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Finance Bill provision to define charity has NGOs concerned

The clause has been designed to target 'paper charities', or for-profit organizations that exploit tax shelters

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A clause in the 2008 Finance Bill designed to target "paper charities"—for-profit organizations that exploit tax shelters for non-governmental organizations (NGOs)—has sparked fears of restrictions in the NGO community at large.

The clause seeks to clear the ambiguity in defining charity. Until now, charity, as defined by the Income-tax Act, covered relief to the poor, education, medical relief, and a fourth area that included the "advancement of any other object of general utility."

This fourth limb has proven to be vulnerable to misuse since almost any project can be argued to advance public good.

The provision, to take effect from 1 April 2009, limits the scope of the phrase. Laid out in the third chapter of the Bill, which brings the Budget recommendations before Parliament, the clause states: "Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business..."

Under this, an NGO's revenue-generating activities that do not contribute specifically towards relief of the poor, education or medical relief could be stripped of any protection



Aid check: HelpAge's health care service in Vrindavan. NGOs say the proposed change will come in the way of their capacity to raise resources and is against the policy which encourages them to stand on their feet

from taxation

"This is a broad-spectrum antibiotic, whereas they should be using a more specific treatment," said Paresh Tewary, chief executive of Voluntary Action Network India, an association of Indian voluntary organizations.

Earlier this week, Tewary led a four-member group into a meeting with revenue secretary P.V. Bhide to present a memorandum and request an amendment to the proposal. The memorandum says the proviso goes against the spirit of the national policy on the voluntary sector, which encourages NGOs to stand on their feet and "categorically safeguard their autonomy".

The impact of the proviso is likely to be felt by organizations such as HelpAge India, a non-profit advocacy for the elderly. Its chief executive, Mathew Cherian, was an understandably nervous member

of Tewary's delegation.

HelpAge produces greeting cards and year planners to generate revenues. But since it works for the health care of the elderly, its activities fall under the generic fourth category of the definition. Cherian is worried that a by-the-letter interpretation of the clause would curtail an important revenue stream for it.

One solution, according to Kamal Kant Jaswal, a former secretary to the government, would be for the government to identify specific unacceptable activities and phrase the proviso accordingly. As director of Common Cause, which works for public causes, laswal was also part of the delegation. The fourth member of the delegation was Sanjay Agarwal of chartered accountancy firm Sanjay Aditya and Associates.

"The government should examine which bodies should be allowed to register for the tax

shelter and which don't qualify," laswal said. "This is a broadside. The collateral damage will be immense."

The memorandum urges: "(Voluntary organizations) need to be encouraged to supplement their resources... In view of the proposed amendment, these organizations would be reluctant to venture into this domain, otherwise their capacity to raise resources through donations will be impaired, since their tax exemption status is directly linked with their registration..."

The proviso came on the heels of the promise of stricter oversight in the national policy on the voluntary sector, released last May. At the time, Montek Singh Ahluwalia, deputy chairman of the Planning Commission, had proposed tighter administrative and penal procedures to prevent misuse of NGO tax incentives.

