

31st March 2020

The Prime Minister
Government of India
New Delhi - 110001

Sub: Existential issue for the non-profit sector in India

Dear Shri Narendra Modi ji,

The country is going through a grave crisis due to COVID-19 global outbreak. May the divine be with you in this difficult hour, so that you could lead 'India – Our Mother' out of this difficult situation.

Meanwhile, we Sri Aurobindo Society, Puducherry India, wish to draw your urgent attention to an existential crisis, hovering over 2.7 Lakh¹ charitable NGOs across India (**largely registered as Trusts & Societies**), whose deepest concerns, we are voicing through this letter. This is the fall-out of newly created '**Draft Companies (CSR Policy) Amendment Rules, 2020**' after the passage of Finance Bill 2020. There are 2 (two) most pertinent issues:

1. Exclusion of 'registered trusts & societies' from the list of organizations which can receive CSR Funds:

- Almost the entire set of charitable NGOs in the country, are registered as Trusts & Societies.
- Rule 4 (1) of 'Draft Companies (CSR Policy) Amendment Rules, 2020' stipulates how CSR can be implemented. It stipulates that 'CSR activities by the Companies in India can be undertaken by Companies themselves or through other **Section 8 Companies** or any entity established under an Act of Parliament or a State legislature (mainly autonomous bodies)'. **This leaves out registered charitable Trusts and Societies, which were earlier included.**
- After rules have been tightened under FCRA, almost entire funding for charitable NGOs today comes from CSR funds of Companies. **CSR Funds form the lifeline for this developmental work and will immediately halt due to this exclusion.**
- This effectively means that existing registered Trusts & Societies will now need to create new Companies and then register them as Section 8 companies. Majority of 2.7 Lakh charitable NGOs (largely registered as Trusts & Societies) are small grass-root organizations working vast swathes of rural and urban areas. **It will not be possible for them to form Section 8 companies.** Any temporary or long term disruption of CSR Funds access to charitable NGOs will put them out of work, leading to catastrophic effect on:
 - **Jobs:** In huge parts of the country, where there is no formal employment, such organizations are the only source of employment.
 - **Local developmental work:** Due to deep reach and understanding of their communities, these charitable NGOs provide succour in a difficult hour or place, where neither Government nor For-profit organizations could reach or innovate.
- It is ironical that even PM-CARES Fund, launched recently to fight COVID-19 outbreak is a Public Charitable Trust. In the light of above proposed rules, even PM-CARES Fund can't receive CSR Funds.
- **Request:**
 - Proposed Draft Rule 4(1) may be modified to **include earlier clause, which allowed registered Trusts & Societies to undertake CSR implementation** with 3 year successful track record in undertaking similar programs or projects.

- In case Dept would like to trace which organisations (or people behind them) are receiving funds, it can easily ask such organisations to file suitable returns with RoC.
- In case above is not possible, the registered societies and trusts may be allowed to receive CSR funds for a cooling / transition period of at-least 3 years during which time, they can form Section 8 company and get due approvals in time. This is due to the reason that the new Section 8 Company needs to be in place with Section 12A / 12AA status at-least 1(month) prior to a given Financial Year to receive donations. Due to multiple bottlenecks and in the light of COVID-19 outbreak, this is not going to be possible even before FY 2021-22. This is critical for continuing their developmental work on-ground.
- The rules should be drafted in a way that they don't disrupt (in short or long term) the access of CSR funds for developmental work in the country.

2. **Section 12A / 12AA and Section 80G revalidation:**

- Non-profit organizations get exemption under Section 12A / 12AA of Income Tax Act and are required to file Income Tax Return within the due date. Once registered under this section, they are assumed as Charities and get exemption from Income Tax. They are also required to spend 85% of the donations received as charitable expenditure in the same Financial Year (they can carry forward only 15%).
- Around 67,000¹ charitable NGOs across India have Section 80G certificate. This enables charitable NGOs to issue 80G certificate to Donors, who can then get 50% tax exemption on the donations. This way, Government has always encouraged society's wealthy to donate for social causes. This is also recognised in the National Voluntary Policy as approved by Government of India. This is an important pillar of Indian philanthropy.
- Finance Bill 2020 enacted recently now requires all charitable NGOs to apply for revalidation their Section 12A / 12AA & Section 80G status between June & August 2020.
- To continue this exemption, Income Tax returns filed by all NGOs are subject to Income Tax scrutiny as per the Dept's norms. Considering almost all documents of an NGO are examined by the Dept during this annual scrutiny process, what new documents Dept would be able to examine in the limited time available for revalidation / renewal.
- Particularly, considering so many organisations' 12AA and 80G would need to be revalidated / renewed with limited infrastructure that Income Tax Dept has (*only 7 'Director-Tax Exemption offices' all over India*), the process is not likely to get over even before the start of next Financial Year (FY 2021-22), due to huge administrative burden on both Government and NGOs. Even if it has to be done it should be done in a staggered manner, thus not putting extreme pressure both on the Income Tax Dept and NGOs.
- It may also be noted that in case of a new charitable entity will need to apply one month prior to the Financial Year for which it requires the registration. This will effectively mean at-least 1 year wait, in case anyone wants to now form a Section 8 company to receive CSR funds.
- In case a non-profit organization's 12AA status is not renewed, as per Section 115TD, a charitable NGO would need to pay Income Tax on its market value of assets as well as carry-forward income. Most NGOs would not have funds to pay such demands, they will need to sell their 'Assets' to give Tax. This could sound death knell for many well-settled NGOs, who are unable to have their Section 12AA status revalidated / renewed. Not only that, it will create personal liabilities on trustees for money which they would have spent during this time for developmental work.

- Not only will non-profit organizations doing developmental work, but most **schools, temples, churches, charitable hospitals, will not be able to settle this demand without selling off their land and buildings**. This will create chaos all around.
- In the light of this prevailing uncertainty, the Donors will also be unsure whether they will receive 80G certificates for their donations. Due to this, they may not eventually get tax deductions on their donations. This uncertainty will propel **Donors to completely halt CSR donations to charitable NGOs**.
- **Request:**
 - Rules must be drafted to ensure that this rule is implemented only for those organisations, which are not subjected to detailed scrutiny once in 5 years, and that too in a staggered manner. After all there would be limitation on the new documents that IT Dept will be able to examine, which they would normally not have examined at the time of annual Income Tax scrutiny.
 - Small charitable NGOs at a certain financial threshold (say receipts of INR 1 Cr or less) may be exempted from this provision.
 - During Gujarat earthquake in 2001, a 100 percent tax exemption was given to all donations. In the light of COVID-19 outbreak, 100 percent tax exemption may be given to all donations made to charitable NGOs.
 - **The rules should be drafted in a way that they don't disrupt (in short or long term) the access of CSR funds for registered charitable Trusts & Societies.**

Unless there is urgent intervention from your side, the capacity of these 2.7 Lakh registered charitable organizations to carry on their developmental work will be suddenly brought to nought. This will have serious consequences for the country in this difficult hour:

- Render 14mn people working in developmental sector jobless.
- Halt the current developmental work for COVID-19 and UN SDGs across vast swathes of country.
- Hit the country's GDP, since developmental sector is now a handsome contributor in it.
- Create State-Center legal confrontation, since most non-profit organizations are registered with States and work under State jurisdiction on various state specific issues and priorities.

We wait with anxious breath for your prompt intervention, so that non-profit sector does not suffer from this fatal shock.

Sincerely

1. As per Income Tax Department data available on its official website