Justice when India is passing through economic and social reforms. We need to understand the role played by the corporate sector, voluntary service organisations and Government in serving the community called "beneficiary".

In this article, an attempt has been made to understand the role played by each one of the above and an action plan has also been suggested.

A) Corporate Sector

The corporate sector all over the world is playing a dominant role in shaping the future of the country/countries. India is no exception to this and this is specially so with the opening of the Indian economy to foreign multinationals.

The corporate sector is not only focusing on return on investment, but is also trying to pass on a certain percentage of its profit towards community development and other need-based projects.

Cary Kayson, Head of the Institute for Advanced Study in Princeton, calls commercially controlled media, "the great teachers of our society... far more pervasive in their reach and far more persistent in their influence than school or church".

William M. Day, the President of Michigan Bell Telephone, was asked why his company wanted to adopt Detroit's Northern High School. "The purpose," he said, "is to provide aids designed to help prepare the students for the business world. We think we can make a real difference in pupil attitude."

Consider some of the work carried out by the corporate sector in India for social welfare.

Johnson and Johnson (J&J), a company that has created a name for itself as a "baby-faced" company, has also put in time and money for the upliftment of the community. Mr. P.H. Lele, Executive Vice President, had said, "Yes, shareholders are important, but even they today understand that by doing good for the community, you increase your presence in the community and there is no doubt that the good job done gets reciprocated in one way or the other."

Cadila Health Care, a pharmaceutical company, is working towards the upliftment of the community by providing research scholarships and rural health camps. The group declared "1996 as the year of caring for the human race".

Mr. K.V. Unni, Managing Director, Agrevo (a company of Hoechst and Schering) opines, "We make profits, so why should not we use some of it for the community in which we live."

Doing community service has also been one of the aims of Agrevo.

The corporate sector is no longer restricting its role towards delivery of products and its related services to the consumer but is focussing its attention towards community development, area development and product specifics.

Discharging social responsibility gives the following distinct advantages:

- ★ creation of brand identity with its social commitment;
- ★ creation of favourable attitude of the community towards the corporate sector;
- ★ establishing relationship between corporate, community, voluntary service organisations and Government;
- ★ gaining the Government's confidence and becoming a partner in progress in the areas identified;
- ★ support VSOs in their endeavour to help the beneficiary and gain the goodwill of the community.

Having identified the role of the corporate sector in the social sector, we need to understand the following:

- ★ what the corporate sector is looking for;
- ★ identification of area/s;
- ★ methodology, i.e., direct or through VSOs;
- ★ implementation and control.

B) Voluntary Service Organisations (VSOs)

VSOs, commonly known as NGOs or NPOs, are increasing in number, day by day. As on March 31, 1995, Maharashtra had a total of 3,60,443 charitable organisations registered throughout the state, while Greater Mumbai has 58,77 charitable organisations registered throughout the region. This number is increasing, day by day.

VSOs are focusing themselves in a number of areas, namely:

AIDS, drugs, anti-dowry movement, health services, community development..... The list is endless.

VSOs are facing a number of challenges in serving the beneficiary:

- ★ Sustainability: sustainability is something which all the VSOs require at the moment. Sustainability should be in terms of timely availability of the funds to implement the projects and competent manpower to implement the projects successfully.
- ★ Management Expertise: a majority of the VSOs need management guidance in terms of finance, administration, marketing, production planning, development of MIS, etc.
- ★ Resource mobilisation: resources are required not only in terms of money, but also in terms of manpower, materials, machinery, including transportation, etc.
- ★ Transparency in operations.
- ★ Attract, retain and motivate employees.

★ Establishing linkages with the beneficiaries, Government, national and international linkages.

At the one continuum, we have charitable organisations like IMPACT, NAB, BCPT, CRY UNICEF, CAPART, etc., and at the other end of the spectrum, we have VSOs, namely, Seva Sadan, Community Service Centre, Sneha Sadan, which have low level of operations and are faced with a number of issues and challenges. There is a wide gap between the VSOs and their operations.

We, therefore, need to ask questions such as:

What spread are VSOs having?

Can they reach the rural community?

What are the resources available and can we provide them?

Can we establish a network among these VSOs?

We have the third linkage which is none other than the Government.

C) Government

The role of the Government in the social sector is being increasingly discussed and debated. The Government has given the social service sector due attention in the Budget for the year 1997-98. The economic survey duly emphasizes the social sector with a better coverage. Investment in the social sector means working towards community development, health, education, sanitation, etc. There are a number of issues and challenges the Government is facing in terms of:

- * girls' education;
- * mid-day meal scheme for school children;
- * rural water supply scheme;
- * rural job-creation program;
- * family welfare program;
- * drugs, AIDS, etc.

The total allocation for social services has been enhanced from Rs. 11786.27 crore to Rs. 15707.01 crore. This clearly shows the real concern of the Government towards social welfare of the community.

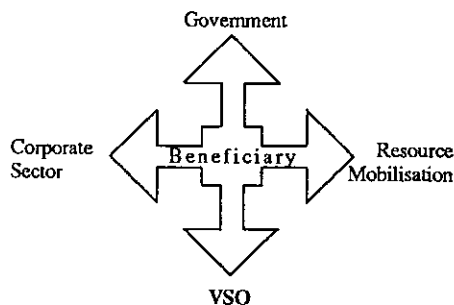
What are the issues and challenges our Government is faced with?

- * project viability, research and feasibility study;
- * transparency in operations;
- * identification of the role of the corporate sector and their area/s of interest;

- * identification of VSOs and their area/s of interest;
- * establishing the linkages for the delivery systems for serving the beneficiary;
- * establishing proper controls;
- * monitoring and performance evaluation.

D) What Next?

The foregoing analysis clearly indicates that there is a distinct need to develop a Model with Beneficiary as Focus. The model, as perceived by us, is given below:



Relationship Model

There are a number of channels available to serve the beneficiary:

- Flow 1 : Govt. ——— Beneficiary
- Flow 2 : Govt. ——— VSO ——— Beneficiary
- Flow 3 : Govt. ——— Corporate ——— Beneficiary
- Flow 4 : Govt. ——— Corporate ——— VSO ——— Beneficiary
- Flow 5 : Corporate ——— Beneficiary
- Flow 6 : Corporate ——— VSO ——— Beneficiary
- Flow 7 : VSO ——— Beneficiary

It is clearly understood that whichever flow we take, we certainly need to keep the Government informed about the activities being carried out.

Suggested Action Plan for the Corporate Sector and VSOs:

- 1) decide the social objectives which the corporate sector and VSOs would like to achieve;
- 2) decide the areas of core competence and identification of strengths;
- 3) identify what we can offer;
- 4) identify what we can expect;
- 5) what do we need from and to inform the Government;
- 6) share mutual expectations/offerings;
- 7) prioritize the issues;
- 8) decide whether the services of outside agencies are required for design, development and monitoring of the projects;
- 9) decide whether services of other VSOs are required;
- 10) reach an agreement;
- 11) work out the budget for execution of the project;
- 12) identify the roles and the responsibility centres;
- 13) prepare a time-bound action plan;
- 14) develop a communication model to communicate with the beneficiary;
- 15) develop a data-base and establish linkages with the use of information technology;
- 16) review the progress on a regular basis;
- 17) carry out annual marketing and social audit for performance evaluation and decide the future course of action.

[The Author is Chair Professor of Non-Profit Organisations, Rotary Club of Bombay W. and Professor, Marketing, NMIMS.]

Implications.....

(Cont'd. from page 1)

or a grant, the trustees have the option to spend the surplus during the immediately succeeding 12 months. This is now proposed to be reduced to just three months.

Under the existing Income Tax Act, surplus income can also be accumulated for a period not exceeding 10 years, for specific projects like construction of a new school building, or a new wing of a hospital, etc.

The Income Tax Bill 1997 has no provision for such accumulation of income. So one will have to doctor the question of donation to be received with the capacity to spend 60% of it each year, or otherwise pay the tax.

Corpus

According to the provisions of the new section 9, contributions to the corpus of a trust can be made either in kind or by crossed cheque or crossed bank draft only. If any cash contribution is received towards the corpus of the trust, it will be deemed to be a contribution otherwise than towards the corpus of the trust and the provisions will apply accordingly.

A number of trusts which were set up solely to promote education and presently enjoying exemption under section 10(22) will now lose the exemption, unless notified by the Central Government.

Income received through collection boxes and *hundis* in temple trusts, hospitals and other places will be treated as income (regardless of any indication put near or on the collection boxes that contributions are towards the corpus) and 60% of the amount will have to be applied for charitable purposes.

Also, according to Explanation 1 to the new section 9, "The amount of income which has not been received during the financial year shall be deemed not to have been derived during the financial year but shall be deemed to have been derived in the financial year in which it is received." In other words, it

has been proposed that trusts should account for their income **only on a receipt basis.**

Capital Gains

Further, according to Explanation 2 to the new section 9:

"Where a capital asset is transferred and the net consideration is utilised for the objectives of the trust or for investment in the modes specified in sub-section (5) then, the capital gains arising from such transfer shall be deemed to have been applied to charitable or religious purposes."

In other words, as long as the trust either applies the entire sale proceeds for charitable purposes and/or keeps the funds invested in any of the specified modes of investment, the capital gains will be exempt from tax.

Business Carried On By A Trust

For the purpose of the new section 9, "property held under trust" includes a business undertaking only in a case where the business is carried on in the course of carrying out the primary objectives of the trust and separate books of account are maintained in respect of such business.

In other words, trusts enjoying exemption under the new section 9 (existing section 11) should not run any business which is **not integral** to achieving the charitable or religious objectives for which they were set up. It is only when the business activities are a necessary fallout of the activities undertaken in the course of the actual carrying out of the primary objectives of the trust that income from such business will qualify for exemption. A trust running a business not connected with its activities for attaining its objectives would have to pay tax on the business income. Consequently, earning income through the business for financing the objectives of the trust will not be regarded as a charitable purpose.

However, under the provisions of the new section 8(44)(v), the profits and gains of a business of any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be notified by the Central Government, having regard to the manner in which the affairs of the trust or institution are administered and supervised

for ensuring that the income accruing thereto is properly applied for the objects thereof, **would be exempt from tax**, provided the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business.

Implications

After a long judicial battle, the Supreme Court settled the issue of what actively constitutes charity "not with a purpose of profit". Subsequently, the existing provisions of section 11(4A) speak of activity **incidental** to the objects of charity. What, then, is the implication of "integral"? A whole lot of cases now settled will again face litigation. This could have been easily avoided.

Modes Of Investment

Under the existing Income Tax Act, charitable organisations whose income is exempt under the existing section 11 must invest or deposit their funds in the forms and modes as specified in the existing section 11(5).

These funds and modes are now specified in the new section 9(5).

They include:

- i) "investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Scheme of that Government;

Trusts enjoying exemption under the new section 9 (existing section 11) should not run any business which is not integral to achieving the charitable or religious objectives for which they were set up.

- ii) deposit in any account with the Post Office Savings Bank;
- iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank);

- iv) investment in units of the Unit Trust of India;
- v) investment in any security for money created and issued by the Central Government or a State Government;
- vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;
- vii) investment in immovable properties meant to be used for charitable or religious purposes or which are acquired for the purposes of earning income to be utilised for carrying out the objects of the trust."

The existing section 11(5) prescribes about 12 different types of assets eligible for investment by trusts. The new Income Tax Bill 1997 has deleted:

- i) investment or deposit in any public sector company;
- ii) deposits with or investments in any bonds issued by an approved financial corporation engaged in providing long-term finance for industrial development and housing;
- iii) deposits with IDBI;
- iv) any mode of investment which may be prescribed.

The limited choice offered under the existing section 11(5) has been further circumscribed with the omission of investment or deposit in IDBI, ICICI and companies like HDFC.

When Income Will Not Be Exempt

There is no change in the conditions under the new provisions.

The only significant change is that the number of sub-sections in existing sections 13(2) (a) to (h) have been

condensed into sections 11(2)(a) and 11(2)(b) which is as under:

11(2)(a): "If any part of the income or property of the trust or institution is, or continues to be lent, divested or paid to any such person for any period during the financial year without adequate security or adequate consideration."

11(2)(b): "If the trust or institution enters into any transaction with any such person and that person is benefitted unduly by the terms of the transaction."

There is no other significant change except that the interested person makes a contribution of Rupees One Lakh as against Rupees Fifty Thousand in the existing provisions.

According to the provisions of the new section 9, contributions to the corpus of a trust can be made either in kind or by crossed cheque or crossed bank draft only. If any cash contribution is received towards the corpus of the trust, it will be deemed to be a contribution otherwise than towards the corpus of the trust and the provisions will apply accordingly.

Registration

The provisions of a new section 10 [existing section 12A(a)] will apply in relation to registration for exemption of a trust's income under the new section 9 (existing section 11).

The application for registration of the trust or institution should be made in the prescribed manner to the Commissioner or Director within one year from the date of setting up of the trust or establishment of the institution and such trust or institution being granted registration by the office of the Charity Commissioner or the Registrar of Societies.

Where an application for registration is made after the expiry of the aforesaid

period, the provisions of this section will apply in relation to the financial year in which the application is made and for subsequent years. Registration, after due enquiries, may be granted or refused within six months from the end of the month in which the application is received.

Audit

Under the provisions of the new section 10(1)(b), "where the total income of the trust or institution as computed under this Act, without giving effect to the provisions of section 9, exceeds fifty thousand rupees in any financial year, the accounts of the trust or institution

for that year have to be audited by a chartered accountant and the report of such audit in the prescribed form should be furnished alongwith the return of income for that year. There is no change from the existing provision.

Appeals

It is recommended that orders passed by a Commissioner or Director passing an order under section 10(2) of the new provision should be an appealable order within the meaning of section 195(1), but the appeal be heard by the College of Commissioners under section 199(1) or the Appellate Tribunal under section 201(1) of the new provisions.

HUMOUR



The Original Rabble-Rouser

A doctor, an engineer, a rabbi and a lawyer were debating upon who was the world's first professional.

The doctor said, "It must have been a doctor. Who else could have helped with the world's first surgery of taking a rib from Adam to create Eve, the first women."

"No," said the rabbi. "It must have been a rabbi, since the Lord needed someone to help preach his message to Adam and the world."

"Wait," said the engineer. "The world was created in six days from nothing. Do you know what a master engineering feat that must have been to create the whole world into an organised civilised place from utter chaos?"

"And WHO created the chaos?" demanded the lawyer.

Indian Trust Act

Thank you for sending me 'Philanthropy' regularly. I always look forward to receiving the next copy of 'Philanthropy'.

I find it packed with very timely, significant information for financial and legal aspects of non-profit organisations. Please find enclosed the readership survey questionnaire for your perusal.

I have already collected a copy of your book, 'Management of Philanthropic Organisations'. We must work to bring out many more useful publications such as these, for the benefit of social sector administrators.

I would appreciate if you could cover the following aspects in your forthcoming issue of 'Philanthropy': can a public charitable trust be registered under the Indian Trust Act, 1882 which is literally meant for private trusts and also enrol under FCRA? I have come across a couple of organisations that have created their trust deed under the Indian Trust Act, 1882 and registered the trust deed with the Registrar of Assurance under the Indian Registration Act. Such organisations have also received income tax and FCRA registrations. On consultation, I found different experts giving different points of view. Your guidance will be very useful in considering such registration as an alternative to society and public trust registrations.

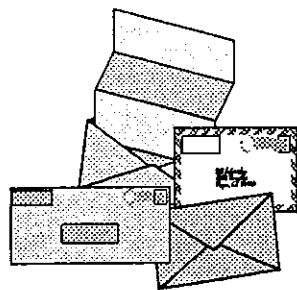
Dr. Swapan Garain
Reader

Dept. of Social Welfare Admn.
Tata Institute of Social Sciences
Bombay

A public charitable trust in the states of Maharashtra and Gujarat can only be registered under the Bombay Public Trusts Act, 1950. In like manner, a public charitable trust in the state of Rajasthan should be registered under the Rajasthan Public Trusts Act, 1959 and a public charitable trust in the state of Madhya Pradesh should be registered under the Madhya Pradesh Public Trusts Act, 1951.

The Indian Trust Act, 1882, as you have rightly observed, governs private (not public) trusts. However, like you, we have also observed that in certain states and Union Territories where there is no public trust Act or office of the Charity Commissioner, public trusts are registered under the Indian Trust Act, 1882. We may emphasise, however, that in states like

READERS



FORUM

Maharashtra, Gujarat, Rajasthan, Madhya Pradesh, etc., where there is a public trust Act in force and a Charity Commissioner to enforce it, public charitable trusts should only be registered under the relevant public trust Act and not the Indian Trust Act.

Remunerating A Trustee

Centre for Advancement of Philanthropy deserves congratulations for bringing out an excellent book, 'Management of Philanthropic Organisations'. This book, written by Mr. Noshir Dadrawala in his inimitable and lucid style, will be extremely useful to all those laymen or professionals who are involved in managing charitable trusts.

On page 60 of the book, the author states: "It is a general rule of equity that a trustee should administer the trust gratuitously..." He further states, on the same page, "Voluntary service is the foundation underlying all trusteeship and the law precludes a trustee from making a profit or acquiring a benefit from his office as trustee."

In spite of these contentions, I am of the opinion that the law does not forbid a trustee from accepting a reasonable and just remuneration for his services to the trust. Consider the following:

i) Historically, trusts were formed by philanthropists or business houses to run schools, hospitals, dharmashalas, etc. In their case, perhaps, it could be said that the trustees were expected to administer their trusts gratuitously. But today, many social activists and professionals who may not have financial means but who have other skills and who are committed to social causes, form and run charitable institutions. This new generation of trustees, in many cases, work full-time and devote their lifetime to the causes for which they formed their trusts - unlike their peers in the past. The so-called general rule of equity that a trustee should administer the trust gratuitously, therefore, cannot apply to the present-day professional social activists who manage their trusts.

Moreover, I am not aware of any law which specifically debars a trustee from accepting a reasonable remuneration for his services to the trust.

ii) A trustee certainly cannot, and should not, make a profit or acquire a benefit from his office as a trustee. But a just and reasonable remuneration for the services rendered cannot be termed a profit or a benefit accruing from the post of a trustee. This is more so when remuneration payable for such services to an outside professional would be considerably higher than what is paid to a trustee.

Remuneration is not benefit or profit.

iii) Section 13(2) of the Income Tax Act provides that if any amount is paid by way of salary, allowance or otherwise to any persons referred to in sub-section (3) out of the resources of the trust for services rendered by that person to such trust and the amount so paid is in excess of what may be reasonably paid for such services, the trust would lose its exemption under section 11 of the Act. (Please see page 132 of the book.)

Here again, the crux of the matter is "the amount paid in excess of what may be reasonably paid", but not remuneration per se. In other words, the Act accepts a just and reasonable remuneration to a trustee without any threat of disqualification under section 11.

iv) Again, in the Register of Public Trusts to be maintained by the Charity Commissioner under section 17 of the Bombay Public Trusts Act (please refer to Appendix VIII, pages 206/207 of the book), there is a specific column (col. 19) for recording remunerations to trustees or managers. This provision thus explicitly accepts the fact that remuneration to a trustee is not forbidden under the Act.

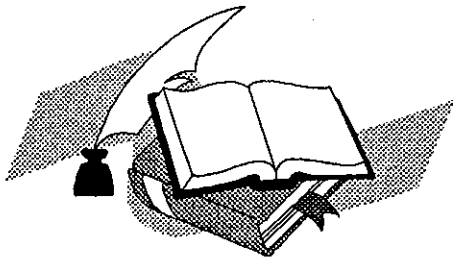
I shall be grateful to know the views of the learned Author or of any of the distinguished Members of CAP.

N.B. Shah
Member-Executive Committee
Low-Cost Standard Therapeutics
Vadodara

Mr. Shah has touched upon a very sensitive and controversial topic, and we would very much like to encourage a healthy debate on the same.

The stand which the Centre has taken is definitely a conservative one, which is that a trustee must serve his or her trust

(Cont'd. on last page)



TAXING EDUCATION

by R.R. Chari

Education, medical relief and relief for the poor has always been, and rightly so, the integral part of the definition of "charitable purpose" right from the 1922 Act through the 1961 Act. The Supreme Court clarified the six words, "not being an activity of profit", in the classic decision in the Surat Art Silk Mills case, commenting on section 2(15) of the Income Tax Act, 1961.

Section 10(22) of the Income Tax Act, 1961 was always a beneficial section, a beacon light for all to see that "education" received special treatment. "Education" was not to be sullied by contact with bureaucratic touch and handling. It was to be pristine in its aloofness. "Hands-off" education was the silent slogan, an undercurrent theme of all legislative processes in regard to tax on charities.

Every philanthropist, every visionary in India, had always dreamt of creating a peaceful revolution in India by educating the teeming illiterate millions. Many trusts were created and private savings were diverted to these trusts to create schools of quality across the length and breadth of the country. Today, our strength in Science, Engineering and the Applied Sciences is well known throughout the world, and this was due to the humble school to which a Sir C.V. Raman went and learnt his A, B, C. Thousands of educated men and women in their glory today owe it all to the good education they secured in their childhood. Thus, the very quality

of life in India was transformed, from subservience under foreign rule, to one of robust nationalism and illumination that only an educated mind can deliver.

Along with promoting academics, charitable trusts have also been in the forefront to mould the character of young people. Morality and ethics, which form the touchstone of all the great religions, were systematically encouraged by schools run by religious organisations. The DAV School and

of religious and moral fervour by a Swami Vivekananda or a Swami Dayananda Saraswati.

Thus, trusts which set up national institutions in education and morality ought to be given the greatest possible impetus. The noble idea of service to one's fellowmen, rendering free help in times of distress are virtues no legislation or state can either emulate or ensure. These are like flowers that bloom under the luxuriant rays of the sun, unfettered by plans and schemes!

Commenting on the word, "education" in section 10(22), the Hon. Supreme Court in Loka Shikshan Trust vs. CIT (1975) 101 ITR stated, "What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling."

It is on record that thousands of schools under trusts or under private management or privately funded institutions have fulfilled the Supreme Court's dictum, educating the millions over the years. They have enjoyed tax exemption for decades and suddenly this exemption is sought to be withdrawn without any valid reason. It goes against the grain defining "charitable purpose" in the Act.

Hence, it is indeed disturbing to find that the proposal to amend section 10(22) into section 8(35) of the Draft Bill, confers blanket exemption to only Government schools and colleges, either run by the Government or financed by it. This is, to say the least, an unworthy amendment. By a mere administrative circular, all these

Section 10(22) of the Income Tax Act, 1961 was always a beneficial section.

Hence, it is indeed disturbing to find that the proposal to amend section 10(22) into section 8(35) of the Draft Bill, confers blanket exemption to only Government schools and colleges, either run by the Government or financed by it.

College, the Ramkrishna Mission Educational endeavours all over India, the Christian missionary schools, the Jain community endeavours, the Khalsa College, the Anjuman-I-Islam institution are well-known examples. They not only taught academics, but also lay emphasis on ethics and morals.

As against this, the state-controlled education merely imparted the three R's and was neutral to this all-important "inner growth". This negative attitude had to be neutralised by the emergence

identifiable institutions could have, by a stroke of the pen, been exempted from income tax scrutiny. Why, then, have a "section" to proclaim the obvious?

To argue that the present provision of section 10(22) enables "teaching shops" to escape taxation is to confess that the tax department is inefficient and inept. The price to pay for this inefficiency is not to amend the provision in such a manner. No one will support the thesis that a provision in the statute is for administrative convenience and to counter inefficient bureaucracy!

Section 8(35) in the proposed draft should exempt all charitable trusts or institutions for "education" in whatever form or shape or scope. This is a vital requirement. They could be asked to file a "Returns of Income" but, basically, they should be exempt from tax.

If "education" is not exempted, *per se* run by a charity trust, it will create an undesirable historical precedent. Self-improvement programmes, religious life encouraged by *ashram*-type institutions, residential schools and institutions, teaching the inmates the three R's, crafts for living, technical-education institutes inculcating spiritual and moral values, along with

academics, will also be discouraged if the exemption they now enjoy as a "prestige", is denied to them.

No one is against scrutiny, but the status of tax exemption ought not to be denied to such vibrant and living institutions, as they are, indeed, the salt of the earth.

"*Vidya paramo dharma*" has been the mainstay of ancient India. Are we being true to our ancient values and our great cultural heritage by displacing the old section 10(22) by the new section 8(35)? How can we ever afford to lose that great concept for an unthinking, mundane material gain?

"Charity" does not stop with feeding the poor or curing the ill. **Real charity begins where there is transformation of the mind.** Once the mind is transformed, the other material gains are easier to achieve.

It is therefore vital that "education" be exempt from taxation. **The present wording of section 10(22) ought to be incorporated under section 8(35) of the Draft Bill.** We owe our children – the future generation, the builders of our nation in the new millennium – that.

[The author is Commissioner of Income Tax - Trust Circle (Retd.) and a Founder Director of the Centre for Advancement of Philanthropy.]

READERS' FORUM

(Cont'd. from page 6)

voluntarily and draw no remuneration or benefits in kind. A trustee may be reimbursed for expenses incurred on actual basis. However, to draw a salary or an honorarium as a trustee would erode the very principle of volunteerism on which this office (of the trustee) conventionally stands.

Mr. Shah feels, "... today, many social activists and professionals, who may not have financial means but who have other skills and who are committed to social causes, form and run charitable institutions. This new generation of trustees, in many cases, work full-time and devote their lifetime to the causes for which they formed their trusts... The so-called general rule of equity that a trustee should administer the trust gratuitously, therefore, cannot apply to the present-day professional social activists who manage their trusts."

Our counter-question to Mr. Shah would be, **is it necessary for these "new generation, professional social activists" to serve their organisations only in the capacity of trustees?** Would it not be possible to have a small board of trustees (who serve gratuitously) and a hierarchy of **paid professional staff** like Director/s of Programme or Director/s of Finance, Chief Executive, Executive Secretary, Programme Officers, etc.?

Agreed, there is no law which specifically debars a trustee from accepting a reasonable remuneration for his services to the trust. However, by general "custom and usage" (which also has a force in law), trusteeship is deemed to be an office which should be ideally held in an honorary/voluntary capacity.

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