

A Study on Laws Governing Charitable Organisations in India



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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Foreword

The two key challenges faced by our country are Economic Growth and Social Development. In spite of launching several major programs that mandate social spending programs to address issues like child welfare, poverty eradication, health and hygiene, upliftment of poor and the needy, there are several major gaps. These gaps are filled by charitable organisations, more commonly known as Non-Profit Organizations. A large percentage of charitable organizations in India are involved in social development, while many of them are also religious charities. There are currently 1.2 million charitable organizations in India.

There are many regulations governing the Non-Profit Organizations/Institutions in India. Regulations include nature of organisation, its formation, management, receipt of funds, spending and taxation. It is estimated that Foreign funds to the tune of ₹ 10,500 crores are pumped into our country through the voluntary Sector. Given the magnitude and purpose, a close watch on the functioning of these organisations and their legal compliance become areas of vital importance to professionals and society at large.

In India the co-operative and NPO sector has been playing a distinct and significant role in socio-economic development. To develop and focus on these sectors, the Committee for Co-operatives and NPO sector had been constituted by the Institute of Chartered Accountants of India. To spread the knowledge on Co-operatives and Voluntary Organisations, Committee for Co-operatives and NPO sector has been taking various initiatives such as Conducting Certificate Course on Co-operatives and Not-for-Profit Organizations respectively, Seminars, Workshops, Conferences and other programmes across the country.

I take this opportunity to congratulate Shri CA. Rajkumar S. Adukia, Chairman, the Committee for Co-operatives and NPO sectors and his team, in conceiving and bringing forth this publication 'A Study on Laws Governing Charitable Organisations in India'.

I wish this publication all success. I am sure that this publication will enhance the members understanding of the Charitable Organisations and the various regulations applicable to them. I hope that the Committee for Co-operatives and NPO sectors will bring forth more such publications for the benefit of the profession at large.

New Delhi
June 27, 2014

CA. K. Raghu
President





Preface

The role and contribution of voluntary sector in India has been significant. The quality of service and support extended by the Indian voluntary sector together with its impartial analysis and research based recommendations for public cause has gained it international recognition. The voluntary sector has brought about phenomenal changes in the lives of the people of our country, especially in improving their quality and standard of living. In its journey towards working for a common cause it has been working in collaboration with the government and other private players. With the changing times, the voluntary sector has grown not only in number, but has also widened its scope of reach and service. Testing new ventures and encouraging hitherto untouched strategies, the sector and its service have become indispensable to the lives of millions in the country.

While the non-profit institutions (NPIs) operating in India are estimated at around 20,00,000 organisations, which is about 1 NPI for every 600 people, the internationally operating NPIs are about 40,000 in number. From 2002 to 2009. ₹ 6,654 crores was released by Centre and States averaging to about ₹ 950 crores per year.

These Non-profit organizations (NPOs) are also known as Charitable Organizations (COs), Voluntary Sector/Organizations (VS/VOs), Non-Profit Institutions (NPIs), Non-Government Organisations (NGOs), Non-State Organizations (NSOs), Civil Society Organisations (CSOs) and Third Sector.

Non-profit organisations (NPOs) are organisations that are voluntary in nature, that do not distribute profits as dividends, instead utilise the surplus made for achieving their goals. Their structure can be defined as organisations that are intentionally not for profit and institutionally separate from Government, thereby self-governing and have formed voluntarily. These NPOs take the form of Trusts, Societies, Section 8 Companies and Special Licensing. The Trusts, Charities and Charitable Institutions fall under the Concurrent List in the Seventh Schedule to the Constitution of India.

Charitable organisations that are considered organised for public benefit can include those which offer relief for the poor, distressed or underserved, and those

with religious, educational or scientific affiliations. Some charitable organisations are engaged in the creation and management of monuments, public buildings or works. Many charities work to enhance social services, lessen government burden and combat community deterioration. Public safety, child welfare, civil rights, and elimination of prejudice and discrimination are some other social centric activities that charities concern themselves with.

A Trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. While there are various legislations that govern Trusts in India, the Public Trusts are primarily governed by the State Laws, The Indian Trusts Act, 1882 governs the Private Trust.

A Society has a more democratic set up with membership and an elected body to manage the society. A minimum of seven members are required to form a Society. One can set up a registered Society under the Societies Registration Act of 1860. The Societies Registration Act, 1860, is an All-India Act, with each state adopting certain modifications. The legal requirements are much simpler than in the case of a Trust or Section 8 companies.

Section 8 of the Companies Act, 2013 deals with the formation of companies with charitable objectives. The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies and shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. These companies are required to omit the word "Limited", or as the case may be, the words "Private Limited" from their name.

For Income Tax purposes, an organisation to be termed as Charity requires, Income tax clearances under 12 A clause of Income Tax Act, 1961. Section 2(15) of the Income Tax Act, 1961 defines 'charitable purpose' to include 'relief of the poor, education, medical relief and the advancement of any other object of general public utility'.

In addition to registration under a Society or trust or Section 8 Company, a non-profit organization engaged in certain activities might also require special licence/permission, namely, to set up a place of work in a restricted area (tribal area), to open an office and employ people (registration under Shop and Establishments Act), to employ foreign staff (FCRA Registration), to set up a foreign NPO office (with RBI permission).

These NPOs are seen across various classifications of activities namely Culture and Recreation, Education and Research, Health, Social Services, Environment, Development and Housing, Law, Advocacy and Politics, Philanthropic intermediaries and voluntarism promotion, International, Religion, Business and professional associations, unions and Labour Unions, to name a few.

This publication focuses on the legislative framework of Non-Profit Organizations, their formation, management and taxation aspects, alongside authorities regulating these organizations. For easy understanding and practical relevance, this publication is presented in a very lucid and logical manner.

I appreciate the sincere efforts put in by CA. Nazia Hassan in preparing this study on various laws governing NPOs.

I would like to thank our President CA. K. Raghu and Vice-President CA. Manoj Fadnis for providing me this opportunity to bring out this publication.

I would like to thank my council colleagues at the Committee for Co-operative and NPO Sector, CA. Shiwaji Bhikaji Zaware, Vice Chairman, CA. Sanjeev K. Maheshwari, CA. Dhinal Ashvindhai Shah, CA. Nilesh Shivji Vikamsey, CA. S. Santhanakrishnan, CA. Vijay Garg, CA. Anuj Goyal, CA. Naveen N.D. Gupta. CA. Vijay Kumar Jhalani, CA. Akki Basavaraja Kotrappa, CA. Menshi Ashock Channabasappa, CA. Madhu Sudan Goyal, CA. A. Mohanam, CA. Dinesh Gandhi, CA. Ramesh S. Prabhu for their support and co-operation.

I am confident that this publication "A Study on Laws Governing Charitable Organisations in India" will be of immense benefit to members.

CA. Rajkumar S. Adukia
Chairman,
Committee for Co-operatives and NPO Sector



Contents

1.	Introduction	1
2.	Charitable Organisation	4
3.	Trust	18
4.	Laws Governing Charitable Organisations In India	29
5.	Procedure for Forming A Charitable Organisation	47
6.	Overview of Provisions of Maharashtra Public Trust Act, 1950	104
7.	Trust Deed	116
8.	Stamp Duty for Charitable Organisations	131
9.	Applicability of FCRA, 2010 for Charitable Organisations	133
10.	Religious and Charitable Endowments	146
11.	Taxation Aspects of Charitable Organisations	153
12.	Charitable Organisations and Money Laundering	189
13.	Authorities Regulating Charitable Organisations	192
14.	Laws Governing Charitable Organisations In Other Countries	196
15.	Useful Websites	208



Chapter 1

Introduction

To give to the destitute is true charity. All other gifts have the nature of (what is done for) a measured return. – Thirukkural

The practice of charity means the giving of help to those in need who are not related to the giver.

Charitable giving is the act of giving money, goods or time to the unfortunate, either directly or by means of a charitable trust or other worthy cause. Charitable giving as a religious act or duty is referred to as almsgiving or alms.

The poor, particularly widows and orphans, and the sick and disabled, are generally regarded as the proper objects of charity. Most forms of charity are concerned with providing food, water, clothing, and shelter, and tending the ill, but many other actions may be performed as charity: visiting the imprisoned or the homebound, dowries for poor women, ransoming captives, educating orphans. Donations to causes that benefit the unfortunate indirectly, such as donations to fund cancer research, are also charity.

Early Christians, particularly, recommended the care of the unfortunate to the charge of the local bishop. In Islam this is called Zakat, and is one of the five pillars upon which the Muslim religion is based.

Charity need not be with money alone. Charity can be in the form of kind words, helping someone, teaching, blessing someone; it can even be something as simple as a smile if someone needs that, at that moment, without expecting anything in return. It is any act of helping someone without any direct benefit to you. Your work is only to do your *karma* and forget about it.

Though the roots of charity are to be found in religious belief and practice, charitable trusts and voluntary organizations are its secular and institutional manifestation. Those who were unable to serve society directly, but were able to provide money and other material resources, either established charitable institutions like dharamshalas, schools, orphanages, women's homes and the like, and donated funds to run them, or established endowments to provide monetary help in perpetuity to some charitable cause.

A Study on Laws Governing Charitable Organisations in India

The beginning of the industrial revolution in India led to establishment of large fortunes, and gave a fillip to the establishment of endowed foundations to support welfare and development work. Later, inspired by Gandhiji's message that rich businessmen should look upon themselves as trustees of society and hold their wealth in trust for the less fortunate, many wealthy families and businesses added to the numbers of foundations and trusts, just as his message of constructive work to bring about national development led to the formation of many voluntary agencies.

1.1. Meaning of Charity

The word "*charity*" entered the English language through the Old French word "*charité*" which was derived from the Latin word "*caritas*". Originally in Latin the word *caritas* meant preciousness, dearness, high price. From this, in Christian theology, *caritas* became the standard Latin translation for the Greek word *agape*, meaning an unlimited loving-kindness to all others, such as the love of God. *Agape* was not primarily about good works and giving to the poor, although in English the word 'charity' has steadily acquired this as its primary meaning, wherein it was first used in Old French at least since the year 1200 A.D.

Charity is defined as giving voluntarily to those in need. It covers the giving of both money and of the self through service to the needy. The term is also used to denote an institution or organisation-which helps those in need.

Charitable giving is the act of giving money, goods or time to the unfortunate, either directly or by means of a charitable trust or other worthy cause. Charitable giving as a religious act or duty is referred to as almsgiving or alms. The name stems from the most obvious expression of the virtue of charity; giving the recipients of it the means they need to survive. The impoverished, particularly those widowed or orphaned, and the ailing or injured, are generally regarded as the proper recipients of charity.

Most forms of charity are concerned with providing basic necessities such as food, water, clothing, healthcare and shelter, but other actions may be performed as charity: visiting the imprisoned or the homebound, ransoming captives, educating orphans, even social movements. Donations to causes that benefit the unfortunate indirectly, such as donations to fund cancer research, are also charity.

1.2. Need for Charity

Adatt Danachha Bhavet Daridra ||

Daridra Bhavachha Karuti Papam ||

Papam Prabhavat Narakam Prayanti ||

Punaha Daridra Punarepa Papi ||

If one does not donate, the person is penniless and because he is in misery he performs evil deeds. By performing evil deeds he ends up in here and after taking rebirth he once again ends up in the vicious cycle of misery and evil deeds. By charity one attains all state of Dharma, Arth, Kama and Moksha.

We get that thing all throughout life what we donate. That is the reason why we should donate all kinds of things. One can attain eternal bliss by doing charity. The fruits of donation and charity are simply limitless. Wealth invested on interest basis becomes double, while wealth invested in business becomes a fortune. Wealth invested in agriculture becomes hundred times the original, and wealth donated to the worthy becomes limitless. Amongst the great *Karmas* to be performed, charity is the greatest amongst them. A person who donates is known as saviour of life.

Charity, which is done to help poor, destitute, orphans, disabled, and the unhappy indirectly reaches God. Because of charity, if ego erupts it vitiates the purpose of charity. Charity should be done with the feeling that the Lord's wealth is only being returned to him. Charity which is embellished with the element of surrender is noble indeed.

Chapter 2

Charitable Organisation

Charitable organisation is an organisation with charitable purposes only. Trusts, foundations, unincorporated associations and in some jurisdictions specific types of companies, may be established for a charitable purpose or may acquire such purpose after establishment. Charitable organisations are non-profit organizations; however, not all non-profit organisations are charitable organisations. Some charitable organizations may be established by companies as part of tax planning strategies.

Though the roots of charity are to be found in religious belief and practice, charitable trusts and voluntary organizations are its secular and institutional manifestation. Those who were unable to serve society directly, but were able to provide money and other material resources, either established charitable institutions like dharamshalas, schools, orphanages, women's homes and the like, and donated funds to run them, or established endowments to provide monetary help in perpetuity to some charitable cause.

The primary function of a charitable organisation is to give benefit to the public by performing worthy causes that helps the public at large. Also all the operations performed by those organizations are legal and their policy goes in tune with the general public policy.

Charitable organisations usually adopt an active course of action to raise funds through a campaign or conducting programmes. Its functions can range from helping others in times of disaster, giving financial aid, medical services, public works and conducting human right activities. They generally function as welfare organisations and work for the improvement of the society through their charitable work.

2.1 Meaning of Charitable Purpose

In law, the concept of "charitable" purpose has a meaning which is not quite the same as in normal language.

In common law jurisdiction, the concept derives loosely from the meandering list of charitable purposes in the Charitable Uses Act (also known as the Statute of Elizabeth) 1601, interpreted and expanded in a considerable body of case law. In *Commissioners for Special Purposes of Income Tax vs.*

A Study on Laws Governing Charitable Organisations in India

Pemsel (1891), Lord McNaughten identified four heads of charity which could be extracted from the Charitable Uses Act and that are recognised by the law of charities today: (1) relief of poverty, (2) the advancement of education, (3) the advancement of religion, and (4) other purposes considered beneficial to the community.

According to Section 9(1) of the Maharashtra Public Trusts Act, 1950, “charitable purpose includes: 1) relief of poverty or distress 2) education 3) medical relief 3A) provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit 4) the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.”

The definition of charitable purpose is broad enough to cover activities other than direct relief of distress due to poverty or calamities. It includes education, medical relief, and the advancement of any other object of general public utility such as promotion and preservation of the arts.

According to Sec. 2(15) of Income Tax Act, 1961, “charitable purpose” includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

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, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year.

2.2 Basic characteristics of a Charitable Organisation

1. Formal

A charitable organisation should be institutionalised and registered, and should have well defined programme objectives as well as rules and regulations of governance.

A Study on Laws Governing Charitable Organisations in India

2. *Private*

It is important that a charitable organisation be institutionally separate from the Government.

3. *Self-governing*

A charitable organisation is usually managed by 'Board of Trustees' or 'Governing Council' and not controlled from the outside. Key participants in the management of a charitable organisation are supposed to act in fiduciary capacity.

4. *Not for profit*

A charitable organisation cannot distribute profits. It can earn and retain a profit, which is referred to as surplus.

5. *Voluntary*

Some meaningful voluntary participation in the activities and management of the organisation is important for an organisation to be classified as charitable organisation.

6. *Non-religious*

A charitable organisation should not be involved in promoting religious worship or religious education. However, pure service-oriented organisations affiliated to religious organisations can be covered.

7. *Non-political*

A charitable organisation should not be affiliated to any political party.

8. *Works for public benefit:*

A charitable organisation should not serve private cause, and public element for its activities is very important.

2.3 Forms of Activities of Charitable Organisation

1. *Advocacy*

Charitable organisations working on advocacy or campaigning on issues or causes, they do not implement programmes e.g. Centre for Social Research, which advocates women's rights in India.

A Study on Laws Governing Charitable Organisations in India

2. *Consultancy / Research Organisations*
Charitable organisations working on social and development research as well as consultancy.
3. *Training / Capacity Building Organisations*
Charitable organisation helping other charity organisations by training & capacity building.
4. *Networking Organizations*
Charitable organisations providing networking opportunities in a specific field e.g. Association of Voluntary Agencies for Rural Development (AVARD) works on networking of NGOs working in the field of 'rural development'.
5. *Mother NGOs*
These charitable organisations are recipients as well as givers e.g. CRY/ Concern India receive funds as well as disburse funds. They have a work focus, but instead of implementing projects, they identify projects and monitor, evaluate and build capacities of participating NGOs.
6. *Grass root Organisations*
Charitable organisations working directly with the community e.g. Apnalaya works with the underprivileged in the slums of Mumbai.
7. *City Based Organisations*
These restrict their focus to cities e.g. AGNI focuses its work in Mumbai City
8. *National Organisations*
Charitable organisations with national presence e.g. CRY, Pratham, Concern India.
9. *International Organizations*
Part of an International NGO, e.g. CARE India is an integral part of CARE's global operations. Like mother NGOs, these NGOs receive and disburse grants.

A Study on Laws Governing Charitable Organisations in India

10. *Self Help Groups*

Formed by beneficiary communities, typically women who come together in a group of 10 plus. India is witnessing a great movement of SHGs presently and these women are transforming the Rural Andhra Pradesh and Rural Tamil Nadu.

11. *Religious NGOs*

A large percentage of NGO funding goes to religious organisations e.g. Siddhivinayak Trust, a major worship community in Mumbai

2.4 History of Charitable Organisations

Until the mid 18th century, charity was mainly distributed through parish relief (such as the English poor laws of 1601), churches, almshouses and bequests from the rich. Charities were also responsible for education, health, housing and even prisons. Almshouses were established throughout Europe in the early Middle Ages to provide a place of residence for poor, old and distressed people-the first recorded almshouse was founded in York by King Athelstan in the 10th century.

It was in the Enlightenment era that charitable and philanthropic activity among voluntary associations and rich benefactors became a widespread cultural practice. Societies, gentlemen's clubs and mutual associations began to flourish in England, and the upper-classes increasingly adopted a philanthropic attitude toward the disadvantaged. This new social activism was channelled into the establishment of charitable organizations; these proliferated from the middle of the century.

This emerging upper-class fashion for benevolence resulted in the incorporation of the first charitable organisations. Captain Thomas Coram, appalled by the number of abandoned children living on the streets of London, set up the Foundling Hospital in 1741 to look after these unwanted orphans in Lamb's Conduit Fields, Bloomsbury. This was the first such charity in the world and served as the precedent for incorporated associational charities everywhere.

Jonas Hanway, another notable philanthropist of the era established The Marine Society in 1756 as the first seafarer's charity, in a bid to aid the recruitment of men to the navy. By 1763, the Society had recruited over 10,000 men and it was incorporated by an Act of Parliament in 1772. Hanway

A Study on Laws Governing Charitable Organisations in India

was also instrumental in establishing the Magdalen Hospital to rehabilitate prostitutes. These organisations were funded by subscription and run as voluntary associations. They raised public awareness of their activities through the emerging popular press and were generally held in high social regard - some charities received state recognition in the form of the Royal Charter.

Charities also began to adopt campaigning roles, where they would champion a cause and lobby the government for legislative change. This included organised campaigns against the ill treatment of animals and children and the campaign that eventually succeeded in ending the slave trade throughout the British Empire at the turn of the 19th century.

This period also saw growing philosophical debate between those who championed state intervention and those who believed that private charities should provide welfare. Thomas Malthus, the political economist, criticized poor relief for paupers on economic and moral grounds and proposed leaving charity entirely to the private sector. His views were very influential and informed the Victorian laissez-faire attitude toward state intervention for the poor.

During the 19th century, a profusion of charitable organizations were set up to alleviate the awful conditions of the working class in the slums. The Labourer's Friend Society, chaired by Lord Shaftesbury in the United Kingdom in 1830, was set up to improve working class conditions. This included the promotion of allotment of land to labourers for "cottage husbandry" that later became the allotment movement. In 1844 it became the first Model Dwellings Company - organizations that sought to improve the housing conditions of the working classes by building new homes for them, at the same time receiving a competitive rate of return on any investment. This was one of the first housing associations, a philanthropic endeavour that flourished in the second half of the nineteenth century brought about by the growth of the middle class. Later associations included the Peabody Trust and the Guinness Trust. The principle of philanthropic intention with capitalist return was given the label "five per cent philanthropy".

2.5 History of Charitable Trusts

Although gifts to charity have existed in antiquity, English Courts of Chancery first created charitable trusts, which were enforceable in equity.

A Study on Laws Governing Charitable Organisations in India

Charitable trusts were popular in England, but they were commonly abused or mismanaged. As a result of widespread abuse, Parliament enacted the Statute of Charitable Uses of 1601, which acted as an enforcement mechanism to prevent the mismanagement of charities. The statute of Charitable Uses created a new remedy for the misapplication of property held in a charitable trust; the statute did not create the jurisdiction of the chancery court, which already existed prior to the enactment of the Statute. The Statute merely created a new remedy to enforce charitable trusts by providing the chancellor with the auxiliary power to investigate and to enforce breaches of charitable trusts through a special commission. The statute did not create the chancellor's jurisdiction over charities, and it did not supersede or supplant the existing remedy allowed by the chancery courts.

The use of charitable trusts and private charities crossed the Atlantic Ocean with the colonization of America, but after the American Revolution, the framers of the U.S. Constitution did not specifically enumerate the enforcement of charitable trusts as one of the powers of the federal government. Charitable trusts were left to the states, and many states passed laws allowing for the creation of charitable trusts. Some states, however, passed laws to repeal all English statutes, and they did not support charities or charitable trusts because of a desire to completely rid themselves of all former vestiges of English rule. Seven states and the District of Columbia rejected the doctrine of charitable trusts. For many years, the only method of providing for a charity in these states was either to leave property to an existing charitable corporation or to leave property to a trustee instructed to create a charitable corporation within the period allowed by the Rule against Perpetuities.

2.6 Types of Charitable Organisations in India

Under the Indian law there are three basic types of charitable organisations namely –

- Trusts and charitable institutions registered under the Registration Act, 1908; Charitable Endowments Act, 1890; the Maharashtra Public Trusts Act, 1950; and similar other State Acts.
- Non-profit companies incorporated under Section 25 of the Companies Act, 1956 (Section 8 of Companies Act, 2013)
- Societies registered under the Societies Registration Act, 1860 and various state Acts.

A Study on Laws Governing Charitable Organisations in India

Alternative names used for referring to Charities in India -

- NPO - Not for Profit Organisation
- NGO - Non-governmental organisation
- VO - Voluntary organisation
- CSO - Civil society organisation
- CBO - Community based organisation
- Charitable organisation
- TSO - Third sector organisation

2.6.1 Society

A society is essentially an association of persons (seven or more) united together to achieve some common purpose. Such objects are normally charitable, scientific, literary etc.

The term "society" comes from the Latin word *societas*, which in turn was derived from the noun *socius* ("comrade, friend, ally"; adjectival form *socialis*) used to describe a bond or interaction among parties that are friendly, or at least civil. Without an article, the term can refer to the entirety of humanity (also: "society in general", "society at large", etc.), although those who are unfriendly or uncivil to the remainder of society in this sense may be deemed to be "anti-social".

A society is a distinct legal entity entirely independent of the members constituting it. Thus, it can sue or be sued independent of its members. No member either independently or jointly, can claim ownership rights in the assets of a society during its existence. On its dissolution, the surplus assets are given to some other society with similar objects. The membership rights are non-transferable, and it has perpetual succession not affected by the changes in its membership or employees. Along with having the flexibility to undertake a wide range of activities, a society also has a more democratic set up with membership and an elected body to manage it. The original members can continue to remain in control as long as they are elected to the managing committee. The society can exist beyond its original members and there is a possibility of a complete renewal of members and objects can be modified easily.

A Study on Laws Governing Charitable Organisations in India

A society is registered under the Societies Registration Act, 1860. In addition various states have framed their respective acts and rules for ensuring propriety in functioning of societies, including provisions for compulsory division, amalgamation or dissolution. The registration is done under the auspices of the various state governments in whose territories the organisation is located. An organisation can be registered in any district of India with the Registrar of Societies within that district.

2.6.2 Trust

A Trust is a special form of organisation which emerges out of a will. The will maker exclusively transfers the ownership of a property to be used for a particular purpose. If the purpose is to benefit particular individuals, it becomes a Private Trust and if it concerns some purpose of the common public or the community at large, it is called a Public Trust.

A Trust is created if a person wishes to set apart either property or income for a charitable purpose so that the income may be devoted in perpetuity for the fulfilment of the charitable purpose or if he / she wants to limit the control over the disposal of that income to persons whom he knows or trusts. Charitable Trusts need to satisfy the definition of "charitable purpose, which includes relief to the poor, education, medical relief and advancement of any other object of general public utility".

The trust has primarily three parties: the donor/s, the trustees and the beneficiaries. It is usually created through a trust deed. A trust may be private or public, fixed or discretionary (among others).

In India, a public charitable trust can be set up under the Maharashtra Public Charitable Trust Act, 1950 in the states of Maharashtra and Gujarat. Elsewhere in the country it can be set up under the general law, i.e., registration of the Trust deed with the registrar. Or under the public trust act of the state, if any.

Trusts have developed since Roman times and have become one of the most important innovations in property law. Roman law had a well-developed concept of the trust (*fideicommissum*) in terms of "testamentary trusts" created by wills, but never developed the concept of the *inter vivos* (living) trusts which apply while the creator lives. This was created by later common law jurisdictions. The trust is widely considered to be the most innovative contribution to the English legal system. Today, trusts play a significant role

in most common law systems, and their success has led some civil law jurisdictions to incorporate trusts into their civil codes.

2.6.3 Sec. 8 company (Companies Act, 2013) (erstwhile Section 25 Company of Companies Act, 1956)

A charitable organisation can be set up under Section 8 of the Companies Act of 2013. Earlier a charitable organisation could be set up under Section 25 of the Companies Act, 1956. The provisions of Section 25 are now covered under Section 8 of the Companies Act of 2013. Most of the provisions of the new Companies Act have been notified and Section 8 has come into force from 1st April, 2014. The procedure for incorporation of Section 8. Company is covered under the Companies (Incorporation) Rules, 2014.

Companies can be registered under Section.8 if:

- 1) They have their objects the promotion of -
 - a. commerce
 - b. art
 - c. science
 - d. sports
 - e. education
 - f. research,
 - g. social welfare
 - h. religion
 - i. charity
 - j. protection of environment
 - k. any such other object
- 2) they intend to apply profits or other income in promoting their objects;
- 3) they intend to prohibit the payment of any dividend to their members.

A Section 8 company has a distinct legal entity, entirely independent of its members and has perpetual succession. While the non-profit companies enjoy limited liability like a limited company or society they don't need to use the words limited in their name. No member can independently or jointly claim ownership rights in the assets of the company during its existence and cannot distribute profits or assets to its members.

2.6.4 Comparative Perspective

	Sec. 8 company	Society	Trust
Legislation	Companies Act, 2013	Societies Registration Act, 1860	State related Acts / Registration Act, 1908
Regulatory authority	Registrar of companies	Registrar of societies (charity commissioner in Maharashtra)	Registrar/Charity commissioner
Objects	Non profit Activities	Charitable, Literary, Scientific etc.	Charitable, Socially Beneficial
Registration	As a Company	As Society	As Trust
Registration Document	Memorandum and articles of association and regulations	Memorandum of association and rules and regulations	Trust deed
Stamp duty	No stamp paper required for memorandum and articles	No stamp paper required for memorandum of association and rules and regulations	Trust deed to be executed on non-judicial stamp paper, vary from state to state.
Number of members	Minimum seven; no upper limit	Minimum seven members; no upper limit	Minimum two trustees; no upper limit
Management	Board of Directors	Governing Body or Council / Managing or Executive Committee	Trustees
Mode of Succession	Election by members of the general body	Appointment or Election by members of the general body	Appointment or Election

2.7 Zakat

Translated from Arabic, the word “zakat” means “to purify”; it is the third pillar of Islam.

The obligation is to give 2.5% of one’s wealth to those in need. Zakat is essentially an act of worship through which Muslims can purify their wealth, cleanse their souls and benefit themselves as well as others – it is a symbol of Islamic social justice.

Every sane, adult Muslim who possesses equal to or more wealth than the Nisab for one lunar year is eligible to pay Zakat. This person is known in Arabic as a “Sahib-un-Nisab” (Translated: “Owner of Wealth” – The word “wealth” in this context refers to the minimum amount of wealth required to be eligible to give Zakat).

“Nisab” is an Arabic word which means the minimum value of wealth that one must own to become eligible to pay Zakat; its current monetary value is equal to 87.48 grams of gold or 612.36 grams of silver.

The Zakat year of an individual begins on the day that they first become “Owner of Wealth” for that year. For example, if the Nisab on 21st Sha’ban 1433 was £3,500 and Abdullah was the owner of this amount of wealth on that day, then his Zakat year would begin from this date. On the 21st of Sha’ban the following year, if Abdullah is still the owner of £3,500 worth of wealth or more, then he must pay Zakat upon his wealth immediately.

Zakat can be paid at anytime of the year; it is dependent on the person’s individual circumstances – (different people will become owners of Nisab at different times of the year). Many people choose to pay Zakat during Ramadan for the increased reward, but this is not part of the obligation; the obligation is to pay Zakat as soon as it becomes due. As paying Zakat is an act of duty, it is not permissible to delay it.

A Muslim can spread his Zakat throughout the year. For example, If Mrs. Khan’s Zakat of £3,500 is due to be paid on 15th of Rajab in 1434, then she may choose to begin paying monthly instalments by direct debit from 15th of Rajab 1433. She must however ensure that the total amount of £3,500 is reached by the due date, which in this case would be on 15th of Rajab 1434.

Some people choose to spread the payment of their Zakat via direct debit; there is considerable benefit to this, because it means the receiver of Zakat

A Study on Laws Governing Charitable Organisations in India

can be supported regularly throughout the whole year. It is beneficial for both the one who gives and the one who receives.

On what types of wealth Zakat could be paid

Jewellery – Zakat is due on all jewellery which consists of equal to or more than 50% gold and/or silver. The value of gold and silver change on a daily basis, so it is advisable to find out the value of gold and/or silver at the time of paying Zakat. Different scholars have varying opinions on this matter. Due to the fact that gold is more expensive than silver, many scholars advise that it is better to calculate Zakat based on the value of silver because this will be more beneficial to those dependent on your support. In the Asian subcontinent gold is sometimes measured in units of 'tola' as opposed to grams. 1 tola equals 11.66 grams, which means 87.48 grams of gold is equivalent to 7.5 tolas.

Business – Zakat is payable on the value of all goods which are intended to be sold; the calculated value should be that of the selling price. It is important to remember that Zakat is due regardless of whether the business is making a profit or not.

E.g.: Imran runs a business and if he is due to his pay Zakat, he should use the following formula to calculate how much Zakat needs to be paid:

$2.5 \times (\text{value of trade goods} + \text{cash} + \text{business loans}) - \text{debts payable to others}$.

Property – Zakat is only due on property that is owned for investment, not the property in which one resides.

Buy to Rent – If one owns a home for rental purposes, then Zakat is payable upon the rent with the deduction of any outgoings in connection with the property.

Buy to Sell – If one owns a second home with the intention of re-selling the property, then Zakat is payable on the value of the property.

Shares, cash savings and pensions

One must pay Zakat on the value of the shares which one owns for the entire Zakat year. Due to the fact that the share market is in constant fluctuation, it is advisable to check the value of shares at the end of the Zakat year.

A Study on Laws Governing Charitable Organisations in India

Zakat is payable on any cash money which is kept at home or deposited in the bank.

A person needs to pay Zakat on their pension which they receive after retirement, provided that they are considered Sahib-un-Nisab (owner of wealth). People, who are currently earning and have a percentage of their salary paid directly into a pension fund by their employer, do not need to pay Zakat for this money yet, as they do not have access to it until after retirement.

Loans given to others – If one is sure that the person who has borrowed money from them will pay the money back, then they must pay Zakat on this loaned money. However, if one thinks that the borrower is not able to return the loan, then they do not need to pay Zakat on that money. If in this instance, the borrower eventually returns the money, then one will become eligible to pay Zakat on that money.

Who is eligible to receive it?

Allah has identified in the Holy Quran (chapter 9, verse 60) the people who have the right to receive Zakat:

- People who are in complete poverty and have nothing.
- People who have some wealth, but not enough to meet their basic needs.
- People who collect Zakat to distribute to the poor and needy.
- People who are sympathetic towards Islam or wish to embrace Islam, and are needy.
- Zakat may be used to free a person from slavery.
- Zakat can be given to those who are in debt and unable to pay off their debt.
- People who work in God's way and strive to give Dawah.
- Travellers and/or wayfarers who are needy.

Chapter 3

Trust

A trust is a relationship whereby property is held by one party for the benefit of another. A trust is created by a settlor, who transfers some or all of his or her property to a trustee. The trustee holds that property for the trust's beneficiaries. Trusts have been there since Roman times and have become one of the most important innovations in property law.

An owner placing property in trust turns over part of his or her bundle of rights to the trustee, separating the property's legal ownership and control from its equitable ownership and benefits. This may be done for tax reasons or to control the property and its benefits if the settlor is absent, incapacitated, or dead. Trusts are frequently created in wills, defining how money and property will be handled for children or other beneficiaries.

The trustee is given legal title to the trust property, but is obligated to act for the good of the beneficiaries. The trustee may be compensated and have expenses reimbursed, but otherwise must turn over all profits from the trust properties.

The trustee may be an individual, a company, or a public body. There may be a single trustee or multiple co-trustees.

The trust is governed by the terms under which it was created. In most jurisdictions, this requires a contractual trust agreement or deed.

Basic Principles of Trust

Property of any sort may be held in a trust. The uses of trusts are many and varied, for both personal and commercial reasons, and trusts may provide benefits in estate planning, asset protection, and taxes. Living trusts may be created during a person's life (through the drafting of a trust instrument which is filed in a court) or after death in a will. The basic principles of a trust are given below:

i) Terms

Terms of the trust, as to who will be the trustee, beneficiary etc.

ii) Creation

Trusts may be created by the expressed intentions of the settlor (express trusts) or they may be created by operation of law known as implied trusts.

A Study on Laws Governing Charitable Organisations in India

An implied trust is one created by a court of equity because of acts or situations of the parties. Implied trusts are divided into two categories: resulting and constructive. A resulting trust is implied by the law to work out the presumed intentions of the parties, but it does not take into consideration their expressed intent. A constructive trust is a trust implied by law to work out justice between the parties, regardless of their intentions.

Typically a trust can be created in the following ways:

- A written trust instrument created by the settlor and signed by both the settlor and the trustees (often referred to as an *inter vivos* or "living trust");
- An oral declaration;
- The will of a decedent, usually called a testamentary trust; or
- A court order (for example in family proceedings).

iii) Formalities

There must be a clear intention to create a trust. The property subject to the trust must be clearly identified. The beneficiaries of the trust must be clearly identified, or at least be ascertainable. In the case of discretionary trusts, where the trustees have power to decide who the beneficiaries will be, the settlor must have described a clear class of beneficiaries. Beneficiaries may include people not born at the date of the trust (for example, "my future grandchildren"). Alternatively, the object of a trust could be a charitable purpose rather than specific beneficiaries.

iv) Trustees

A trust may have multiple trustees, and these trustees are the legal owners of the trust's property, but have a fiduciary duty to beneficiaries and various duties, such as a duty of care and a duty to inform. If trustees do not adhere to these duties, they may be removed through a legal action. The trustee may be either a person or a legal entity such as a company, but typically the trust itself is not an entity and any lawsuit must be against the trustees. A trustee has many rights and responsibilities which vary based on the jurisdiction and trust instrument. If a trust lacks a trustee, a court may appoint a trustee. The trustees administer the affairs attendant to the trust. The trust's affairs may include prudently investing the assets of the trust, accounting for and reporting periodically to the beneficiaries, filing required tax returns, and

A Study on Laws Governing Charitable Organisations in India

other duties. In some cases dependent upon the trust instrument, the trustees must make discretionary decisions as to whether beneficiaries should receive trust assets for their benefit.

v) Beneficiaries

The beneficiaries are beneficial owners of the trust property. Either immediately or eventually, the beneficiaries will receive income from the trust property, or they will receive the property itself. The extent of a beneficiary's interest depends on the wording of the trust document. One beneficiary may be entitled to income (for example, interest from a bank account), whereas another may be entitled to the entirety of the trust property when he attains a particular age. The settlor has much discretion when creating the trust, subject to some limitations imposed by law.

Significance of Trust

The trust is widely considered to be the most innovative contribution to the English legal system. Today, trusts play a significant role in most common law systems, and their success has led some civil law jurisdictions to incorporate trusts into their civil codes. Curaçao for example has introduced a trust in its Civil Code from 1 January 2012, which does only allow express trusts, constituted by a notarial deed. France has recently added a similar, though not quite comparable, notion to its own law with *la fiducie*, which was modified in 2009; *la fiducie*, unlike the trust, is a contract. Trusts are widely used internationally, especially in countries within the English law sphere of influence, and whilst most civil law jurisdictions do not generally contain the concept of a trust within their legal systems, they do recognise the concept under the Hague Convention on the Law Applicable to Trusts and on their Recognition (partly only to the extent that they are parties thereto). The Hague Convention also regulates conflict of trusts.

Purpose for which trust is created

1. **Privacy:** Trusts may be created purely for privacy. The terms of a will are public and the terms of a trust are not. In some families, this alone makes the use of trusts ideal.
2. **Spendthrift protection:** Trusts may be used to protect beneficiaries (for example, one's children) against their own inability to handle money. These are especially attractive for spendthrifts. Courts may generally recognize spendthrift clauses against trust beneficiaries and their creditors, but not against creditors of a settlor.

A Study on Laws Governing Charitable Organisations in India

3. **Wills and estate planning:** Trusts frequently appear in wills (indeed, technically, the administration of every deceased's estate is a form of trust). Conventional wills typically leave assets to the deceased's spouse (if any), and then to the children equally. If the children are under 18, or under some other age mentioned in the will (21 and 25 are common), a trust must come into existence until the contingency age is reached. The executor of the will is (usually) the trustee, and the children are the beneficiaries. The trustee will have powers to assist the beneficiaries during their minority.
4. **Charities:** In some common law jurisdictions all charities must take the form of trusts. In others, corporations may be charities also. In most jurisdictions, charities are tightly regulated for the public benefit (in England, for example, by the Charity Commission).
5. **Unit trusts:** The trust has proved to be such a flexible concept that it has proved capable of working as an investment vehicle: the unit trust.
6. **Pension plans:** Pension plans are typically set up as a trust, with the employer as settlor, and the employees and their dependents as beneficiaries.
7. **Remuneration trusts:** Trusts for the benefit of directors and employees or companies or their families or dependents. This form of trust was developed by Paul Baxendale-Walker and has since gained widespread use.
8. **Corporate structures:** Complex business arrangements, most often in the financial and insurance sectors, sometimes use trusts among various other entities (e.g., corporations) in their structure.
9. **Asset protection:** Trusts may allow beneficiaries to protect assets from creditors as the trust may be bankruptcy remote. For example, a discretionary trust, of which the settlor may be the protector and a beneficiary, but not the trustee and not the sole beneficiary. In such an arrangement the settlor may be in a position to benefit from the trust assets, without owning them, and therefore in theory protected from creditors. In addition, the trust may attempt to preserve anonymity with a completely unconnected name (e.g., "The Teddy Bear Trust"). These strategies are ethically and legally controversial.
10. **Tax planning:** The tax consequences of doing anything using a trust are usually different from the tax consequences of achieving the same effect by another route (if, indeed, it would be possible to do so). In many cases, the tax consequences of using the trust are better than the alternative, and trusts are therefore frequently used for legal tax avoidance.

A Study on Laws Governing Charitable Organisations in India

11. **Co-ownership:** Ownership of property by more than one person is facilitated by a trust. In particular, ownership of a matrimonial home is commonly effected by a trust with both partners as beneficiaries and one, or both, owning the legal title as trustee.
12. **Construction law:** In Canada and Minnesota, monies owed by employers to contractors or by contractors to subcontractors on construction projects must by law be held in trust. In the event of contractor insolvency, this makes it much more likely that subcontractors will be paid for work completed.

Types of Trusts

Trusts go by many different names, depending on the characteristics or the purpose of the trust. Because trusts often have multiple characteristics or purposes, a single trust might accurately be described in several ways. For example, a living trust is often an express trust, which is also a revocable trust, and might include an incentive trust, and so forth.

- i. **Constructive trust:** Unlike an express trust, a constructive trust is not created by an agreement between a settlor and the trustee. A constructive trust is imposed by the law as an "equitable remedy." This generally occurs due to some wrongdoing, where the wrongdoer has acquired legal title to some property and cannot in good conscience be allowed to benefit from it. A constructive trust is, essentially, a legal fiction. For example, a court of equity recognising a plaintiff's request for the equitable remedy of a constructive trust may decide that a constructive trust has been created and simply order the person holding the assets to deliver them to the person who rightfully should have them. The constructive trustee is not necessarily the person who is guilty of the wrongdoing, and in practice it is often a bank or similar organisation. The distinction may be finer than the preceding exposition in that there is also said to be two forms of constructive trust, the institutional constructive trust and the remedial constructive trust. The latter is an "equitable remedy" imposed by law being truly remedial; the former arising due to some defect in the transfer of property.
- ii. **Discretionary Trust:** It is a trust where the beneficiaries and/or their entitlements to the trust fund are not fixed, but are determined by the criteria set out in the trust instrument by the settlor. It is sometimes referred to as a family trust in Australia or New Zealand. Where the discretionary trust is a testamentary trust, it is common for the settlor to leave a letter of wishes for

A Study on Laws Governing Charitable Organisations in India

the trustees to guide them as to the settlor's wishes in the exercise of their discretion. Letters of wishes are not legally binding documents.

- iii. **Directed Trust:** In these types, a *directed trustee* is directed by a number of other trust participants in implementing the trust's execution; these participants may include a distribution committee, trust protector, or investment advisor. The directed trustee's role is administrative which involves following investment instructions, holding legal title to the trust assets, providing financial and tax accounting, coordinating trust participants and offering dispute resolution among the participants
- iv. **Dynasty Trust (also known as a generation-skipping trust):** A type of trust in which assets are passed down to the grantor's grandchildren, not the grantor's children. The children of the grantor never take title to the assets. This allows the grantor to avoid the estate taxes that would apply if the assets were transferred to his or her children first. Generation-skipping trusts can still be used to provide financial benefits to a grantor's children, however, because any income generated by the trust's assets can be made accessible to the grantor's children while still leaving the assets in trust for the grandchildren.
- v. **Express Trust:** An express trust arises where a settlor deliberately and consciously decides to create a trust, over their assets, either now, or upon his or her later death. In these cases this will be achieved by signing a trust instrument, which will either be a will or a trust deed. Almost all trusts dealt with in the trust industry are of this type. They contrast with resulting and constructive trusts. The intention of the parties to create the trust must be shown clearly by their language or conduct. For an express trust to exist, there must be certainty to the objects of the trust and the trust property. In the USA Statute of Frauds provisions require express trusts to be evidenced in writing if the trust property is above a certain value, or is real estate.
- vi. **Fixed trust:** In a fixed trust, the entitlement of the beneficiaries is fixed by the settlor. The trustee has little or no discretion. Common examples are:
 - A trust for a minor ("to x if she attains 21");
 - A **life interest** ("to pay the income to x for her lifetime"); and
 - A **remainder** ("to pay the capital to y after the death of x")
- vii. **Hybrid Trust:** A hybrid trust combines elements of both fixed and discretionary trusts. In a hybrid trust, the trustee must pay a certain amount

A Study on Laws Governing Charitable Organisations in India

of the trust property to each beneficiary fixed by the settlor. But the trustee has discretion as to how any remaining trust property, once these fixed amounts have been paid out, is to be paid to the beneficiaries.

- viii. **Implied Trust:** An implied trust, as distinct from an express trust, is created where some of the legal requirements for an express trust are not met, but an intention on behalf of the parties to create a trust can be presumed to exist. A resulting trust may be deemed to be present where a trust instrument is not properly drafted and a portion of the equitable title has not been provided for. In such a case, the law may raise a resulting trust for the benefit of the grantor (the creator of the trust). In other words, the grantor may be deemed to be a beneficiary of the portion of the equitable title that was not properly provided for in the trust document.
- ix. **Incentive Trust:** A trust that uses distributions from income or principal as an incentive to encourage or discourage certain behaviors on the part of the beneficiary. The term "incentive trust" is sometimes used to distinguish trusts that provide fixed conditions for access to trust funds from discretionary trusts that leave such decisions up to the trustee.
- x. **Inter Vivos Trust (or Living Trust):** A settlor who is living at the time the trust is established creates an *inter vivos* trust.
- xi. **Irrevocable Trust:** In contrast to a revocable trust, an irrevocable trust is one in which the terms of the trust cannot be amended or revised until the terms or purposes of the trust have been completed. Although in rare cases, a court may change the terms of the trust due to unexpected changes in circumstances that make the trust uneconomical or unwieldy to administer, under normal circumstances an irrevocable trust may not be changed by the trustee or the beneficiaries of the trust.
- xii. **Offshore Trust:** Strictly speaking, an offshore trust is a trust which is resident in any jurisdiction other than that in which the settlor is resident. However, the term is more commonly used to describe a trust in one of the jurisdictions known as offshore financial centers or, colloquially, as tax havens. Offshore trusts are usually conceptually similar to onshore trusts in common law countries, but usually with legislative modifications to make them more commercially attractive by abolishing or modifying certain common law restrictions. By extension, "onshore trust" has come to mean any trust resident in a high-tax jurisdiction.

A Study on Laws Governing Charitable Organisations in India

- xiii. **Personal Injury Trust:** A personal injury trust is any form of trust where funds are held by trustees for the benefit of a person who has suffered an injury and funded exclusively by funds derived from payments made in consequence of that injury.
- xiv. **Private and Public Trusts:** A private trust has one or more particular individuals as its beneficiary. By contrast, a public trust (also called a charitable trust) has some charitable end as its beneficiary. In order to qualify as a charitable trust, the trust must have as its object certain purposes such as alleviating poverty, providing education, carrying out some religious purpose, etc. The permissible objects are generally set out in legislation, but objects not explicitly set out may also be an object of a charitable trust, by analogy. Charitable trusts are entitled to special treatment under the law of trusts and also the law of taxation.
- xv. **Protective Trust:** Here the terminology is different between the UK and the USA. In the UK, a protective trust is a life interest that terminates upon the happening of a specific event; such as the bankruptcy of the beneficiary, or any attempt by an individual to dispose of his or her interest. They have become comparatively rare. In the USA, a *protective trust* is a type of trust that was devised for use in estate planning. (In another jurisdiction this might be thought of as one type of asset protection trust.) Often a person, *A*, wishes to leave property to another person *B*. *A*, however, fears that the property might be claimed by creditors before *A* dies, and that therefore *B* would receive none of it. *A* could establish a trust with *B* as the beneficiary, but then *A* would not be entitled to the use of the property before they died. Protective trusts were developed as a solution to this situation. *A* would establish a trust with both *A* and *B* as beneficiaries, with the trustee instructed to allow *A* use of the property until they died, and thereafter to allow its use to *B*. The property is then safe from being claimed by *A*'s creditors, at least so long as the debt was entered into after the trust's establishment. This use of trusts is similar to life estates and remainders, and is frequently used as alternatives to them.
- xvi. **Purpose Trust:** Or, more accurately, non-charitable purpose trust (all charitable trusts are purpose trusts). Generally, the law does not permit non-charitable purpose trusts outside of certain anomalous exceptions which arose under the eighteenth century common law (and, arguable, *Quistclose* trusts). Certain jurisdictions (principally, offshore jurisdictions) have enacted legislation validating non-charitable purpose trusts generally.

A Study on Laws Governing Charitable Organisations in India

- xvii. **QTIP Trust:** Short for "qualified terminal interest property." A trust recognized under the tax laws of the United States which qualifies for the marital gift exclusion from the estate tax.
- xviii. **Resulting Trust:** A resulting trust is a form of implied trust which occurs where (1) a trust fails, wholly or in part, as a result of which the settlor becomes entitled to the assets; or (2) a voluntary payment is made by A to B in circumstances which do not suggest gifting. B becomes the resulting trustee of A's payment.
- xix. **Revocable Trust:** A trust of this kind may be amended, altered or revoked by its settlor at any time, provided the settlor is not mentally incapacitated. Revocable trusts are becoming increasingly common in the US as a substitute for a will to minimize administrative costs associated with probate and to provide centralised administration of a person's financial affairs after death.
- xx. **Secret Trust:** A post-mortem trust constituted externally from a will but imposing obligations as a trustee on one, or more, legatees of a will.
- xxi. **Simple Trust:** In the US jurisdiction this has two distinct meanings - In a *simple trust* the trustee has no active duty beyond conveying the property to the beneficiary at some future time determined by the trust. This is also called a *bare trust*. All other trusts are *special trusts* where the trustee has active duties beyond this. A simple trust in Federal income tax law is one in which, under the terms of the trust document, all net income must be distributed on an annual basis.

In the UK, a bare or simple trust is one where the beneficiary has an immediate and absolute right to both the capital and income held in the trust. Bare trusts are commonly used to transfer assets to minors. Trustees hold the assets on trust until the beneficiary is 18 in England and Wales, or 16 in Scotland.
- xxii. **Special Trust:** In the US, a special trust, also called complex trust, contrasts with a simple trust. It does not require the income be paid out within the subject tax year. The funds from a complex trust can also be used to donate to a charity or for charitable purposes.
- xxiii. **Special Power of Appointment Trust (SPA Trust):** A trust implementing a special power of appointment to provide asset protection features.
- xxiv. **Spendthrift Trust:** It is a trust put into place for the benefit of a person who is unable to control their spending. It gives the trustee the power to decide how the trust funds may be spent for the benefit of the beneficiary.

- xxv. **Standby Trust (or Pour over Trust):** The trust is empty at creation during life and the will transfers the property into the trust at death. This is a statutory trust.
- xxvi. **Testamentary Trust (or Will Trust):** A trust created in an individual's will is called a testamentary trust. Because a will can become effective only upon death, a testamentary trust is generally created at or following the date of the settlor's death.
- xxvii. **Unit Trust:** A trust where each of the beneficiaries (called *unit-holders*) possesses a certain share (called *units*) and can direct the trustee to pay money to them out of the trust property according to the number of units they possess. A unit trust is a vehicle for collective investment, rather than disposition, as the person who gives the property to the trustee is also the beneficiary.

Whether Trust is a legal entity?

The courts in India in various decisions held that the instrument of registration does not by itself lend legal entity to a trust. The Supreme Court of India in AIR 1957 SC 887 (891) held that "A trustee is legal owner of trust property and the property vests in him. He holds trust property for the benefit of beneficiaries but does not hold it on their behalf."

In *Duli Chand vs. Mahabir Prasad etc. Trust AIR 1984 Del 145 (DB)* the court observed that a trust is "not like a corporation which has a legal existence of its own and therefore, can appoint an agent. A trust is not in this sense a legal entity. It is possible for some of the trustees to authorise the others to file a suit but this could only be done by the execution of a power of attorney."

It was also held in *H. N. Bhiwandiwalla vs. Zoroastrian Co-op. Bank AIR 2001 Bom 267* that, a suit against a trust is not maintainable as it is not a legal entity. Observed, "all the trustees must be made a party."

It was further held in *N. T. P. C. vs. Canara Bank (1999) 97 Comp. Cas. 930* at Pages 937-38 that "Trusts created under Indian Trusts Act, 1882 are not legal entities as public trusts registered under the Societies Registration Act are."

Trust is an obligation annexed to the ownership of property and a trustee is a person who accepts a confidence which gives rise to obligation annexed to the ownership of property. But a trust is not a legal entity in the eye of law as it has no lawful authority of incorporation.

Famous case law on Trusts – *Knight vs. Knight*

Knight vs. Knight (1840) 49 ER 58 is an English trusts law case, embodying a simple statement of the "three certainties" principle. This has the effect of determining whether assets can be disposed of in wills, or whether the wording of the will is too vague to allow beneficiaries to collect what appears on the face of the will to be theirs. The case has been followed in most common law jurisdictions.

Richard Knight made a settlement on 26 April 1729, which passed the manors of Leintwardine and Downton, Herefordshire, including Croft Castle and Downton Castle, down the family line. The first grandson, of his second son, was Richard Payne Knight (a specialist on phallic imagery). He made a will on 3 June 1814, leaving the property to his brother, Thomas Andrew Knight (a horticulturalist), and to his male descendants. But if there were none, the property was to pass to the 'next descendant in the direct male line of my late grandfather, Richard Knight of Downton...' He had also said, however,

'I trust to the liberality of my successors to reward any others of my old servants and tenants according to their deserts, and to their justice in continuing the estates in the male succession, according to the will of the founder of the family, my above-named grandfather.'

Thomas' son died early, and Thomas died intestate. His daughter, Charlotte, had married Sir William Edward Rouse Boughton. Richard's second brother, Edward, had a grandson named John Knight, who brought a claim alleging that Thomas had been bound to make a strict settlement in favour of the male line. William Boughton argued that no such trust had been created and the property had in fact gone to Thomas absolutely, and thus on to Charlotte and his family.

Lord Langdale MR held that the words of Richard's will were not sufficiently certain, but that meant there had been an absolute gift to Thomas, who had taken the trust unfettered by any trust in favour of the male line. He formulated the test, known as the "*three certainties*". This test specified that, for a valid trust, there must be certainty of

- (1) Intention (there must be an intention to create a trust),
- (2) Subject matter (the assets constituting the trust fund must be readily determinable)
- (3) Objects (the people to whom the trustees are to owe a duty must be readily determinable).

Chapter 4

Laws Governing Charitable Organisations In India

There is no single piece of legislation, which comprehensively governs the sector and similarly no single regulator exists in India, in contrast to other countries where a Charity Commissioner regulates the individual organisations on nationwide basis. Charities can be formed in multiple ways and may be subject to various acts of legislation. It is the choice of the persons forming the charity to decide which form to take. Different legal provisions exist at the national and state level. Some states in India have enacted their own law to govern certain forms of charities.

Charity is a concurrent subject under the 7th schedule, List III, Item 28 of the Constitution of India, where both the Centre and the States are competent to legislate and regulate charitable organisations. Accordingly some of the laws are Central and applicable all over India, while others are enacted by individual states.

For example, all public charitable trusts in the state of Maharashtra are governed by the Maharashtra Public Trusts Act, 1950. The same Act, with minor changes, is also operational in the state of Gujarat. Rajasthan, too, has a Trusts Act of 1959, while Madhya Pradesh had an Act of 1951. In certain southern states like Andhra Pradesh, there are endowment Acts, while a number of northern and north-eastern states in India have no trust Act at all. Even the capital of India, Delhi, has no trust Act.

The main laws governing the charity sector –

- 1) The Societies Registration Act, 1860
- 2) Companies Act, 2013
- 3) The Registration Act, 1908 (registration of trust)
- 4) Public Trusts Acts of various states in India
- 5) Income-tax Act, 1961
- 6) Foreign Contribution (Regulation) Act, 2010
- 7) Sikh Gurdwaras Act, 1925

A Study on Laws Governing Charitable Organisations in India

Apart from the above:

- 8) Constitution of India Articles 19(1)(c) and 26;

Societies

- 9) Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (covers districts of Thrissur, Eranakulamm, Idukki, Kottayam, Alappuzha, Pathanamititta, Kollam and Thiruvananthapuram while rest of Malabar region are covered under Societies Registration Act, 1860)
- 10) The Rajasthan Societies Registration Act, 1958
- 11) The Karnataka Societies Registration Act, 1960
- 12) Karnataka Societies Registration Rules, 1961
- 13) The West Bengal Societies Registration Act, 1961
- 14) The West Bengal Societies Registration Rules, 1963
- 15) Societies Registration (Maharashtra) Rules, 1971
- 16) The Madhya Pradesh Registrkaran Adhiniyam, 1973
- 17) The Tamil Nadu Societies Registration Act, 1975
- 18) Tamil Nadu Societies Registration Rules, 1978
- 19) The Uttar Pradesh Societies Registration Rules, 1976
- 20) The Meghalaya Societies Registration Act, 1983
- 21) Manipur Societies Registration Act, 1989
- 22) The Jammu & Kashmir Societies Registration Act, 1998
- 23) Andhra Pradesh Societies Registration Act, 2001
- 24) Mizoram Societies Registration Act, 2005
- 25) Mizoram Societies Registration Rules, 2006
- 26) Himachal Pradesh Societies Registration Act, 2006
- 27) Himachal Pradesh Societies Registration Rules, 2006
- 28) Haryana Registration and Regulation of Societies Act, 2012

Trusts

- 29) Charitable Endowments Act, 1890
- 30) Indian Stamp Act, 1899
- 31) Civil Procedure Code, 1908
- 32) Registration Act, 1908
- 33) Official Trustees Act, 1913
- 34) Charitable and Religious Trusts Act, 1920
- 35) The Madras Hindu Religious and Charitable Endowments Act, 1951

Wakfs

- 36) Mussalman Wakf Validating Act, 1913
- 37) Mussalman Wakf Act, 1923
- 38) Mussalman Wakf Validating Act, 1930
- 39) Bengal Wakf Act 1934
- 40) U.P. Muslim Wakf Act, 1936
- 41) Delhi Muslim Wakf Act, 1943
- 42) Bihar Wakf Act, 1947
- 43) Dargah Khwaja Saheb Act, 1955
- 44) U.P. Muslim Act, 1960
- 45) Wakf Act, 1995

State Acts

- 46) United Provinces Charitable Endowments Rules, 1943
- 47) Maharashtra Public Trusts Act, 1950
- 48) Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950
- 49) Maharashtra Public Trusts Rules, 1951
- 50) Charitable Endowments (U.P. Amendment) Act, 1952
- 51) Rajasthan Public Trust Act, 1959

A Study on Laws Governing Charitable Organisations in India

- 52) Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
- 53) The Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961
- 54) Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
- 55) Jammu and Kashmir Charitable Endowments Act, 1989
- 56) Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997
- 57) Karnataka Hindu Religious Institutions and Charitable Endowments Rules, 2002

Bill

- 58) Draft Multi- State Societies Registration Bill, 2012

Apart from meeting the requirements of legislations mentioned above, the charitable organisations should also follow the provisions of law as applicable to their functional areas. For example, those working in the health sector need to follow the laws applicable to that sector. Similarly, organisations working on environment protection will have to abide by the environment specific laws.

4.1. Constitutional Provisions with regard to Charitable Organisations

The Indian Constitution provides a distinct legal space to social capital / civil society institutions –

- (a) Through its Article on the right to form associations or unions – Article 19 (1)(c);
- (b) Through Article 43 which talks of States making endeavor to promote cooperatives in rural areas; and
- (c) Through explicit mention in entries made in Schedule 7.

Article 19: Right to Freedom

19(1)(c): All citizens shall have the right to form associations or unions.

Clause 4 of the Article states that Nothing in sub-clause (c) of the clause (1) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of

India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

Article 26: Freedom to manage religious affairs

(a) Subject to public order, morality and health, every religious denomination or any section thereof shall have the right — to establish and maintain institutions for religious and charitable purposes.

The State list – Entry 32 – “Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies”.

Concurrent List – Entry 10 – “Trusts and Trustees”

Entry 28 – “Charities and charitable institutions, charitable and religious endowments and religious institutions”.

Since forming Associations is a Constitutional right under Article 19(1)(c) of the Indian Constitution, it is quite feasible to set up a non-profit/voluntary organisation without any kind of registration or recognition under any of the entries mentioned above. In fact, some of the community based organisations like village committees, small religious groups and many Resident Welfare Associations function in this manner. However, when it comes to claiming exemptions under the Income Tax Act, 1961 and for availing of other benefits from the Government, there is insistence on formal registration.

4.2. History of laws regulating charitable organisations in India

Acharya Chanakya’s *Arthashastra* contains reference to some of the problems that may arise in charitable transactions, and how these were to be resolved. For instance, a promise to give was enforceable against the donor. Judges were instructed to treat temples as privileged litigants. Village elders were charged with responsibility of looking after temple properties. Punishments were prescribed for embezzlement of temple property by trustees. Two privileges accorded to temples were that: (i) temple property could not be seized as war booty; and (ii) temple bulls could graze freely in any pasture. A government department, headed by the Chief Superintendent of Temples, was responsible for temple affairs. This law appears to have continued more

A Study on Laws Governing Charitable Organisations in India

or less without any change during the period of Muslim rule. However, with the coming of the British Crown after the 1857 war of Independence, the indigenous system of laws and law-enforcement was dismantled gradually and replaced with British civil law. Though the British borrowed heavily from Indian traditions while framing the law, the basic orientation of the law changed. It was no longer rooted in community traditions or evolved from their practices — rather it was imposed from above after being framed by a select set of people.

One of the first laws passed was the Societies Registration Act, 1860. It provided that all societies, associations, libraries, and reading rooms could be registered with the Government. This would give them legal recognition, and perhaps help the Government keep a better eye on their activities.

The British Crown also introduced income tax in India for the first time in 1893. The earlier system was based on paying tax on the gross produce or transaction value. The new system allowed a deduction for expenses, and taxed net income. Since 1921, the Income Tax Act has recognized that charitable expenditure is also eligible for tax incentives.

Almost all the laws existing on the statute books at the time of independence from the British were adopted by the Indian Government. After this, it set about framing new laws for the nation. Over the next fifty years, nearly 2,500 statutes were passed at the central level, with another 30,000 or so being passed by various states taken together. India was now firmly in the grip of civil law. Fortunately, except for one piece of legislation (the Foreign Contribution (Regulation) Act), none of these were related to the Non-profit sector.

The first years of the twentieth century saw some of the most unprecedented famines in India, generated by the modified land tax collection procedures introduced in the British period. These attracted international attention and after the Second World War, international charities started looking at India as a worthwhile cause. During the Cold War years that followed, bilateral aid also increased. Some of this foreign money also attracted adverse publicity in the late 1960s, and as a result, in 1976, a law called the Foreign Contribution (Regulation) Act (FCRA) was passed to control and monitor foreign donations to political parties, quasi-political organisations, and charitable organisations.

4.3. Reform Initiatives in the Charity sector

Attempts have been made periodically by the state to check mismanagement of charitable institutions. Since charity was considered a state subject, majority of the attempts to improve governance of charitable organisations have been taken up by the State Governments. The central government's attempts at dealing with recalcitrant trusts were largely through the Income Tax Act, which regulated the utilisation of charitable funds.

Some of the earliest efforts at trust reform have been by the then Madras Government in the form of a series of acts applicable to Hindu religious and charitable endowments. The main purpose of the Acts of 1951, and 1959 was to provide for better management and administration of Hindu Religious and Charitable Endowments Act; to secure efficiency and speedy disposal of the work of the organisation; to preserve the properties and the income of the institution and endowments; and to ensure that the incomes of the institutions and endowments are utilised for the purposes for which they were intended. But this Act related mostly to religious organizations, and those set up by Hindus alone. It did not bring into its ambit societies or other kinds of organizations.

The other state where serious attempts were made to review the functioning of charities periodically was Maharashtra, where the Maharashtra Public Trust Act was amended 25 times between 1950 and 1997. Each amendment gave more and more powers to the Charities Commissioner to check maladministration, to enable him to check the misappropriation and misuse of trust funds, and to check abuses of powers by trustees. Each successive amendment granted more powers to the Maharashtra Charities Commissioner for removal, dismissal, suspension of trustees; for issuing injunctions and directions to them; and to appoint receivers, etc. The amendments were to bring the Maharashtra Charities Commissioner at par with the Commissioners in Andhra Pradesh and Orissa. Till these amendments were introduced, the Charities Commissioner had to go to court of law to remove trustees or give injunctions to trustees to prevent loss to the trust that led to considerable delays.

The Maharashtra Public Trust Act was again reviewed by the Maharashtra Law Commission constituted in 2001, on the grounds that there is "general public discontent about the administration and implementation of the Maharashtra Public Trusts Act, 1950. The Commission has submitted its

A Study on Laws Governing Charitable Organisations in India

report to government for introducing a new Bill. While several of its provisions for improving the performance of the Charities Commissioner's office by strengthening its capacity have been welcome steps, other provisions *vis-à-vis* Section 21.1.4 and 21.2 which provide for appointment of government officers on to important and wealthy trusts (having an income above ₹ 5 lakhs), and the drawing up of a trust constitution which would supersede the instrument of the trust, have raised an outcry from charitable organisations. The bill, therefore, has been stayed till objections from the public have been received.

Gujarat has not amended or so far reviewed the Bombay Public Trusts Act, as applicable to it, nor framed separate rules for itself. However, Gujarat too is reported to be considering an amendment on the lines of the Maharashtra and Andhra model, to give more powers to the Charity Commissioners.

Apart from these steps taken by some states, the state of charity in the country has been mainly a concern of the Income Tax department and relates mostly to misuse of tax concessions. Several committees and commissions have gone into the state of charity as a part of a wider exercise of looking at tax reform. One of the earliest attempts in recent times was the Direct Taxes Administration Enquiry Committee, 1958-59. The committee noted that loopholes in the provisions relating to charity in the Income Tax Act had helped the formation of pseudo charitable trusts by businesses that appropriated trust funds for their own businesses and continued to enjoy tax exemption.

The Wanchoo Committee (The Direct Taxes Enquiry Committee) of 1972 noted that the misuse continued. It quoted the Public Accounts Committee's 121st Report thus: "While trusts fulfil a laudable social objective, they have also been used as a device to avoid tax" Though recommending measures to plug the loopholes the Committee simultaneously remarked that the law should not be so draconian as to discourage the growth of genuine trusts and charities and the law should continue to create a congenial climate for the growth of charitable institutions. They recommended that the Income Tax Act be amended to require trusts above certain minimum size to register themselves with the income tax authorities; to furnish annual income tax returns, and to have their accounts audited in a prescribed manner. Most of the recommendations were incorporated in subsequent Finance Acts.

The Raja Chelliah Committee on Tax Reforms, set up in 1992, also examined the charities and charitable organisations with a view to streamlining the

A Study on Laws Governing Charitable Organisations in India

procedures. The committee made a number of suggestions for simplifying procedures and minimising delays. These included:

- Application under Section 12A and sub-section (5) of section 80G to be processed together and with utmost expedition, that is, within a period of 3 months from the date of receipt of the applications.
- Approvals granted and renewals of approvals should be valid for 5 years.
- The last date for filing returns in case of organisations registered under Sections 11 and 12 of the Income-tax Act to be fixed at 31 December instead of 31st August.
- The income limit for audit laid down in clause (b) of section 12A to be enhanced from ₹ 25,000 to ₹ 50,000.
- The law should be made uniform for all charitable organisations irrespective of the dates on which they were set up.

Many of these recommendations have found a place in later Finance Acts. The committee concluded that while “charity is indeed a desirable objective, there is no case for making it more attractive at the expense of revenue.”

Similarly, the Public Accounts Committee, 1994-95 in its 102 report to the Lok Sabha, took the stand that the amount of revenue involved in giving tax exemption to trusts is substantial and, since there has been no systematic evaluation of the funding of these trusts, of their contribution towards the enhancement of social objectives, or of abuses if any, there was no case for extending tax exemptions until there has been such an evaluation.

Perhaps the most comprehensive look at the regulatory and promotional structure for the charitable sector so far as that of the “Task force on Laws relating to the Voluntary Sector”, set up in November 2000, and reported in 2001. The Task Force considered all the central acts pertaining to the sector including the Income-tax Act, 1961; Registration of Societies Act 1860; FCRA and Labour laws. It, however, did not consider the Charitable Trusts Act on the grounds that they were not central acts. The Task Force considered the various provisions of the Income-tax Act from the point of view of ironing out difficulties experienced by NGOs, without taking away from the basic features of the Law. The Task Force also considered that the provisions of

A Study on Laws Governing Charitable Organisations in India

the Income-tax law should facilitate larger and smoother flows of grants / donations to NPOs from Income-tax payers of all categories.

4.4. SOCIETIES REGISTRATION ACT, 1860

The Societies Registration Act came into force in 1860, two years after the Revolt of 1857 was put down. The “Sepoy Mutiny” also termed as the “First War of Independence” caught the British Imperial law and order machinery in India by surprise. After the rebellion was crushed with an iron hand, an analysis of how it happened led to an amazing discovery for the British Government when they realised that the intellectual underpinnings of the rebellion came from numerous arts and cultural societies that had sprung up in India in the middle of the nineteenth century. Most of these societies had served as front organisations for the radical elements attempting to free India from the colonial yoke.

With an attempt to control and monitor these societies, the Societies Registration Act was enacted which required all associations of more than seven or more people to be formally registered with the government. The act was modelled after the English Literary and Scientific Institutions Act, 1854 and it was hoped by the British Government that it would be able to monitor and prevent the proliferation of insidious activities. (The Literary and Scientific Institutions Act of 1854 was introduced to encourage Britain’s wealthiest families into giving their lands to charity to boost it in surrounding areas.)

Although not specifically stated within the Act, the tenor of the Act was oriented towards regulating charitable societies keeping in mind that during those times, societies were mainly established for altruistic purposes. In this respect, Section 20 of the Act specifically listed the type of societies to which the Act applies, such as charitable societies, military orphan funds or societies, societies established for promotion of science, literature, or for fine arts, societies established for intrusion and diffusion of useful knowledge, diffusion of political education, societies established for maintenance of libraries or reading rooms for general public, societies established for public museums and galleries for paintings or other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.

Until 1947, the Act did not undergo any major changes; registration remained largely a voluntary effort. Most of the Societies constituted during those

A Study on Laws Governing Charitable Organisations in India

periods had a poor financial standing and were driven primarily by the strong intent and tenacity of the founding members. Post-Independence, as a consequence of Article 372 of the Constitution, the Act remained in force, but legislative competence to enact law of 'societies' was passed on to the State Legislatures by virtue of Entry 32 of List II of Seventh Schedule to Constitution, i.e., 'unincorporated literary, scientific, religious and other societies and associations'. This provision enabled a number of States to repeal the said Act or introducing multiple amendments to the Act in a short time.

The said Act was amended in its application by almost all the States and some of the Union Territories, e.g. the long title and the preamble were amended in its application to the National Capital Territory of Delhi and the State of Gujarat; provisions were inserted by the State Amendment Acts for the appointment of Registrar of Societies by the State legislatures of Orissa, Punjab and Haryana, U.P., Gujarat and Maharashtra. Section 3 of the Act dealing with the registration of societies was amended comprehensively in Uttar Pradesh, Assam, Maharashtra, Goa and in Union territory of Daman and Diu. Penal provisions have been inserted in the Act in its application to the States of Gujarat, Maharashtra, Goa and Union territory of Daman and Diu. Some states replaced the entire Act with cognate legislations, e.g. in Madhya Pradesh, Manipur, Karnataka, Rajasthan, Tamil Nadu and West Bengal.

4.5. Companies Act, 2013

Section 8 of the Companies Act, 2013 provides for a mechanism through which an Association of persons can be registered as a Company with a limited liability, if such association is formed for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any other useful object and intends to apply its profits/income in promoting its objects. The objective of this provision is to provide corporate personality to such Associations but at the same time exempting them from some of the cumbersome legal requirements.

An Association registered under the above provision shall enjoy all the privileges and would be subject to all the obligations of limited companies.

The Companies Act, 2013 was passed by Lok Sabha on the 18th of December 2012 and passed by the Rajya Sabha on 8th August 2013 and is

A Study on Laws Governing Charitable Organisations in India

all set to replace the 57 year old Companies Act, 1956. The Companies Act, 2013 received the Assent of the President on 29th August, 2013 and was notified in the Gazette of India on 30th August, 2013.

The Ministry of corporate Affairs notified 98 sections for implementation of the provisions of the companies Act, 2013 on 12th September, 2013. The Ministry has further notified 183 sections of the Act and Rules thereunder to be made effective from 01.04.2014.

Section 8 of the Companies Act, 2013 which deals with formation of companies with charitable objects has been notified with effect from 1st April 2014. Hence the provisions of the erstwhile Companies Act, 1956 will not apply anymore for formation of charitable organization as a company.

4.6. Laws applicable to Trusts

The concept of a 'trust' is unique to common law or English speaking jurisdictions. Historically, it developed from the English laws of equity and sought to separate the creator of the trust, known as the Settlor, from specified real or personal property usually for the benefit of future heirs and/or to ensure that any future dispositions would be made in a manner generally in keeping with the original intentions of the Settlor. Once a Settlor has decided what property he wishes to transfer to the hypothetical trust he must decide upon its administrators, the 'Trustees'. It is vital to understand that these must have full autonomy to independently manage and control the transferred property in favour of either known or unknown beneficiaries. If full autonomy is not granted then it could be claimed that the trust was not settled and therefore, was not properly constituted. If this happened then the Settlor would still be legally deemed the owner of the trust assets - defeating the-*raison d' être* behind the trust in the first place. Obviously, given this requirement to totally deny the Settlor direct control over what were formally his assets demands great trust in the Trustees. Fortunately, Trustees are not totally free of control since they must normally strictly adhere to the trust instrument unless such instrument involves an illegal act or is in breach of some current public policy. Certainly, it is normally open to interested or potentially interested parties, to seek the assistance and interpretation of the applicable courts. In almost all common law jurisdictions, they have reserved the right to vary, abrogate or otherwise change the terms and conditions in a deed of trust including the originally designated 'Trustees' and/

A Study on Laws Governing Charitable Organisations in India

or beneficiaries. Notwithstanding the above, it must be understood that the courts in, most common law jurisdictions will do everything in their ability to carry out the wishes of the Settlor and, bar some malfeasance, are unlikely to interfere with a deed of trust.

The law relating to trusts in India derives from the common law. A trust is an equitable device, the origin which can be traced back to early 1800s. Unlike the civil law, in common law, a trust is not created by a contract, but by a unilateral act.

The first law on Trusts came into force in India in 1882 known as the Indian Trusts Act, 1882; it was basically for management of Private Trusts. Para 2 of Section 1 of the Indian Trusts Act, 1882, specifically mentions that the Act will not apply to public or private religious or charitable endowments. Hence the scope of this Act is beyond the purview of our book, as the book mainly deals with charitable organisations.

Under Schedule 7 of the Indian Constitution, the subject 'Trust and Trustees' finds mention at Entry No.10 in the Concurrent List. 'Charities & Charitable Institutions, Charitable and religious endowments and religious institutions' find place at Entry No.28 of this list.

The first state legislation on this subject was enacted by the then State of Bombay in 1950. Known as the Bombay Public Trusts Act, 1950 (Maharashtra Public Trusts Act), it was meant to deal with an express or constructive Trust for either public, religious or charitable purposes or both and included a temple, a math, a Waqf, or any other religious or charitable endowment and society. When the erstwhile Bombay province was bifurcated into Maharashtra and Gujarat, in 1960, both the States adopted this very law to govern Trusts and other charitable institutions falling in their jurisdiction.

The Maharashtra Public Trusts Act, 1950 provides for a machinery of charity commissioners to regulate the administration of public, religious and charitable trusts. It makes registration of all the public, religious and charitable trusts including the religious trusts created under Hindu, Muslim and Christian personal laws mandatory and prescribes certain norms for the maintenance and audit of budget, and accounts of such trusts and further empowers the charity commissioners to inspect and supervise the property belonging to a public trust, as well as the proceedings of the trustees and

A Study on Laws Governing Charitable Organisations in India

books of accounts of such a trust. That apart, the act also creates certain restrictions on the investment of public trust money and alienation of immovable property of such a trust.

Rajasthan is the other State that has enacted its own Public Trusts legislation i.e. Rajasthan Public Trust Act, 1959. Other States do not have such specific Public Trusts legislations. Andhra Pradesh, Tamil Nadu and Kerala have separate Religious Endowments Acts to govern temple properties. Many States have specific legislations to manage particular endowments / charities. In all other cases, Section 92 of the Civil Procedure Code dealing with public charities prevails.

The amended Civil Procedure Code, 1908 also took cognizance of the emerging charity scenario through Sections 92 and 93. In terms of Section 92 of the Civil Procedure Code, 1908, interference of Civil Courts could also be invoked for laying down schemes for governing a Trust, if a breach of original trust conditions is alleged. This can be done by way of a suit filed by either the Advocate-General or two or more persons having an interest in the Trust. While deciding such suits, the Court is empowered to alter the original purposes of the Trust and allow the property or income of such Trusts to be vested in the other person or Trustee for its effective utilisation in the manner laid down by the Court. Section 93 empowers the Collector to exercise these powers in a district with prior approval of the State Government.

4.7. Charitable and Religious Trusts Act, 1920

This law was enacted to provide more effectual control over the administration of Charitable and Religious Trusts. It extends to the whole of India except the State of Jammu and Kashmir. The Government at any stage may, by notification in the Official Gazette, direct that this Act, or any specific part thereof, shall not extend to that State or any specific area therein, or to any specified trust or class of trusts.

4.8. Income Tax Act, 1961

The Income Tax Act, 1961 is a central legislation, which affects all non-profit organizations (trust, society or company) uniformly throughout India. Any organisation engaged in charitable purposes, defined as relief for the poor, education, medical relief, and the advancement of any objects of general public utility not involving any activity for profit, can claim exemptions of its

income from tax provided that it fulfils the conditions laid down in Sections 11, 12 A and 13 of the Income tax act. The income of certain organizations engaged in activities pertaining to scientific research, education, running charitable hospitals, etc., is exempt from payment of tax by various provisions contained in a group of different clauses of section 10 of the Income Tax Act, 1961.

Taxation aspects of charitable organisations have been discussed elsewhere in the book.

4.9. Foreign Contribution Regulation Act, 2010

The Foreign Contribution Regulation Act of 2010 seeks to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

Section 11 of the Act provides that no Association having a definite cultural, economic, educational, religious or social programme can receive foreign contribution without seeking registration or prior permission from the Central Government. Any Association which has a defined programme for carrying out specific activities, which may fall in the five generic categories as mentioned above, may seek registration or prior permission for receipt of foreign contribution. An Association which has received foreign contribution is also required to inform the Central Government of the amount of each foreign contribution received by it, the sources thereof, the manner in which such foreign contribution was received and the purposes for which such foreign contribution was utilized by it.

4.10. Report of Expert Group & Draft Multi-State Societies Registration Bill, 2012

The Ministry of Corporate Affairs had constituted an expert group to study the legislative and regulatory architecture of The Societies Registration Act, 1860 governing the functioning of societies in India and also to study the ground situation with respect to the operation of the said Act so as to identify the regulatory gaps and oversight mechanism with a view to formulate a

A Study on Laws Governing Charitable Organisations in India

Model Law on the subject. The expert group headed by Dr. K. N. Chaturvedi submitted its report to the Ministry on 5.07.2012 proposing a legislation titled as 'Multi-state Societies Registration Bill, 2012'.

The expert group had decided to draft two Bills i.e.

- Model Law for Societies Registration Bill to be adopted by the States in respect of Societies having operations in one state.
- A new enactment on the Societies having operations/activities which are spread to more than one state in India or having pan-India operations.

Presently the expert group has only submitted the draft Multi-state Societies Registration Bill, 2012, while the model law on societies to be adopted and enacted by each state separately will be discussed in the next report of the Group. Report from various Individuals/ Experts/Institutions/Organisations are being considered by the Ministry.

Why the need for a new legislation?

- The activities undertaken by societies have acquired economic significance and larger public interest;
- The activities of societies have become multi-jurisdictional in nature and in some cases, also in foreign jurisdictions;
- The present regulatory framework does not contain a centralized oversight or reporting mechanism for societies operating in multiple jurisdictions;
- There is an urgent need to align the societies to the governance requirements akin to Companies/LLP, including consequent reporting/disclosure requirements in a manner similar to the MCA 21 e-governance platform for Companies and LLP's in India.
- The present regulatory framework does not provide for an enabling framework to ensure transparency and accountability in governance of societies; and
- The present regulatory framework does not provide for universally acceptable self-regulatory standards which are critical for the governance of societies operating in the new economic environment.

The new Bill should be able to –

- ✓ To create an enabling environment;

A Study on Laws Governing Charitable Organisations in India

- ✓ To instil transparency;
- ✓ To establish accountability;
- ✓ To promote self-regulation;
- ✓ To modernize regulatory framework;

The proposed Bill will not substitute or supersede the existing framework regulating societies, i.e., the Societies Registration Act, 1860. The present statutes will continue to govern societies which are not engaged in inter-state activity and have local operational characteristics. The proposed Multi-State Societies Bill after being enacted as a Central Act will cover societies which have multi-state operations or pan-national characteristics. The multi-state nature of the business entities is determined by the scope of their activities.

The Bill consists of 63 clauses in 8 chapters with 2 schedules. It covers registration of Multi state societies and matters incidental thereto (clauses 6 to 31); Inspection, inquiry and investigation (clauses 32 to 41); Power of the Central Government to take over the affairs of a multi-state society (clause 42); Offences and punishment (clauses 43 to 47); Governing Body Identification Number (clauses 48 to 52); Foreign societies (clauses 53 to 56) & miscellaneous matters.

“Multi-state society” means any multi-state society registered under this Act or any society carrying on inter-state activity. “Inter-state activity” means any activity carried out by a society directly or indirectly for cash, or for deferred payment or for commission, remuneration or other valuable consideration from the place other than place of origin including overseas transaction and also to include the following:

- (i) The Receipt of foreign contribution, as defined under the Foreign Contributions (Regulation) Act, 2010, or an application/registration to receive such foreign contribution in excess of the amount as may be prescribed.
- (ii) The Receipt of grants/funds/donations, in excess of amounts as may be prescribed, from a Non-Resident Indian.
- (iii) The Receipt of grants/funds/donations, in excess of such amounts as may be prescribed, directly from the Central Government.
- (iv) Receipt of immovable property from the Central Government or any agency thereof in excess of such value as may be prescribed shall be deemed as an interstate activity within the meaning of this clause.

A Study on Laws Governing Charitable Organisations in India

- (v) Funding of another society or membership of a society outside the place of origin by any society shall be deemed as an inter-State activity within the meaning of this clause.
- (vi) Admitting persons who are not citizens of India or non-resident Indians as members shall be deemed as an inter-State activity within the meaning of this clause.

Explanation – The following activities being conducted outside the place of origin shall not be considered an inter-State activity:

- (i) Becoming a party to a legal proceeding or effecting settlement of a legal proceeding or of a legal claim or legal dispute;
- (ii) Holding a meeting of managers or partners outside the place of origin; (Clause 2(1)(n) of the Bill)

The Act will be applicable to all multi-state societies incorporated after the commencement of this Act; all multi-state societies incorporated before the commencement of the Act, whether under: Societies Registration Act, 1860 or any other law relating to societies in force in any state or in pursuance of the Societies Registration Act, 1860 and where the registration for such multi-state society has not been cancelled.

No multi-state society should carry on any inter-State activity without registration under this Act. Existing multi state societies registered under the Societies Registration Act, 1860 should, either register under this Act or stop carrying such activities within the prescribed time of 12 months from the date of commencement of the new Act or close of the next financial year, whichever is later. Failure to obtain registration is an offence punishable under the proposed Bill.

Seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose prescribed under the new Act and who conduct or plan to conduct inter-state activity by such association should subscribe their names to a memorandum of association and file the same with an application for registration as a multi-state society to the Registrar.

Every multi-State society should have either the words “multi-State society” or “MSS” as the last words of its name along with the name of the state in which the society has its place of origin. The name should not be undesirable or identical or nearly resembles that of any other partnership firm or multi-state society or limited liability partnership or body corporate or a registered trade mark of any other person under the Trade Marks Act, 1999.

Chapter 5

Procedure for Forming A Charitable Organisation

5.1. Trust

A trust is a relationship whereby property is held by one party for the benefit of another. A trust is created by a settlor, who transfers some or all of his or her property to a trustee. The trustee holds that property for the trust's beneficiaries.

The person who reposes the confidence is called 'author of trust' (testator), the person who accepts the confidence is called 'trustee' and the person for whose benefit the confidence is accepted is 'beneficiary'. The subject matter of trust is called 'trust property' or 'trust-money'. The 'beneficial interest' or 'interest of the beneficiary' is his right against the trustee as the owner of trust-property. The instrument by which trust is declared is called as 'instrument of trust'.

The trustee is given legal title to the trust property, but is obligated to act for the good of the beneficiaries. The trust is governed by the terms under which it was created.

Charitable trust is a form of trust in which the donor (trustor or settlor) places substantial funds or assets into an irrevocable trust (a trust in which the basic terms cannot be changed or the gift withdrawn) with an independent trustee, in which the assets are to go to charity on the death of the donor, but the donor (or specific beneficiaries) will receive regular profits from the trust during the donor's lifetime.

Formation of Private Charitable Trust

A Private Trust may be created *inter vivos* or by Will. If a trust is created by Will it shall be subject to the provisions of Indian Succession Act, 1925.

The following are required for forming a private trust –

- i. The existence of the **author/settlor** of the Trust or someone at whose instance the Trust comes into existence and the settlor to make an unequivocal declaration which is binding on him.

A Study on Laws Governing Charitable Organisations in India

- ii. There must be a **divesting of the ownership** by the author of the trust in favour of the trustee for the beneficial enjoyment by the beneficiary.
- iii. **A Trust property.**
- iv. The **objects of** the trust must be precise and clearly specified.
- v. The **beneficiary** who may be a particular person or persons.

Unless all the above requisites are fulfilled, a trust cannot be said to have come into existence.

A trust can be created for any lawful purpose. A trust can be created by deed, will or even word of mouth. However, trust of immovable property can be created only by non-testamentary instrument signed by author of trust and is registered, or by Will of author. Thus, 'Will' is not required to be registered, even if it pertains to immovable property.

The main instrument of declaring a trust is the Trust Deed, which should be made on non-judicial stamp papers of, prescribed fee and signed by the trustee or trustees for submission to the Registrar concerned. In case of trust the registrar or sub-registrar having authority to register properties has the authority to register the Trust Deed. Therefore, Trust Deed of the proposed Trust may be registered with Tahsildar, or Registrar properties and endowment at the district Collectorate. In metropolitan cities, separate offices of Registrar of properties and endowments do function.

The Trust Deed should contain name(s) of the author(s), settler(s) of the trust; the name(s) of the trustee(s); the name(s) if any, of the beneficiary/ies or whether it shall be public at large; name of the trust; address of the trust; objects of the trust; procedure of appointment, removal or replacement of a trustee, their rights, duties and powers, etc; the mode and method of determination of the trust etc.

When is a trust created?

A trust is created when the author of the trust indicates with reasonable certainty by any words or acts an intention on his part to create thereby a trust, the purpose of the trust, the beneficiary, and the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

The subject-matter of a trust must be property transferable to the beneficiary. It must not be merely beneficial interest under a subsisting trust.

Who can form a Charitable Trust?

A trust can be formed –

- a) By every person competent to contract; and
- b) By or on behalf of a minor, with the permission of a principal civil court of original jurisdiction.

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the Author of the Trust may dispose of the Trust property. A person competent to contract is defined in Section 11 of the Indian Contract Act, 1882 as a person who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject. Thus, generally speaking, any person competent to contract and competent to deal with property can form a trust. Besides individuals, a body of individuals or an artificial person such as an association of persons, an institution, a limited company, a Hindu undivided family through its Karta, can also form a trust.

Under the Hindu Law, any Hindu can create a Hindu endowment and under the Muslim law, any Muslim can create a public wakf. Public Trusts are essentially of charitable or religious nature, and can be constituted by any person.

Capacity to create a Trust

As a general rule, any person, who has power of disposition over a property, has capacity to create a trust of such property. According to Section 7 of the Transfer of Property Act, 1882, a person who is competent to contract and entitled to transfer the property or authorized to dispose of transferable property not his own, either wholly or in part and either absolutely or conditionally, has 'power of disposition of property'.

Thus, two basic things are required for being capable of forming a trust – power of disposition over property and competence to contract.

Who can be a Trustee?

Every person capable of holding property can become a trustee. However, where the trust involves the exercise of discretion, he can accept or act as a trustee only if he is competent to contract. No one is bound to accept trusteeship. Any number of persons may be appointed as trustees. However, no trust is defeated for want

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of a trustee. Where there is no trustee in existence, an official trustee may be appointed by the court and the trust can be administered. An executor of a Will may become a trustee by his dealing with the assets under the provisions of the Will. When an executor is functus officio to any of the assets and yet retains them, he becomes a trustee in respect of those assets.

Who can be a Beneficiary?

In a private trust the beneficiaries are one or more ascertainable individuals. In a public trust the beneficiaries are a body of uncertain or fluctuating individuals and may consist of a class of the public or the whole public. Generally, a private trust is not a permanent one. But a public trust is of a permanent nature. If properties are dedicated to temples and mosques or gifts are made to religious or charitable institutions they create a trust.

The beneficiary has the right to:

- i. Enjoy the rents and profits of the trust property.
- ii. Expect the trustee to transfer the trust property to one or more beneficiary.
- iii. Inspect and take copies of the instrument of trust, the documents relating to trust property and the accounts of the trust property.
- iv. If for any reason the execution of the trust by the trustee becomes impracticable the beneficiary may institute a suit for execution of the trust.
- v. To expect the trustee to properly protect and administer the trust property.
- vi. To compel the trustee to perform his duty properly.
- vii. To transfer the benefits arising out of the trust to any other person after the beneficiary attains majority.

Duties of Trustee

The duties of a trustee are as follows –

- i. Bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation;
- ii. Bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property;

A Study on Laws Governing Charitable Organisations in India

- iii. Bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto;
- iv. Must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary;
- v. Bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own;
- vi. Bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property of a in to property permanent and immediately profitable character;
- vii. Bound to be impartial in case of more beneficiaries than one;
- viii. Bound to take measures to prevent waste;
- ix. Bound to keep clear and accurate accounts of the trust-property, and at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property;
- x. Bound to invest the money appropriately;

Liabilities of Trustee

Where the trustee commits a breach of trust, he is liable to make good the loss which the trust property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

Rights of a Trustee

Following are the rights of a trustee —

- i. To have possession of the trust property and the related documents of title.
- ii. To get reimbursement of expenses incurred in maintaining the trust property.
- iii. To get indemnified from gainer by breach of trust.

A Study on Laws Governing Charitable Organisations in India

- iv. To apply to the court, for its opinion, advice or direction in the management of the trust property.
- v. To have the accounts of the trust property examined and settled on completion of the duties.
- vi. On completion of his duties, to have a written acknowledgement from the beneficiaries saying there are no dues from him to the beneficiaries.

Powers of Trustee

The trustee is empowered to take action for the welfare of the trust property to:

- i. Sell the trust property together or in lots, by public auction or private contract. This can be sold together or at different times.
- ii. Do the above within a reasonable time, i.e. sell the property and invest the trust money to purchase any other property.
- iii. Convey the trust property through a valid and registered sale deed.
- iv. Invest the trust money and monitor the investments.
- v. Use the trust property for the maintenance, education or advancement of a minor beneficiary, if any.
- vi. Give a written receipt for any money, securities or other movable property, which is paid, transferred or delivered, to him.
- vii. When there are two or more trustees, any one may be authorised to execute the trust. In that case the authorized trustee can:
 - a. Accept security for a debt,
 - b. Allow time for payment of a debt,
 - c. Compromise, abandon, submit to arbitration or settle any debt relating to the trust.

Disabilities of Trustees

The disabilities of a trustee are —

- i. Once he has accepted the trust; he cannot refuse to act as a trustee.
- ii. A trustee cannot delegate his duties to another or a co-trustee.

A Study on Laws Governing Charitable Organisations in India

- iii. A trustee should not use the trust property for his own profit or any other purpose, unconnected with the trust.
- iv. A trustee cannot buy the trust property on his own account or as an agent of a third person.
- v. A trustee cannot act unilaterally but must consult his co-trustees, if any.
- vi. Co-trustees should not lend the trust money to each other.

Formation of Public Trust

Like the private trusts, public trusts may be created *inter vivos* or by Will. In the case of *Hanmantram Ramnath (Bom.)* it was held that “Although the Indian Trusts Act does not specifically apply to charitable trusts, there are three certainties required to create a charitable trust. They are:

- (i) A declaration of trust which is binding on settlor,
- (ii) Setting apart definite property and the settlor depriving himself of the ownership thereof, and
- (iii) A statement of the objects for which the property is thereafter to be held, i.e. the beneficiaries.

It is essential that the transferor of the property *viz.* the settlor or the author of the trust must be competent to contract. Similarly, the trustees should also be persons who are competent to contract. It is also very essential that the trustees should signify their assent for acting as trustees to make the trust a valid one.

When once a valid trust is created and the property is transferred to the trust, it cannot be revoked, If the trust deed contains any provision for revocation of the trust, provisions of sections 60 to 63 of the Income-tax Act, 1961 will come into play and the income of the trust will be taxed in the hands of the settlor as his personal income.

Requisites of A Trust

- ✓ The existence of the author/settler of the trust or someone at whose instance the trust comes into existence.
- ✓ Clear intention of the author/settler to create a trust.
- ✓ Purpose of the Trust.

A Study on Laws Governing Charitable Organisations in India

- ✓ The Trust property
- ✓ Beneficiaries of the Trust.
- ✓ There must be divesting of the ownership by the author / settlor of the trust in favour of the beneficiary or the trustee.
- ✓ Unless all these requisites are fulfilled a trust cannot be said to have come into existence.

Important elements of a charitable trust

- ✓ The object or purpose of the trust must be a valid religious or charitable purpose according to law.
- ✓ The founder or settlor should be capable of creating a trust and dedicating his property to that trust.
- ✓ The settlor should indicate precisely the object of the trust and the property in respect of which it is made. The property should be dedicated to the trust and the owner must divest himself of the ownership of that property.
- ✓ The trust or its objects must not be opposed to the provisions of any law for the time being in force.

Registration of a Public Charitable Trust

Public Trusts can submit an application for registration to the deputy / assistant Charity Commissioner having jurisdiction over the region / sub region in which the trust is sought to be registered.

The Bombay Public Trusts Act, 1950 is applicable only in the states of Maharashtra and Gujarat. Rajasthan, Gujarat and Tamil Nadu have their own Trust Acts. Most charities have to be registered as a Charitable Trust. Only the state of Maharashtra has a Charity Commissioner and a Charity Administration Fund helps support the office of the charity commissioner in the state.

The capital of India – New Delhi, does not have a Charity Commissioner. There is a Registrar of Societies (ROS). However only societies registered under the Act of 1860 are registered with the ROS.

While states like Maharashtra and Gujarat have a Charity Commissioner much of North and North-East India does not have a Charity Commissioner.

A Study on Laws Governing Charitable Organisations in India

A Public Charitable Trust can be legally created by executing a 'Trust Deed' on stamp paper and obtaining the signatures of all the 'Settlers/Founders' and the 'Trustees'. This legal document is then registered with the Sub-Registrar's Office. After this, the trust may proceed to obtain tax exemptions with the Income Tax authorities.

The procedure for registration of a Public Charitable Trust given below is based on the provisions of Maharashtra Public Trust Act, 1950.

The application for registration of a public charitable trust should be submitted (under Section 18 of the Maharashtra Public Trusts Act, 1950) to the deputy/assistant Charity Commissioner having jurisdiction over the region / sub region in which the trust is sought to be registered.

The application should be made in the prescribed form i.e. Schedule II of Maharashtra Public Trusts Rules, 1951, which is available from the office of the Charity Commissioner.

After providing details (in the form) regarding designation by which the public trust shall be known, names of trustees, mode of succession, etc., the applicant has to affix a court fee stamp accordingly –

- i) When the Value of the property of a public trust does not exceed ₹ 2,000 – ₹ 3
- ii) When the value of the property of a public trust exceeds ₹ 2,000 but does not exceeds ₹ 5,000 – ₹ 5
- iii) When the value of the property of a public trust exceeds ₹ 5,000 but does not exceeds ₹ 10,000 – ₹ 10
- iv) When the value of the property of a public trust exceeds ₹ 10,000 but does not exceeds ₹ 25,000 – ₹ 20
- v) when the value of the property of a public trust exceeds ₹ 25,000 – ₹ 25

The application form should be signed by the applicant before the regional officer or superintendent of the regional office of the charity commissioner or a notary. The application form should be submitted, together with a copy of the trust deed (the original may be produced, later, for verification) which is the main instrument of the trust.

According to Article 61 of Schedule I of the Bombay Stamp Act, 1958, "where there is disposition of property" and "where the trust is made for a religious or

A Study on Laws Governing Charitable Organisations in India

charitable purpose", the stamp duty is 'Ten rupees for every rupees five hundred or part thereof of a sum equal to the amount settled or market value of the property settled'. Where there is no disposition of property, the stamp duty is 'the same duty as a Bond (Article 13) for a sum equal to the amount settled or market value of the property settled but not exceeding two hundred rupees'.

Both the settlor/s and trustee/s in the presence of a witness should sign the trust deed. The witness may be a friend or relative. Some even prefers to sign before a notary.

The application for registration should contain the following particulars –

- ✓ The designation by which the public trust is or shall be known,
- ✓ The names and addresses of the trustees and the manager,
- ✓ The mode of succession to the office of the trustee,
- ✓ The list of the movable and immovable trust property and such description and particulars as may be sufficient for the identification thereof,
- ✓ The approximate value of the movable and immovable property,
- ✓ The gross average annual income of the trust property estimated on the income of three years immediately preceding the date on which the application is made or of the period which has elapsed since the creation of the trust, whichever period is shorter,
- ✓ The amount of the average annual expenditure in connection with such public trust estimated or the expenditure incurred within the period to which the particulars relate,
- ✓ The address to which any communication to the trustee or manager in connection with the public trust may be sent,
- ✓ Particulars of documents creating the trusts,
- ✓ Particulars other than documents about the creation or origin of the trust,
- ✓ Objects of the trust,
- ✓ Sources of income of the trust,
- ✓ Particulars of encumbrances, if any, on trust property,
- ✓ Particulars of the scheme, if any relating to the trust,

A Study on Laws Governing Charitable Organisations in India

- ✓ Particulars of title deeds pertaining to trust property and the names of trustees in possession thereof.

Two other documents which should be submitted at the time of making an application for registration are:

- Affidavit which must be sworn (by the trustees making the application) before a notary and executed on non-judicial stamp paper of ₹ 10/- .
- Consent letter, which may be prepared on an ordinary sheet of paper and signed by the trustee/s other than the trustee making the application.

In the absence of a consent letter from the remaining trustees, the deputy/assistant charity commissioner can insist on the presence of all the remaining trustees for the hearing.

Processing the application usually takes about six to eight weeks. A notice informing the applicant about the day and time fixed for a formal hearing is dispatched usually 10 to 15 days in advance. The applicant generally has to appear in person or depute his / her lawyer. The original trust deed should be produced for verification at the time of the hearing.

The deputy / assistant charity commissioner before whom the enquiry is held will ascertain:

- Whether a trust exists and whether such trust is a public trust;
- Whether any property is the property of such trust;
- Whether the whole or any substantial portion of the subject matter of the trust is situated within his jurisdiction;
- The names and addresses of the trustees and managers of such trust;
- The mode of succession to the office of the trustee of such trust;
- The amount of gross average annual income and expenditure of such trust;
- Any other particulars as may be prescribed under sub-section (5) of section 18.

After making inquiries on the aforesaid issues, the deputy/assistant charity commissioner makes entries in the register kept under Section 17 (popularly known as schedule I) of the Maharashtra Public Trust Act, 1950 and issues a certificate of registration which bears the official seal and registration number of the trust.

A Study on Laws Governing Charitable Organisations in India

If the certificate of registration is lost or damaged over the years, a duplicate certificate can be obtained from the department, on application and payment of a nominal fee.

5.2. Society

A society may be defined as a company or an association of persons united together by mutual consent to deliberate, determine and act jointly for same common purpose.

Minimum seven persons, eligible to enter into a contract, can form society. When a charitable organisation intends to have an open participation of large number of people in its functioning and decision making, it must be registered as a Society. Societies have been envisaged as welfare and charitable associations of people having a broad based membership and comparatively more democratic and transparent set up as compared to such set ups as public charitable trusts.

According to Section 20 of the Societies Registration Act, 1860, the following societies can be registered under the Act: 'charitable societies, military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs.'

The chief advantage of forming a society is that it gives a corporate appearance to the organisation, and provides greater flexibility as it is easier to amend the memorandum and bye laws of the society than in case of trust, terms of which are strictly manifested in the trust deed. However, formation of a society requires more procedural formalities than a trust.

The main instrument of any society is the memorandum of association and rules and regulations (no stamp paper required). All promoters should sign each page of the memorandum and the signatures should be witnessed by an Oath Commissioner, Notary Public, Gazetted Officer, Advocate, Chartered Accountant or Magistrate First Class with their rubber/official stamp and complete address.

A Study on Laws Governing Charitable Organisations in India

The Memorandum should contain name, registered office, area of operation, objects, name of members of governing body and names of promoters. The Rules and Regulations should include all the provisions that would regulate functioning of the proposed Society; it should comprise membership, powers and responsibilities of office-bearers, meetings, quorum of meetings, termination of membership, operation of bank account and financial year, procedure for dissolution or merger of Society if so required, and other general rules required to manage the society.

According to the provisions of Societies Registration Act, 1860, minimum seven or more adult persons can form a Society. For a national level Society eight persons from seven different states would be required as promoters. An authorised person from among the promoters must apply to the concerned Registrar with preferably three alternative names of the proposed Society so as to avoid any inconvenience if the envisaged name has already been allotted to some other Society. Individuals (excluding minors but including foreigners), partnership firms, companies and registered societies are eligible to form a Society.

Name of the society should not attract the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950. The name proposed should not suggest or be calculated to suggest, the patronage of the government of India or the government of state or connection with any legal authority under any law for time being under force. Emblems and Names (Prevention of Improper Use) Act, 1950 prohibits the use of any name, emblems, official seals, and colourable imitation thereof as specified in the Act, without previous permission of competent authority. It also prohibits the use of name of National Heroes and other names mentioned in the Act. Further if the proposed name is identical with that by which any other society has been registered or nearly resembles such names as to likely to deceive the Public or the members of the society such names may not be registered.

Registration can be done either at the state level (i.e., in the office of the Registrar of Societies) or at the district level (in the office of the District Magistrate or the local office of the Registrar of Societies).

General Procedure for registration of society

The procedure varies from state to state. However generally the application should be submitted together with:

- a) Covering letter requesting for registration stating in the body of letter various documents annexed to it;
- b) Memorandum of association;
- c) Rules and regulations / Bye-laws;
- d) An affidavit of the President/Secretary on a non-judicial stamp paper of prescribed value, stating the relationship between the subscribers/ promoters, duly attested by an Oath Commissioner/Notary Public or First Class Magistrate;
- e) Proof of registered office, rent receipt or no objection from the landlord;
- f) Authority letter duly signed by all the members of the managing committee;
- g) A declaration by the members of the managing committee that the funds of the society will be used only for the purpose of furthering the aims and objects of the society.

All the aforesaid documents which are required for the application for registration should be submitted in duplicate, together with the required registration fee. Unlike the trust deed, the memorandum of association and rules and regulations need not be executed on stamp paper.

If the registrar is satisfied with the documents filed, then the applicant should deposit the registration fee (varies from state to state) by cash or by demand draft. On completion of all the formalities the Registrar will issue a Certificate of Registration and copies of the Memorandum and Rules & Regulations certified in his hand.

Procedure for registration of society in Delhi

The Registrar of Societies in the Industries Department grants registration to the charitable societies.

- 1) Types of Societies Registered under Societies Registration Act, 1860
 - Welfare society

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- Social welfare
 - Natural environment & pollution control
 - Literacy societies
 - Science / health / research
 - Residents welfare societies
 - Games / sports
 - Fine arts
 - Cultural
 - Educational societies
 - Medical & hospital
 - Religious
 - Charitable
 - Misc.
- 2) The two documents for registration viz. Memorandum of Association and Rules and Regulations should separately be typed neatly with separate page marking. Good quality durable paper should be used for typing as the documents are for permanent records.
 - 3) At least 4 cm. margin must be on the left side and 2.5 cm from right side of each sheet on thick paper while typing on double space lining and type on one side only.
 - 4) The aims and objects given under Clause 3 of the memorandum should not to be repeated in the Rules and Regulations likewise, the activities of the programme of working direction towards attainment of the aims and objects of the Society should not figure in Memorandum.
 - 5) Specific language given in the Guidelines for the particular clauses may be adopted while preparing the document.
 - 6) In case management of or reference to a particular existing place of worship like Mandir, Gurudwara, Masjid, Church or Budh Vihar etc. is involved sufficient documentary proof is required that the Society is legally competent for the same.

A Study on Laws Governing Charitable Organisations in India

- 7) Affidavit on ₹ 10/- (Rupees ten only) Non-Judicial stamp paper from the President or Secretary of the Society should be furnished regarding the relationship between the subscribers (desirous persons) to the Memorandum and also an affidavit that the name of society will be changed if the said name is already found registered in the records. This affidavit must be attested by Oath Commissioner or Notary Public with National Stamp affixed thereon or Magistrate 1st Class. Documentary proof in the shape of Sale Deed / General Power of Attorney/ Water bill and an allotment letter in the case of Government Quarter in respect of premises shown as registered office of the Society should also be furnished along with No Objection Certificate from the owner of the premises on ₹ 10/- (Rupees ten only) Non-judicial Stamp affixed thereon.
- 8) ₹ 50/- (Rupees fifty only) as the registration fee shall be demanded when formalities are complete and the Registrar of the Societies has approved the grant of registration.
- 9) Driving Licence/Passport / Election Card or any other identity proof required in respect of all desirous persons.
- 10) Societies which propose to operate on all India basis should have one member each from at least seven states of the Union of India.
- 11) Signature of minimum three office bearers is required on each & every page of the Memorandum of Association and rules and regulations of the Society.

Implications of registration of a society

A society registered under the Act enjoys the status of a legal entity apart from the members constituting it. A society so registered is a legal person just as an individual but with no physical existence. As such it can acquire and hold property and can sue and be sued. The society should be registered under the Act to acquire the status of a juridical person.

When the society is registered, it and its members become bound to the same extent, as if each member had signed the memorandum. A society, registered under this Act, must confine its activities to the sphere embraced by its objects. An unregistered society cannot claim benefits under the Income-tax act, 1961.

All societies in India have to be registered under the Societies Registration Act 1860. By and large, the registration and filing procedures are similar in all the states.

A Study on Laws Governing Charitable Organisations in India

It is possible to register a society in New Delhi under the Central Act, or register in any state capital or district headquarters with the Local Registrar of Societies. In the states of Gujarat and Maharashtra, under the provisions of the Maharashtra Public Trust Act, 1950 all societies that have a charitable purpose have to be registered with the Charity Commissioner. Although societies are registered by the Charity Commissioner's office as trusts, they are given two registration numbers: one under the Maharashtra Public Trust Act and another under the Societies Registration Act.

Under the Societies Registration (Uttar Pradesh) Act, 1974 there is a stipulation of renewal after a period of two years and in the Societies Registration (Kerala) Act, registration is valid for 18 months and thereafter the registration is to be renewed. In the state of Tamil Nadu, as per the provisions of the Tamil Nadu Societies Registration Act, 1975 societies have to renew their registration every five years. Renewal of registration has not been provided for under Societies Registration Act, 1860.

Specimen formats –

COVERING LETTER

The Registrar of Societies,
..... (Address)

Sir,

Re: Registration of a society under the name

A society by name

Has been formed on

I, s/d/o..... residing at

.....have been elected its first secretary and have been
Authorized to complete the formalities of registration.

Please find herewith enclosed

- (1) Two copies of memorandum duly signed and completed.
- (2) Two copies of rules and bylaws of the society.
- (3) Affidavit duly attested.
- (4) Registration fee of ₹ -----/-in cash.
- (5) Copy of resolution

Please register the society under the Societies Registration Act, 1860 (State Act, if any) and issue a Certificate of Registration.

I have been authorised by the society to sign this application on behalf of all the Subscribers of Memorandum.

Thanking you.

Yours faithfully,

AFFIDAVIT

I, S/O W/O D/O residing atdo hereby solemnly affirm and declare as under:

1. That I am the President/ General Secretary of the proposed society, namely
2. That to the best of our knowledge and belief, the name of the proposed society is not identical to nor resembles the name of any other society in our area/locality.
3. That if the name of this proposed society was found identical or resembling closely the name of any other society which is already registered under Society Registration Act in the district or elsewhere in any other state, the society undertakes to abide by the provisions of the Societies Registration Act, 1860 and the Registration so granted shall be deemed to have been withdrawn/cancelled automatically, if the society fails to change the name within the given time to do so.
4. That the Desirous persons are not related to each other by way of blood relation or otherwise.
5. That I shall submit the required returns annually by the given date.
6. That I will abide by all the relevant act of Societies Registration Act of 1860.

Deponent

Verified at on this day
..... that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Deponent.....

MEMORANDUM OF ASSOCIATION OF ----- SOCIETY

1. Name of the Society

The name of the society shall be.....

2. Registered Office

The registered office of the society shall be situated in (Mention the state) and at present it is at the following address:

.....

3. Aims and Objects

This Society shall at all times be exclusively for charitable and general public utility and welfare.

The aims and objectives for which this Society is established shall include the following;

- (a)
- (b)
- (c)
- (d) and so on.....
- (e) To do all acts, matters and things as are incidental or conducive to the attainment of the above aims or objects or any one or more of them.

4. Governing Body

The first members of the Governing Council shall be as under –:

S.No.	Name (full in capital)	Address	Occupation	Designation in the society
1				
2				
3				
4				
5				
6				
7 and so on				

5. Desirous persons

We the undersigned are desirous of forming a society namely “.....” under the Societies Registration Act, 1860 (name of the State Act, if any) in pursuance of this Memorandum of Association of the Society.

S.No.	Name (full in capital)	Address	Occupation	Designation in the society
1				
2				
3				
4				
5				
6				
7 and so on				

All the incomes, earnings, movable, immovable properties of the Society shall be utilised by the society and applied towards the promotion of its aims and objects only as set forth in the Memorandum of Association and no profit thereof, shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or past members of the Society or to any person claiming through anyone or more of the present or the past members. No member of the Society shall have any personal claim on any movable or immovable properties of the Society or make any profits, whatsoever, by virtue of his membership.

Attested the signatures from
No. 1 to 7 (or more)

Signatures of Two witnesses
other than the members of the
society with Addresses

Signature of the Attesting Officer
with Official Seal

(1)

Certified that this is the true
and correct copy of the Memorandum

(2)

Signatures of any three members of the Governing Body

President

Secretary

Treasurer

RULES AND REGULATIONS OF ----- SOCIETY

1) NAME OF THE ASSOCIATION:

2) ADDRESS OF THE ASSOCIATION:

3) INTERPRETATION

- a. "The Society" means the ----- (name of the society).
- b. "The Act" means the Societies Registration Act, 1860 (or name of State specific Act, if any)
- c. "The Governing Council" means the Governing Council for the time being.
- d. "The Chairman" means the Chairman or President for the time being.
- e. "The Secretary" means the Secretary General or Chapter / Branch Secretary as relevant and
- f. "Treasurer" means the Treasurer of the society or Branch Treasurer as relevant.
- g. "Office" means the registered office of Society.
- h. "Central Office" means the office of the Secretary General.

Words importing the singular number also include the plural number and vice versa. Words importing the masculine gender also include the feminine gender and vice versa.

4) MEMBERSHIP

The Society shall consist of not less than seven members.

- (a) Membership of the Society is open to:
 - (i) Any person aged 18 years and above
 - (ii) He must be willing to work for the aims and objectives of the society.
 - (iii) There are two types of members viz. Ordinary Members and Life Members.
 - (iv) He must be proposed by a valid member and seconded by another valid member. There shall be no entrance fee. Annual

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subscription will be ₹ -----/- for Ordinary Members and a onetime payment of ₹ -----/- for Life Members.

- (v) The local branch shall have the power to admit or reject the applications for membership. However, the Governing Council retains the ultimate right to accept or reject any membership. The decision of the Governing Council shall be final.
 - (vi) Membership of the Society shall commence from the date of the approval of his candidature and shall cease on his death, resignation or on his failure to pay the dues towards the society or indulges in misconduct or does anything contrary to the rules or objectives of the society.
 - (vii) Misconduct means transgression of any defined rule of action, any act forbidden by the Rules of the Association, dereliction from duty, unlawful or improper behaviour, misdemeanor, impropriety, offence involving moral turpitude which would undermine the objectives of the Association.
 - (viii) A member in arrears of subscription for 3 months is not a valid member (or a member of good standing) and ceases to be a member of the society without any intimation. If he wishes to rejoin he must clear all arrears of subscription. The Governing Council shall retain the ultimate right to terminate any membership.
 - (ix) Notice for the annual general body meeting addressed to a member shall be considered as proof of membership.
- (b) Honorary Members: These shall be limited to those over 70 years of age, who have been Ordinary Members of the Association and who have worked actively in the field of ----- for ----- or more years, upon acceptance of their applications by a three-fourths majority of the Governing Council present at the time of voting. They shall have no voting rights.
 - (c) Honorary Corresponding Members shall be those who have done distinguished work in the field of ----- from countries other than India. They shall have no voting rights.
 - (d) The Association shall also have as Patron any person who shall pay to the Association a donation of ₹ -----/- or more. They shall receive one copy of all communications, Newsletters, etc. They shall have no voting rights.

5) MEETINGS

- i. When Ordinary Meetings to be convened: An Annual General Meeting of the Society shall be convened and held at least once in each year at such place and on such date and at such time as shall be determined by the Governing Council.
- ii. Business of Ordinary Meeting: The purpose of an Annual General Meeting shall be:
 - a. To receive, consider and pass the Accounts of the Society and the Report of the Governing Council which shall be submitted to the meeting.
 - b. To review the work and to discuss the policy of the Society.
 - c. To transact any other business or matter which any member of the Society may wish to place before the meeting. No member of the Society shall however be entitled to move any resolution in respect of such business or matter unless a copy of the proposed resolution signed by him shall have been sent to the Central office of the Society, seven days before the date of the meeting.
- iii. Extraordinary Meetings: Extraordinary General Meetings of the Society may be convened at any time by the Governing Council for the transaction of any business.
- iv. Notice of Meetings: At least twenty-one days' notice, specifying the place and day and hour of meeting, and in the case of an Extraordinary General Meeting the nature of the business to be transacted shall be sent by post to each member who has registered with the Society at the address in India, provided that the inadvertent omission to send a notice or the non-receipt of the receipt of such notice by any member shall not invalidate any resolution passed or proceedings taken at such meeting. Any meeting may be held on shorter notice than above specified if more than one-half of the members of the Society agree in writing.
- v. Service of Notice: Service of the notice shall be deemed to have been effected on the day following that on which it is posted.

6) PROCEEDINGS AT MEETINGS

- i. Chairman of General Meeting: The Chairman shall preside at every meeting of the Society or if the Chairman shall not be present, a Chairman of the Meeting shall be elected at the Meeting.
- ii. Power to adjourn general meeting: The Chairman of the Meeting may, with the consent of a majority in number of members present, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting, other than the business left unfinished at the meeting from which the adjournment took place.
- iii. Quorum: At any meeting a quorum shall be five persons present.
- iv. When Quorum not present, meeting to be adjourned: If within half an hour from the time appointed for the holding of any meeting, a quorum is not present, the meeting shall stand adjourned to the same day of the following week at the same time and place and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute a quorum.
- v. Casting Vote: Every question submitted to a meeting shall be decided in the first instance by a show of hands and in the case of equality of votes, the Chairman of the Meeting shall have a casting vote in addition to the vote to which he may be entitled as a member.
- vi. How to decide a question at Meeting: At any Meeting every question shall be decided by a show of hands and a declaration by the Chairman of the Meeting that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry made to that effect in the Minute Book shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

7) VOTES OF MEMBERS

At every meeting of the society, in the event of voting on any topic / subject / issue etc, each branch shall authorise one person to vote on its behalf. In the event, a branch is not represented in the General body Meeting, it can authorise any other person, who is a valid member of society to vote on its behalf.

8) MANAGEMENT

- i. Governing Council: The supervision of the work of the Society and management of its affairs shall be entrusted to the Governing Council.
- ii. Governing Council to be Governing Body: The Governing Council shall be the Governing Body of the Society within the meaning of the Societies Registration Act 1860, and save as herein provided shall have in addition to the powers hereby conferred all the power conferred by the said Act.
- iii. Application of Income and Property: The income and property of the Society whensoever derived, shall be applied solely towards the promotion of the aims and objects of the Society as set forth in its Memorandum of Association, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Society provided however that nothing herein shall prevent the payment of reasonable and proper remuneration and expenses to any officer or servant of the Society or to any member of the Society or Governing Council in return for or incurred in connection with any services actually rendered to the Society, nor prevent the payment of interest at a rate not exceeding 6 per cent annum on money lent or reasonable and proper rent for premises demised or let by any member of the Society or Governing Council.

9) GOVERNING COUNCIL

- i. The Governing Council shall consist of not less than five and not more than thirty one members.
- ii. All valid members of the Society shall be eligible to be elected as office bearers of the Society. Every member satisfying the eligibility clause can stand for an election as an office bearer or Governing Council Member and shall be proposed by any valid member (of at least 3 years' standing) and seconded by another valid member (of at least 3 years' standing) of the Society. The electorate of the office bearers shall be on an all India basis while that of other Governing Council members shall be the respective branches (if any).
- iii. The office bearers shall be President, Vice President, Secretary General and Treasurer.

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- iv. Elections shall be by postal ballot.
- v. Any casual vacancies which may occur by reason of resignation or otherwise may be filled by the Governing Council and the person so appointed shall continue to be the member of the Governing Council until the next election of the Society.
- vi. If for any reason an Annual General Meeting is not held on the date due for the holding thereof, the Society and the persons elected at the previous meeting shall continue to serve until the next meeting is held.

10) CHAIRMAN & VICE-CHAIRMAN

The Governing Council, at its meetings every year, shall, in the absence of the elected President, appoint the elected Vice President/Secretary General/Treasurer to be the Chairman of the meeting. But such Chairman shall not have the right to nominate any member to act as a Chairman in his absence or otherwise at subsequent meetings.

11) PROCEEDINGS OF GOVERNING COUNCIL

- i. The Governing Council may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit and may determine the quorum necessary for the transactions of their business. The Governing Council shall meet at least twice every year. Most business will be carried out by correspondence only.
- ii. The Chairman shall preside at all meetings of the Governing Council. If the Chairman shall not be present at any meeting the Vice-Chairman shall preside and if neither is present the members shall elect a Chairman of the meeting.
- iii. Questions arising at any meeting shall be decided by a majority of votes and in case of an equality of vote the Chairman of the meeting shall have a second or casting vote.
- iv. A meeting of the Governing Council for the time being at which a quorum be present shall be competent to exercise all or any of the authorities, powers and discretions for the time being vested in or exercisable by the Governing Council generally.
- v. The Governing Council may also transact its business by circular resolution.

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- vi. A resolution in writing which has been circulated to all the members of the Governing Council for the time being in India and assented to by a majority of such members shall be as valid and effectual as if it had been passed at a meeting of the Governing Council duly called and constituted.
- vii. The proceedings of all meetings shall be recorded in a Minute Book and the minutes signed by the Chairman of the next meeting shall be accepted as a true record of the business transacted at the meeting.
- viii. The Chairman may invite any person to attend any meeting of the Governing Council but the invitee shall not have the right to participate in the proceedings of the meeting or to vote thereat.

12) OFFICERS

- i. The Governing Council may from time-to-time appoint secretary, stenographer etc. for the Society and shall have the power to determine the duties and authorities and fix their remuneration with full power to terminate their services as and when necessary or required.
- ii. The Governing Council may delegate to the Secretary General, Treasurer and other office bearers such powers as may be necessary or required to enable each official to carry out his duties respectively.
- iii. The Central office of the Society shall be situated where the Secretary General is located.
- iv. All legal disputes / matters shall be decided by the Courts within the jurisdiction where the Secretary General is located.
- v. **Managing Committee:** This will consist of the President, Vice President, Secretary General and the Treasurer to take decisions in the name of the Governing Council between meetings of the latter. It may make changes in the budget of society not exceeding the total amount of the budget.
- vi. **Powers / Responsibilities of office bearers:** The office bearers shall be President, Vice President, Secretary General and Treasurer.
 - a. **President :** He shall preside over the meeting of the Managing Committee, Governing Council and of the general body. He shall have a general control of all matters connected with the management of the Association.

A Study on Laws Governing Charitable Organisations in India

- b. **Vice President:** In the absence of the President, he shall act as President to conduct the meetings of the Managing Committee, Governing Council and the General Body.
- c. **Secretary General:** He shall be the Chief Executive Officer of the Association. He shall carry out the day-to-day administration and also carry out the decisions of the Managing Committee, Governing Council and general body. He shall prepare the agenda for all the meetings of the Committees in consultation with the President. He shall also be responsible for maintenance of the minutes book. He shall have the custody of all registers and papers related to the Association except accounts books. In an emergency matter, the Secretary General shall take suitable action in consultation with the President and shall report the same at the next meeting of the Managing Committee and also the Governing Council. He may keep with him a sum as decided by the Governing Council from time to time as imprest amount to meet any contingent expenditure.
- d. **Treasurer:** He shall maintain an account of money received and spent. He shall also deal with all financial matters with members of central office and branches. All account books of the society shall be in the custody of the Treasurer who shall provide the same to the auditors as and when required. He shall present a statement of income and expenditure at every meeting of the Governing Council and shall also be responsible for presenting the audited statement of accounts at every annual general body meeting. He may keep with him a sum as decided by the Governing Council from time-to-time as imprest amount to meet any contingent expenditure. The Treasurer shall prepare the budget for the next financial year and present it to the Governing Council.

13) COMMITTEES

The Governing Council may appoint a committee or committees (under the name of special committees or sub-committees or under such other name or names as may be determined at the time of appointment) for special purposes, consisting of such one or more persons (whether members of the Society or not) as they may think fit and may delegate to such committees, such powers and authorities as may be thought fit. Any committee so

A Study on Laws Governing Charitable Organisations in India

appointed shall, in exercise of the powers so delegated, conform to any regulations that may from time to time be imposed upon such committee shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Governing Council so far as the same are applicable thereto, and are not superseded by any regulations made by the Governing Council. Each committee shall fix its own quorum. Additional members may be co-opted as the sub-committee may from time to time decide.

14) AUDITOR

An auditor shall be appointed annually and the remuneration shall be fixed by the members in the Annual General Body meeting.

15) SUITS AND PROCEEDINGS

The Society shall sue and be sued and all applications or legal proceedings on behalf of or against the Society shall be brought, made and taken in the name of such persons as shall be appointed by the Governing Council for the purpose.

16) SEAL

The seal of the Society shall not be used except in pursuance of a resolution of the Governing Council. A document to which the seal of the Society is affixed shall be signed on behalf of the Society by at least two members of the Governing Council and countersigned by the Secretary General.

17) PROPERTY OF THE SOCIETY

All property of the Society shall vest in the Governing Council, who shall have the power to sell, mortgage, exchange, gift or otherwise deal with the same in accordance with law and also to purchase, take on lease, accept gift, grants and donations and otherwise acquire any moveable or immovable property, according to law. The Governing Council shall have the power to accept gift, grants, donations, provided in the opinion of the Governing Council the conditions attached are not onerous and not inconsistent with the aims and objects of the Society or otherwise objectionable.

18) FUNDS

- i. All Bank accounts and deposits shall be opened, kept and made in the name of the Society.

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- ii. The Governing Council shall have the management of the funds of the Society and shall have power to invest in the name of the Society or in the name of its nominees, lend or otherwise deal with the same and to investments from time to time according to law, and to incur such expenditure as it may think necessary and proper.
- iii. The Governing Council shall have the power to borrow money for the Society upon such terms as to security and rate of interest or otherwise as the Governing Council shall decide, but in accordance with the law applicable to the Society.
- iv. All cheques, bills of exchange, promissory notes (expressly including promissory notes of the Government of India) and other similar documents shall be drawn accepted or made on behalf of the Society and all cheques be endorsed by the Treasurer and such other person as shall be nominated from time to time by resolution of the Governing Council.
- v. The Governing Council shall cause true and proper accounts to be kept of all sums of money received and expended and all matters in respect of which such receipts and expenditures take place and of the assets, credits and liabilities of the Society. The financial year of the Society shall be from 1st April to 31st March of every year. The Governing Council shall cause the Treasurer to present reports of the finance of the Society at each regular meeting of the Governing Council.
- vi. The accounts of the Society shall be audited once in each year by an Auditor or firm of auditors who shall be Chartered Accounts within the meaning of the Chartered Accountants Act of 1949 appointed by the Governing Council every year with power and authority to fix and pay remuneration if required.

19) ANNUAL LIST

The Governing Council shall cause to be filled once in every year on or before the 14th day succeeding the day on which the Annual General Meeting of the Society is held a list with the registrar appointed under the Societies Registration Act, 1860, of the names / addresses and occupations of the members of the Governing Council.

20) BYE-LAWS

The Governing Council shall have power to make bye-laws for the conduct and government of all committees, and for the conduct and government of the Society, officers and agents of the Society or for any other purposes whatsoever provided that such bye-laws shall not conflict with these rules and regulations. The Governing Council may delegate to such committee or committees appointed by it the power to make, rescind and vary the bye-laws relating to and for the purpose of the work carried out by such committee or committees. The Governing Council will however be entitled to revoke the said power.

21) AMENDMENTS

These Rules and Regulations may be amended by any meeting of the Society convened in the behalf by an ordinary resolution provided that notice of the proposed amendment shall have been given in writing by a member and circulated to all members of the Society, 21 days in advance of the meeting to be convened for such purpose. Such amendments may be accepted by the Meeting with or without modification.

22) DISSOLUTION OR AMALGAMATION

In the event of the dissolution of the society, the funds of the society shall not be divided between the members of the Association. The same shall be transferred to a Trust / Association having similar objectives and recognized under the provisions of Section 80-G of the Income Tax Act of 1961.

23) MISCELLANEOUS

- i. The benefits of the association shall be open to all irrespective of the caste creed or religion.
- ii. The working hours of the association shall be from:- morning: 10.00 a.m. to evening: 7.00 p.m.
- iii. For matters which have not been specified provided for therein above, the provisions of the Societies Registration Act, 1860 and the rules made thereunder shall apply.

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S.No.	Name (full in capital)	Address	Occupation	Designation in the society
1				
2				
3				
4				
5				
6				
7 and so on				

Dated this ----- day of ----- 20----

Signatures of any three members of the Governing Body.

President

Secretary

Treasurer

5.3 COMPANY

Formation of companies with charitable objects etc. is covered under Sec.8 of the new Companies Act, 2013. The provisions are similar to that of a Sec.25 company under the Companies Act of 1956.

The Central Government may by licence, allow an association of persons to be registered as a limited company, if –

- has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits, if any, or other income in promoting its objects; and
- intends to prohibit the payment of any dividend to its member.

A Study on Laws Governing Charitable Organisations in India

A firm may be a member of the company registered under this section. A company registered under this section should not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

At least two individuals are required to form a Sec.8 company. The internal governance of a Sec.8 company is similar to that of a society. It generally has members and is governed by directors or a managing committee or a governing council elected by its members.

The Central Government may, by order, revoke the licence granted to a company registered under Section 8, if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any other action that may be taken, on application, in the prescribed form, register the company accordingly, provided that no such order shall be made unless the company is given a reasonable opportunity of being heard and further that a copy of every such order shall be given to the Registrar.

Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section, provided that no such order shall be made unless the company is given a reasonable opportunity of being heard. Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order. If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects,

A Study on Laws Governing Charitable Organisations in India

subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269. A company registered under Sec.8 shall amalgamate only with another company registered under this section and having similar objects.

If a company makes any default in complying with any of the requirements laid down in Sec.8, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both, provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447 of Companies Act, 2013. (Sec.447 deals with punishment for fraud.)

Obligations

- A Sec.8 Company has to ensure that its profits and all other incomes are utilized only for the purpose of promoting its objects and not for any other purpose.
- It should also ensure that its profits are not distributed as dividend among its members.
- Sec.8 Company cannot alter its objects clause in its Memorandum without seeking the written approval of central government.
- If the Central Government has imposed some conditions and regulations upon the company for granting a licence under Sec.8 then such a company is bound by such conditions and has to ensure adequate compliance with them.
- Sec.8 Company is regarded as a 'company' within the meaning of the Income Tax Act, 1961 and as such its income is taxable according to the applicable rates similar to those applying to other companies.
- If an existing company obtains a licence under Sec.8 it has to ensure that its objects are confined to those mentioned in Sec.8 itself and if not, make proper alteration to its memorandum and articles.

Application for Name

An application for the reservation of a name should be made in **Form No. INC.1** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014. The application should contain the name of the proposed company.

Upon receipt of an application for reservation of name, the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.

Where after reservation of name, it is found that the name was applied by furnishing wrong or incorrect information, then –

- a) if the company has not been incorporated, the reserved name will be cancelled and the person making application will be liable to a penalty which may extend to one lakh rupees;
- b) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard –
 - i. either direct the company to change its name within a period of three months, after passing an ordinary resolution;
 - ii. take action for striking off the name of the company from the register of companies; or
 - iii. make a petition for winding up of the company.

The name stated in the memorandum should not –

- be identical with or resemble too nearly to the name of an existing company registered under the Companies Act, 2013 or any previous company law; or
- be such that its use by the company - will constitute an offence under any law for the time being in force; or is undesirable in the opinion of the Central Government

A company should not be registered with a name which contains –

- any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or

A Study on Laws Governing Charitable Organisations in India

- such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

Rule 8 of the Companies (Incorporation) Rules, 2014 deals with undesirable names -

To determine whether a proposed name is identical with another, the differences on account of the following should be disregarded-

- a) the words like Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;
- b) words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;
- c) plural version of any of the words appearing in the name;
- d) type and case of letters, spacing between letters and punctuation marks;
- e) joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;
- f) use of a different tense or number of the same word does not distinguish one name from another;
- g) using different phonetic spellings or spelling variations shall not be considered as distinguishing one name from another. Illustration (For example, P.Q. Industries limited is existing then P and Q Industries or Pee Que Industries or P n Q Industries or P & Q Industries shall not be allowed and similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;)
- h) misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;
- i) the addition of an internet related designation, such as .com, .net, .edu, .gov, .org, .in does not make a name distinguishable from another, even where (.) is written as 'dot';
- j) the addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name and similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed;

A Study on Laws Governing Charitable Organisations in India

such names may be allowed only if no objection from the existing company by way of Board resolution is submitted;

- k) different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of “Builders and Contractors Limited”, the name “Contractors and Builders Limited” shall not be allowed unless it is change of name of existing company;
- l) if the proposed name is the Hindi or English translation or transliteration of the name of an existing company or limited liability partnership in English or Hindi, as the case may be.

The name will be considered undesirable, if-

- i. it attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);
- ii. it includes the name of a registered trade mark or a trade mark which is subject of an application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;
- iii. it includes any word or words which are offensive to any section of the people;

The following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression-

- (a) Board;
- (b) Commission;
- (c) Authority;
- (d) Undertaking;
- (e) National;
- (f) Union;
- (g) Central;
- (h) Federal;

A Study on Laws Governing Charitable Organisations in India

- (i) Republic;
- (j) President;
- (k) Rashtrapati;
- (l) Small Scale Industries;
- (m) Khadi and Village Industries Corporation;
- (n) Financial, forest, Corporation and the like;
- (o) Municipal;
- (p) Panchayat;
- (q) Development Authority;
- (r) Prime Minister or Chief Minister;
- (s) Minister;
- (t) Nation;
- (u) Forest corporation;
- (v) Development Scheme;
- (w) Statute or Statutory;
- (x) Court or Judiciary;
- (y) Governor;
- (z) Development Scheme or the use of word Scheme with the name of Government (s) , State , India, Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities; and
- (za) Bureau

Application for licence under Sec.8 for new companies

Once the availability of name is confirmed, an application in Form No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a license. The memorandum of association of the proposed company should be in Form No.INC.13. The application for grant of licence is to be made to the Regional Director of the region, in case of proposed

A Study on Laws Governing Charitable Organisations in India

companies in the State where the registered office is proposed to be situated and in case of existing companies in the State where its registered office is situated, falls.

The application should be accompanied by the following documents:

- a) the draft memorandum and articles of association of the proposed company;
- b) the declaration in **Form No.INC.14** by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;
- c) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
- d) the declaration by each of the persons making the application in **Form No. INC.15**.

The licence shall be in **Form No.INC.16** and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him. The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

Application for licence under Sec.8 for existing companies

A limited company registered under the Companies Act, 2013 or under any previous company law with any of the objects specified in section 8 of the Companies Act, 2013, should submit an application in Form No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a license.

The application should be accompanied by the following documents, namely:-

- a) the memorandum and articles of association of the company;
- b) the declaration as given in **Form No.INC.14** by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity

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with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

- c) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (i) the financial statements, (ii) the Board's reports, and (iii) the audit reports, relating to existing companies
- d) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
- e) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
- f) the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and
- g) a declaration by each of the persons making the application in **Form No.INC.15**.

The company should, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar and the said notice shall be in **Form No. INC.26** and shall be published-

- a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and
- b) on the websites as may be notified by the Central Government.

The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central Government or the State Government(s).

The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State

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Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

The licence shall be in Form No.INC.17 and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him. The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

Specimen format of Memorandum of Association and Articles of Association of Section 28 company

MEMORANDUM OF ASSOCIATION OF

(A NOT FOR PROFIT COMPANY)

(Incorporated under Section 8 of the Companies Act, 2013)

1. The name of the company is "_____".
2. The registered office of the company will be situated in the State of _____.
3. The objects for which the company is established are:
 - (A) THE MAIN OBJECTS FOR WHICH THE COMPANY IS ESTABLISHED ARE AS FOLLOWS:
 1. _____
 2. _____
 - (B) OBJECTS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS OF THE COMPANY:
 3. _____
 4. _____
 5. _____
 6. _____
 7. _____
 8. _____

(C) OTHER OBJECTS:

(D)

the doing of all such other lawful things as are incidental or conducive to the attainment of the above objects:

Provided that the company shall not support with its funds, or endeavour, to impose on, or procure to be observed by, its members or others, any regulation or restriction which, if an object of the company, would make it a trade union.

4. The objects of the company extend to the _____

[enter the name of the State or States, and country or countries]

5.

- (1) The income and property of the company, whenever derived, shall be applied solely for the promotion of its objects as set forth in this memorandum.
- (2) No portion of the income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to persons, who at any time are, or have been members, of the company or to any one or more of them or to any persons claiming through any one or more of them.
- (3) Except with the previous approval of the Central Government, no remuneration, or other benefit in money or money's worth shall be given by the company to any of its members, whether officers or servants of the company or not, except payment or out of pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the company.
- (4) Except with the previous approval of the Central Government no member shall be appointed to any office under the company which is remunerated by salary, fees or in any other manner not exempted by sub-clause (3).

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- (5) Nothing in this clause shall prevent the payment by the company in good faith of reasonable remuneration to any of its officers or servants (not being members) or to any other person (not being a member), in return for any services actually rendered to the company.
6. No alteration shall be made to this memorandum of association or to the articles of association of the company which are for the time being in force, unless the alteration has been previously submitted to and approved by the Regional Director, _____ Region.
7. The liability of the members is limited.
8. (For companies limited by guarantee)

Each member undertakes to contribute to the assets of the company in the event of its being wound-up while he is a member or within one year afterwards, for payment of the debts or liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding-up, and for adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a sum of ₹ _____

(For companies limited by shares)

The authorised share capital of the company will consist of ₹ _____ divided into _____ shares of _____ rupees each.

9. True accounts shall be kept of all sums of money received and expended by the company and the matters in respect of which such receipts and expenditure take place, and of the properties, credits and liabilities of the company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the company for the time being in force the accounts shall be open to the inspection of the members. Once at least in every year, the accounts of the company shall be examined and the correctness of the balance sheet and the income and expenditure account ascertained by one or more properly qualified auditor or auditors.
10. If upon a winding-up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the

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objects of this company, to be determined by the members of the company at or before the time of dissolution or in default thereof by the High Court of Judicature that has or may acquire jurisdiction in the matter.

11. We, the following persons whose names, addresses, descriptions and occupations are described below are desirous of being formed into a company not for profit, in pursuance of this Memorandum of Association.

Sl. No.	Name, address, description & occupation of each subscriber	No. of shares taken by each subscriber (in case of company limited by shares)	Signature of Subscriber	Signature of witness with address, description and occupation
1				
2				
3				
4				
5				
6				
7				

Place: _____ Dated this _____ day of _____ 20____

ARTICLES OF ASSOCIATION

OF

(A NOT FOR PROFIT COMPANY)

(Incorporated under Section 25 of the Companies Act, 1956)

I. INTERPRETATION

- 1) In the interpretation of these Articles, the following expressions shall have the following meanings, unless repugnant to the subjects or context.

“THE ACT” means the Companies Act, 2013, with all modifications or amendments thereof.

“THE COMPANY” or this company means “Name of the Company”.

“MEMORANDUM & ARTICLES” means the Memorandum of Association and Articles of Association respectively of the Company.

“DIRECTOR” means and include all Directors of the Company and except where the context otherwise requires for those Articles shall mean the Board of Directors of the Company, or a properly constituted committee thereof.

“BOARD” or “BOARD OF DIRECTORS” means the meetings of the Directors duly called and constituted or, as the case may be, the Directors assembled at a Board Meeting or the requisite number of Directors entitled to pass a circular resolution. “MEMBER” means a shareholder holding shares in the Company including members who are subscribers to the Memorandum of Association and Articles of Association. “THE OFFICE” means the Registered Office for the time being of the company.

“THE REGISTRAR” means the Registrar of Companies,

“SEAL” means the common seal of the Company.

“MONTH” means Calendar Month.

“PROXY” includes Attorney duly constituted under a power of attorney to vote for a member at a General meeting or poll.

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“IN WRITING OR WRITTEN” includes printing, lithography, and other modes of reproducing works in a visible form, which also include thumb impression properly attested.

Words importing persons includes corporation, Firms Associations, Societies, Trusts and local government institutions.

Words importing singular number include the plural and vice-versa.

Words importing masculine gender include the feminine gender and vice-versa.

II. PRIVATE COMPANY

- 2) The Company is a “Private Company” within the meaning of Section 3(1)(b) of the said Act and accordingly the following provisions shall have effect namely.
- a) No invitation shall be issued to the public to subscribe for any shares in or debentures of the Company.
 - b) The number of members of the Company (exclusive of persons who are in the employment of the company and persons who, having been formerly in the employment of the Company, were members of the Company while in that employment and have continued to be the members after the employment ceased) shall be limited to two hundred.

Provided that for the purpose of these provisions where two or more persons hold one or more shares jointly in the Company, they shall be treated as single member.

- 3) The Company may at any time by a special resolution convert itself into a public company within the meaning and subject to the provisions of the Companies Act, 2013.

III. SHARE CAPITAL

- 4) The Authorised Share Capital of the Company is Rs. _____ (Rupees _____ Only) divided in _____ (_____ Only) Equity Shares of Rs. _____/- (_____ Only) each with the power to increase or reduce, subdivide or consolidate it as the Company may think fit, as per the provisions of the Companies Act, 2013.

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- 5) Subject to the provisions of the Act and these Articles, the shares in the capital of the company shall be under the control of the Directors who may issue, allot or otherwise dispose of the same or any of them to such persons, in such proportion and on such terms and conditions and either at a premium or at par and at such time as they may from time to time think fit.

IV. VOTE OF MEMBERS

- 6) Subject to any right of restriction attached to any class by term of its issue or otherwise:
 - a) On show of hands, every member present in person shall have one vote and;
 - b) On poll the voting rights of members shall be in proportion to his Share in the paid up Equity share Capital of the Company.
 - c) A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.
 - d) In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. For this purpose, seniority shall be determined by the order in which the names stand in the register of members.
 - e) No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

V. GENERAL MEETING

- 7) All General Meetings other than Annual General Meeting shall be called Extra Ordinary General Meeting.
- 8) General Meeting may be convened by giving not less than clear twenty-one days' notice either in writing or through electronic mode.
- 9) The board may, wherever it thinks fit, call an Extra Ordinary General Meeting.
- 10) The Chairman of the Board shall be the Chairman of the General Meeting.

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- 11) If the Board is unable to call an Extra-Ordinary General Meeting for want of quorum or otherwise, any two members of the Company may call such a meeting in the same manner as nearly as possible, as that by which such a meeting may be called by the Board.

VI. PROCEEDINGS AT GENERAL MEETING

- 12) a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- b) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.
- 13) a) If within half an hour from the time appointed for holding the meeting, a quorum is not present, the meeting, if called upon the requisition of member shall be dissolved.
- b) In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at other time and place as the Board may determine.
- c) If at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.
- 14) The Chairman, if any, of the Board shall preside as Chairman at every general meeting.
- 15) If there is no such Chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their members to be chairman of the meeting.
- 16) If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be chairman of the meeting.
- 17) a) The Chairman may, with the consent of any meeting, at which a quorum is present and shall if so directed by the meeting, adjourn the meeting, from time to time and from place to place.

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- b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- c) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- d) Save as aforesaid, and as provided in section 103 of the Act it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

VII. DIRECTORS

- 18) The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.
- 19) No remuneration shall be paid to any director for attending the Board, Committee or General Meeting of the Company. The directors may however be paid all travelling, hotel and other expenses properly incurred by them.
- 20) All cheques, promissory notes, drafts, hundis, bills of exchange and other negotiable instruments, and all receipts for monies paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by such person and in such manner as the Board shall from time to time by resolution determine.
- 21) Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.
- 22) Subject to the provisions of section 149, the Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.

VIII. PROCEEDINGS OF THE BOARD

- 23) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.

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- 24) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.
- 25) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.
- 26) The Board may elect a Chairperson of its meeting and determine the period for which he is to hold office. If no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their members to be chairman of the meeting.
- 27)
 - a) The Board may, subject to the provisions of the Act, delegate any of its powers to a committee consisting of such member or members of its body as it thinks fit.
 - b) Any committee so formed shall in the exercise of the powers so delegated, conform to any regulation that may be imposed on it by the Board.
- 28)
 - a) A committee may elect a chairman of its meetings.
 - b) If no such chairman is elected or in any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their member to be chairman of the meeting.
- 29) A committee may meet and adjourn as it think proper.
- 30) Save as otherwise expressly provided in the Act, a resolution in writing signed by all the members of the Board or Committee thereof for the time being entitled to receive notice of a meeting of the Board or Committee, shall be as valid and effectual as if it has been passed at a meeting of the Board or Committee, duly convened and held.

IX. SEAL

- 31) The Board shall provide for the safe custody of the seal of the company. The seal shall not be affixed to any instrument except by the authority previously given by Resolution of the Board or of a committee of the Board authorised by it in that behalf and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and

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the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

X. ACCOUNTS

- 32) a) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the account and books of the Company or any of them shall be open to the inspection of members (not being Directors).
- b) No member (not being a Director) shall have any rights of inspection any accounts or books of accounts of the Company except as conferred by the law or authorised by the Board or by the Company in General Meeting.

XI. INDEMNITY

- 33) Every officer of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in which relief is granted to him by the court or the Tribunal.

We, several persons whose names and addresses, description and occupation are hereunto subscribed are desirous of being formed into a Company, not for profit in pursuance of this Article of Association.

Sl. No.	Name, address, description & occupation of each subscriber	No. of shares taken by each subscriber (in case of company limited by shares)	Signature of Subscriber	Signature of witness with address, description and occupation
1				
2				

Sl. No.	Name, address, description & occupation of each subscriber	No. of shares taken by each subscriber (in case of company limited by shares)	Signature of Subscriber	Signature of witness with address, description and occupation
3				
4				
5				
6				
7				

Place: _____ Dated this _____
day of _____ 20____

5.4. Reporting requirements for a Charitable Organisation

A. Society

The Societies Registration Act, 1860 provides that each society has to submit an annual report to the Registrar of Societies in the state in which it is registered. A Society has to file list of Managing Body once in every year to the Registrar of Societies. The list has to be filed on or before the fourteenth day succeeding the day on which annual general meeting of the society is held. However, if the rules of the society do not provide for an annual general meeting, the list is to be filed in the month of January. The list should contain the names, addresses and occupations of the members of governing council or other governing body entrusted with the management of the affairs of the society. With regard to financial reporting, societies in majority of the states do not need to file audited or even un-audited accounts. Only in the states of Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Pondicherry, Tamil Nadu and in parts of Kerala societies

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have to file audited accounts. In other states either they have to file unaudited accounts or there are no reporting requirements at all. The following table provides details about state wise requirements for filing of accounts –

State	Filing of accounts
Andhra Pradesh	No requirement
Arunachal Pradesh	No requirement
Assam	Balance sheet and audited report need to be filed
Bihar	Audited balance Sheet, Income and expenditure statement and
annual activity report	
Chhattisgarh	Audited balance Sheet, Income and expenditure statement and
annual activity report	
Delhi	No requirement
Gujarat	Audited accounts along with audit report need to be filed
Goa, Daman and Diu	Audited accounts need to be filed
Haryana	No requirement
Himachal Pradesh	No requirement
Jammu and Kashmir	No requirement
Jharkhand	Audited balance Sheet, Income and expenditure statement and
annual activity report	
Karnataka	Audited accounts along with audit report need to be filed
Kerala - Malabar region	No requirement
Rest of Kerala	Audited accounts to be filed
Madhya Pradesh	Audited balance Sheet, Income and expenditure statement, audit
report and report on financial activities to be filed	

A Study on Laws Governing Charitable Organisations in India

Maharashtra	Audited balance Sheet, Income and expenditure statement and audit report to be filed
Manipur	No requirement
Meghalaya	Balance Sheet, financial report and audit report to be filed
Mizoram	No requirement
Nagaland	No requirement
Orissa	No requirement
Pondicherry	Audited balance Sheet, Receipts and expenditure statement to be filed
Punjab	No requirement
Rajasthan	No requirement
Sikkim	No requirement
Tamil Nadu	Audited balance Sheet, Receipts and expenditure statement, and audit report to be filed
Tripura	No requirement
Uttar Pradesh	Balance Sheet to be filed
Uttaranchal	Balance Sheet to be filed
West Bengal	Balance Sheet and audit report to be filed

B. Trust

In case of Public trusts, Annual report and annual return of income should be filed with the authorities having jurisdiction over the region where trust is registered.

The reporting requirements under the Maharashtra Public Trust, 1950 are given in Chapter 6. Audited accounts and income and expenditure statements need to be submitted to the Charity Commissioner's office.

All trusts have to file annual reports. Notices are sent to defaulters. In cases of persistent default and in case of mismanagement and misuse of funds, the Charity Commissioner is empowered to sanction prosecution. If sanction is granted then a complaint is lodged with the metropolitan magistrate according to the jurisdiction.

C. Company

All Sec.8 companies have to adhere to the following legal requirements and report in accordance to the Registrar of Companies.

- Board meetings must be held regularly, normally once a quarter. Proper detailed minutes should be maintained.
- The shareholders or members of the company must meet each year in the Annual General Meeting. At these meetings they are expected to review annual accounts, elect some of the Directors and also appoint auditors. It is compulsory for companies to give copies of the audited accounts to the members. Proper notices and minutes of the meetings are also required.
- If there is any change in the directors or office addresses, the Registrar of Companies (ROC) has to be informed.
- The audited accounts, annual report and an annual return have to be filed with the ROC. Important resolutions also have to be filed.
- All directors and important stakeholders have to disclose names of their relatives each year. They also have to give names of other companies or concerns of which they are directors or shareholders.
- They cannot vote on any contract in which they may be interested. All such contracts have to be entered into a register.
- If directors borrow some money from the company it has to be disclosed in the balance sheet, if it is above the stipulated amount. Even if it is settled within the same year.
- Any other payment to the directors, their relatives or their firms has to be disclosed. Similarly payments to highly paid employees also need to be disclosed.

Alteration of Memorandum:

- A company registered under section 8 of Companies Act 2013 can alter the provisions of its memorandum with respect to its objects only with the prior approval of Central government obtained in writing.

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- The Central Government may revoke the licence of such body if alteration is made without its approval.

All section 8 companies have to submit a balance sheet at the end of every year. The same is scrutinized and reveals mismanagement of funds if any. The ROC also has the power to call for information from any organization and also to cancel the registration on grounds of misuse and mismanagement of funds.

Chapter 6

Overview of Provisions of Maharashtra Public Trusts Act, 1950

In the State of Maharashtra, the legislation governing Public Trust is Maharashtra Public Trusts Act, 1950 and Maharashtra Public Trusts Rules, 1951. Earlier the Act was known as Bombay Public Trusts Act of 1950. Subsequently by the Maharashtra (Change of Short Titles of certain Bombay Acts) Act, 2011, the name of the Act was changed to Maharashtra Public Trusts Act, 1950.

Similar legislation by the name Bombay Public Trusts Act, 1950 prevails in the State of Gujarat. This is because, the Act was passed when Maharashtra and Gujarat were one. Gujarat State, after its separation, has made certain variations according to their requirements. But, more or less, both the states have similar provisions. Under the Maharashtra Public Trusts Act, the Charity Commissioner is the guardian of the trusts. The office of the Charity Commissioner has been given the powers of supervision, regulation and control of public trusts. It is compulsory for every public trust to register with the Charity Commissioner so as to ensure proper administration and Management.

Important Definitions

Section 2(13): Public Trust: means an express or constructive Trust for either public or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or any other religious or charitable endowment and a society formed either for religious or charitable purpose or both and registered under the Societies Registration Act, 1860.

Section 2(7A): "Instrument of trust" means the instrument by which the trust is created by the author of the trust and includes any scheme framed by a competent authority or any Memorandum of Association and rules and regulations of a society registered under the Societies Registration Act, 1860, in its application to the State of Maharashtra

Section 2(8): "Manager" means any person (other than a trustee) who for the time being either alone or in association with some other person or persons administers the trust property of any public trust and includes (a) in the case of a math, the

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head of such math, (b) in the case of a wakf, a mutawalli of such wakf, (c) in the case of the society registered under the Societies Registration Act, 1860, its governing body, whether or not the property of the society is vested in a trustee.

Sec.2(12): "Public securities" means –

- (a) securities of the Central Government or any State Government,
- (b) stocks, debentures or shares in Railway or other companies, the interest or dividend on which has been guaranteed by the Central or and State Government,
- (c) debentures or other securities for money issued by or on behalf of any local authority in exercise of the powers conferred by an Act of the Central or State Legislature,
- (d) a security expressly authorized by an order which the State Government makes in this behalf;

Sec.2(18): "Trustee" means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager.

Sec. 9(1): Charitable Purpose: a charitable purpose includes

- a. Relief of poverty or distress
- b. Education
- c. Medical relief
- d. Provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit, and
- e. The advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

In order to be a public trust, it is not essential that the trust should benefit the whole of mankind or all the persons living in a particular state or city. It is said to be a public trust if it benefits a sufficiently large section of the public as distinguished from specific individuals. Also if the beneficiaries of the trust are uncertain or fluctuating, then the fact that the beneficiaries belong to a certain religion/caste does not make any difference.

Registration of Trust

Under Sec.18 of Maharashtra Public Trusts Act, 1950, it is mandatory to apply for registration of a public trust. Rule 6 of the Maharashtra Public Trusts Rules, 1951 covers the procedure for registration of public trusts.

The procedure for registration is as follows –

- ✓ The application should be made to the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the trustee has an office for the administration of the trust or the trust property or substantial portion of the trust property is situated, as the case may be.
- ✓ Application to be made within 3 months of creation of the trust
- ✓ The application should be in the form of Schedule II of the Rules.
- ✓ The documents to be submitted at the time of registration –
 - o Covering letter
 - o Schedule II (the signatory to the application to affix & subscribe before appropriate authority)
 - o Trust deed certified copy/memorandum of association and rules & regulations (in case of society)
 - o Affidavit in prescribed format.
 - o Consent letter signed by the remaining trustees and stating that they hereby allow the applicant trustee to represent on their behalf and complete all registration formalities and obtain the certificate of registration
 - o Prescribed application fees based on value of the property.
- ✓ Every person signing the application to subscribe on solemn affirmation before the Deputy or Assistant Charity Commissioner, a Justice of the Peace, an Executive Magistrate or a Notary appointed under the Notaries Act, 1952 for the State of Maharashtra that the facts mentioned in the said application are true to the best of his knowledge and belief.
- ✓ Memorandum of particulars of immovable property to be filed within 3 months of creation of trust in Schedule IIA.

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- ✓ The application for registration should contain the following particulars –
 - o the designation by which the public trust is or shall be known (hereinafter referred to as the name of the public trust),
 - o the names and addresses of the trustees and the manager,
 - o the mode of succession to the office of the trustee,
 - o the list of the movable and immovable trust property and such description and particulars as may be sufficient for the identification thereof,
 - o the approximate value of the movable and immovable property,
 - o the gross average annual income of the trust property estimated on the income of three years immediately preceding the date on which the application is made or of the period which has elapsed since the creation of the trust, whichever period is shorter,
 - o the amount of the average annual expenditure in connection with such public trust estimated or the expenditure incurred within the period to which the particulars above relate,
 - o the address to which any communication to the trustee or manager in connection with the public trust may be sent.
- ✓ Apart from the above, the following particulars should also be given at the time of registration –
- ✓ Particulars of documents creating the trusts.
- ✓ Particulars other than documents about the creation or origin of the trust.
- ✓ Objects of the trust.
- ✓ Sources of income of the trust.
- ✓ Particulars of encumbrances, if any, on trust property.
- ✓ Particulars of the scheme, if any relating to the trust.
- ✓ Particulars of title deeds pertaining to trust property and the names of trustees in possession thereof.

Application for registration of a public trust created by will has to be made within 1 month of granting of probate (i.e., copy of will certified under the seal of the Court)

A Study on Laws Governing Charitable Organisations in India

or within 6 months of testator's death, whichever is earlier. In case of a society, it will have to be registered under the Societies Registration Act as well as with the Charity Commissioner. Unlike trusts, societies have a more democratic set up. There is usually a scheme of election for members of the governing council/ managing committee. In case of trust, generally new trustees are appointed by invitation of the sitting trustees.

Details of Fee

The fees to accompany the application for registration should be in cash and in the following amounts –

Sl. No.	Value of the property	Amount (₹)
1.	when the value of the property of a public trust does not exceed ₹ 2,000	3
2.	when the value of the property of a public trust exceeds ₹ 2,000 but does not exceeds ₹ 5,000.	5
3.	when the value of the property of a public trust exceeds ₹ 5,000 but does not exceeds ₹10,000.	10
4.	when the value of the property of a public trust exceeds ₹ 10,000 but does not exceeds ₹ 25,000	20
5.	when the value of the property of a public trust exceeds ₹ 25,000	25

Inquiry for registration

On the receipt of an application under section 18, or upon on application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry for the purpose of ascertaining:

- (i) whether a trust exists and whether such trust is a public trust,
- (ii) whether any property is the property of such trust,
- (iii) whether the whole or any substantial portion of the subject matter of the trust is situated within his jurisdiction,

A Study on Laws Governing Charitable Organisations in India

- (iv) the names and addresses of the trustees and manager of such trust,
- (v) the mode of succession to the office of the trustee of such trust,
- (vi) the origin, nature and object of such trust,
- (vii) the amount of gross average annual income and expenditure of such trust, and
- (viii) any other particulars.

Register under Section 17 / Schedule I

The office of the Charity Commissioner maintains a register in Schedule I containing all details of the Trust viz. Registration No., details of trustees, trust property etc. A copy of the same can be obtained by filing an application along with the prescribed fees.

Intimation of Change: Sections 22 & 22(1A)

Where any change occurs in any of the entries recorded in Schedule I, the same has to be intimated to Charity Commissioner within 90 days of occurrence of change in Form "Schedule III" along with relevant documentary evidence. Intimation of change relating to any immovable property has to be given in Form 'Schedule IIIA' (change report).

Budget (Section 31A & Rule 16A)

Trustee of every public religious trust having annual income exceeding ₹ 5,000 and ₹ 10,000 in case of other trusts has to prepare and submit the budget to the Charity Commissioner, one month before the commencement of the accounting year. The budget has to be prepared as per format given in Schedule VIIA.

Accounts and Audit (Sections 32, 33 & 34)

Every trustee of a public trust should keep regular accounts of all receipts and moveable and immovable property and of all encumbrances created on the trust property and of all payments and alienations made on behalf of the public trust of which he is in the trustee. The accounts should contain all such particulars as in the opinion of the Charity Commissioner will facilitate preparation of the balance sheet and income and expenditure account in the form of Schedules VIII and IX and the preparation of a statement of income chargeable to contribution in the form of Schedule IXC.

A Study on Laws Governing Charitable Organisations in India

Balance sheet should be prepared as per Schedule VIII and Income and Expenditure account as per Schedule IX of the Rules. If the trust/society operates in more than one city or geographical region with separate branch or project offices, the accounts of all such branches or project offices should be consolidated. However it is permissible to file separate accounting returns if filed at one time. Contribution under Section 58 has to be made as per consolidated income. In case of religious trusts, gold, silver and other valuable articles should be valued after every 10 years and a footnote as to such value should be given in the balance sheet.

Accounts shall be balanced on 31st March every year or on such other day as may be fixed by the Charity Commissioner. Audit should be completed within 6 months of the completion of the accounting year. The auditor should forward a copy of the Balance Sheet and Income & expenditure account along with his Audit report to the Deputy or Assistant Charity Commissioner within a fortnight of the audit. Trust having an annual income of ₹ 15,000 or less is exempt from audit. Trust exempted from audit is required to file affidavit as to the extent of their income and also has to file accounts in Schedule IX-A and IX-B within 3 months of the completion of the accounting year.

Audit Report (Rule 19)

The audit report should contain the following particulars –

- a) whether accounts are maintained regularly and in accordance with the provisions of the Act and the rules;
- b) whether receipts and disbursements, are properly and correctly shown in the accounts;
- c) whether the cash balance and vouchers in the custody of the manager or trustee on the date of the audit were in agreement with the accounts;
- d) whether all books, deeds, accounts, vouchers or other documents or records required by the auditor were produced before him;
- e) whether a register of moveable or immovable properties is properly maintained, the changes therein are communicated from time to time to the regional office, and the defects and inaccuracies mentioned in the previous audit report have been duly complied with;
- f) whether the manager or trustee or any other person required by the auditor to appear before him did so and furnished the necessary information required by him;

A Study on Laws Governing Charitable Organisations in India

- g) whether any property or funds of the trust were applied for any object or purpose other than the object or purpose of the trust;
- h) the amounts of the outstanding for more than one year and the amounts written off, if any;
- i) whether tenders were invited for repairs or construction involving expenditure exceeding ₹ 5,000;
- j) whether any money of the public trust has been invested contrary to the provisions of section 35;
- k) alienations, if any, of the immovable property contrary to the provisions of section 36 which have come to the notice of the auditor;
- l) any special matter the auditor may think fit or necessary to bring to the notice of the Deputy or Assistant Charity Commissioner;
- m) all cases of irregular, illegal or improper expenditure or failure or omission to recover moneys or other property belonging to the public trust or of loss, or waste of money or other property thereof, and whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust or misapplication or any other misconduct on the part of the trustee or any other person while in the management of the trust;
- n) whether the budget has been filed in the form provided by rule 16A.

The auditor shall, having regard to the provisions of the instrument of the trust by which the trust is governed, include also in his report the following particulars namely:

- o) whether the maximum and minimum number of the trustees is maintained;
- p) whether the meetings are held regularly as provided in such instrument;
- q) whether the minute book of the proceedings of the meeting is maintained;
- r) whether any of the trustees has any interest in the investment of the trust;
- s) whether any of the trustees is a debtor or creditor of the trust;
- t) whether the irregularities pointed out by the auditors in the accounts of the previous year have been duly complied with by the trustees during the period of audit.

Alienation of Immovable property (Section 36)

Investment in immovable property requires Charity Commissioner's permission. Prior permission of Charity Commissioner is required for sale, exchange, gift of any immovable property, lease exceeding a period of 3 years in case of non-agricultural land/building, lease exceeding 10 years in case of agricultural land.

Powers and duties of Trustees (Section 36A)

A trustee of every public trust should administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the terms of the trust, usage of the institution and lawful directions which the Charity Commissioner or Court may issue in respect thereof, and exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property, if they were his own.

No trustees should borrow money for the purpose of or on behalf of trust except with previous sanction of the Charity Commissioner and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust. No trustee should borrow money for his own use from any property of the public trust of which he is a trustee.

Suspension, removal and dismissal of trustees

The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under section 41B or *suo motu* suspend, remove or dismiss any trustee of a public trust, if he

- (a) makes persistent default in the submission of accounts, report or return
- (b) willfully disobeys any lawful orders issued by the Charity Commissioner, under the provisions of this Act or rules made there under by the State Government;
- (c) continuously neglects his duty or commits any malfeasance or misfeasance, or breach of trust in respect of the trust ;
- (d) misappropriates or deals improperly with the properties of the trust of which he is a trustee; or
- (e) accepts any position in relation to the trust which is inconsistent with his position as a trustee;
- (f) is convicted of an offence involving moral turpitude.

Contribution to Charity Commissioner (Section 58) (Schedule IXC)

A public trust (other than one which is exempt) having gross annual income (from all sources) exceeding ₹ 25,000 has to pay contribution to the Public Trust Administration Fund @5%. Gross annual income excludes corpus donations. Contribution is payable @2% on the gross annual income after making the deductions prescribed in Rule 32 which are stated hereunder:

Deductions

- a. Donations received from other public trusts and *dharmadas*
- b. Grants received from government & local authorities
- c. Interest on sinking and depreciation fund
- d. Amount spent for secular education/ medical relief/veterinary treatment of animals
- e. Expenditure incurred from donations for relief of distress caused by natural calamity
- f. Deduction of land revenue, rent payable to landlord, cost of production out of income from land used for agricultural purpose
- g. Deductions of municipal taxes, ground rent, cesses, insurance premia, repairs @10% of gross rent of let out buildings out of income from land used for non agricultural purposes
- h. Cost of collection of income or receipts from securities, stock etc. @1% of such income
- i. Deduction in respect of repairs of building (yielding no income) @10% of estimated gross annual rent.

The following trusts are exempt from payment of contribution –

- a. Public trusts having gross annual income of ₹ 25000 or less.
- b. Public trusts exclusively for advancement/propagation of secular education/ medical relief/veterinary treatment.
- c. Recognized public libraries and reading rooms.
- d. Public trusts exclusively for the purpose of relief of distress caused by natural calamity.

Investments (Section 35)

A public trust can invest its funds in any of the following modes:

- a. Scheduled bank as defined in RBI Act, 1934
- b. Postal savings bank
- c. Co-operative bank approved by State Government
- d. Public securities being securities of Central/State government (includes Units of UTI)
- e. First mortgage of immovable property situated in India provided the property is not leasehold for a term of 99 years and the value of the property exceeds by one half of the mortgage money.
- f. Any other investment permitted by Charity Commissioner.

Changing the objects of the trust

Sometimes, a trust created for certain specific objects fails due to unforeseen circumstances. In such cases the doctrine of *cy pres* comes into play. The meaning of the phrase '*cy pres*' is as near as possible i.e. the trust can change its objects and the funds can be used for a similar other purpose. For this, an application has to be made to the Charity Commissioner who in turn may further require the trust to take sanction from the Court.

Amalgamation of Trusts

To rescue financially weak trusts, Section 50A(2) lays down the provisions for legally amalgamating two or more trusts with similar objects.

A Study on Laws Governing Charitable Organisations in India

Where the Charity Commissioner is of the opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may; after publishing a notice in the *Official Gazette* and also if necessary in any newspaper which in the opinion of the Charity Commissioner is best calculated to bring to the notice of persons likely to be interested in the trust with a wide circulation in the region in which the trust is registered, and giving the trustees of such trusts and all other interested persons due opportunity to be heard, frame a common scheme for the same.

Penalties (Section 66)

Maximum fine of ₹ 1,000 is payable on failure to apply for registration within time, failure to keep regular accounts, failure to pay contribution, failure to invest money in public securities, failure to report a change. Failure to send memoranda of immovable property within time attracts penalty of ₹ 200. Failure to apply in time under Section 22B or failure to send memoranda within time under Section 22C attracts penalty of ₹ 100. Failure without reasonable cause to comply with Section 41AA (i.e., reserving hospital beds for poor patients) attracts penalty of ₹ 2,000.

Chapter 7

TRUST DEED

A Trust Deed is an instrument in writing executed by a settlor used to constitute a trust.

It is well settled that no formal document is necessary to create a Trust as held in *Radha Soami Satsung vs. CIT – (1992) 193 ITR 321 (SC)*. But for many practical purposes a written instrument becomes necessary under following cases –

1. When the trust is created by a will irrespective of whether the trust is public or private or it relates to movable or immovable property. This is because as per Indian Succession Act, a will has to be in writing.
2. When the trust is created in relation to an immovable property of the value of ₹ 100 and upwards, in case of a private trust. In case of public trusts, a written trust deed is not mandatory, even in respect of immovable property, but is optional.
3. Where the trust/association is being formed as a society or company, the instrument of trust; i.e., the memorandum of association, and Rules and Regulations has to be in writing.

Benefits of a Trust Deed

- i. A written trust deed is a *prima facie* evidence of existence of a trust ;
- ii. It facilitates devolution of trust property to the trust;
- iii. It clearly specifies the trust-objectives which enables one to ascertain whether the trust is charitable or otherwise;
- iv. It is essential for registration of conveyance of immovable property in name of the Trust;
- v. It is essential for obtaining registration under the Income-tax Act and claiming exemption from tax;
- vi. It helps to control, regulate and manage the working and operations of the trust;

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- vii. It lays down the procedure for appointment and removal of the trustee(s), his/ their powers, rights and duties; and
- viii. It prescribes the course of action to be followed under any eventuality including dissolution of the trust.

Requisite clauses of a Trust Deed

While drafting a trust deed, several enactments must be taken into consideration, for example – the state trust acts like Bombay Public Trusts Act, 1950 and the Income-tax Act, 1961.

The Trust Deed should contain the following clauses –

- i. Preamble
- ii. Trust name by which Trust shall be known
- iii. Place where its office shall be situated
- iv. Author or settlor of the trust
- v. Names of the Trustees
- vi. Beneficiaries
- vii. The property settled, for Trust – In case of immovable property, it should contain full description of the property sufficient to identify it
- viii. An express intention to direct the trust property from the trustees
- ix. Objects of the Trust
- x. Minimum and maximum number of Trustees
- xi. Procedure for appointment, removal, replacement of trustees
- xii. Trustees rights, duties and powers
- xiii. Administration of trust
- xiv. Provision for maintenance of accounts, auditing etc.
- xv. Clause enabling, spending and utilisation of the Trust funds or corpus
- xvi. Bank Account operations
- xvii. Borrowing money on security for the purpose of the Trust

A Study on Laws Governing Charitable Organisations in India

- xviii. Investment of the Trust funds and dealing with Trust properties
- xix. Alienation of immovable property of the Trust
- xx. Amalgamation clause
- xxi. Dissolution of Trust
- xxii. Irrevocable nature of the trust

7.1. Specimen format of a Trust Deed

TRUST DEED

THIS INDENTURE OF TRUST executed on this ----- day of -----
20--- **BY**, son / daughter / wife of -----, aged ---
, residing at ----- (hereinafter referred to as the **SETTLOR**
which term wherever the context so requires or admits shall mean and include his
legal heirs, successors, executors, administrators and assigns of **ONE PART**

IN FAVOUR OF

1. ----- son/daughter of ---- , aged --, residing at -----
2. ----- son/daughter of ----, aged --, residing at -----

(hereinafter referred to as '**THE TRUSTEES**' which expression wherever the
context so requires or admits shall mean and include their legal heirs, successors,
executors, administrators and assigns of the **SECOND PART**.)

WHEREAS THE SETTLOR above named has been desirous of creating and
establishing a spiritual, educational and a charitable Trust.

AND WHEREAS THE SETTLOR above named has settled a sum of ₹-----
(Rupees ----- only) as a fund,

AND WHEREAS THE SETTLOR above named has settled the assets and
properties mentioned in the Schedule hereunder,

in favour of the **TRUSTEES** upon Trust with a view to give effect to his desire of
creating and establishing a Trust for the purpose of undertaking charitable and
religious activities for the benefit the public, for the objects set out in this trust deed
and for fulfilment of which, the terms and conditions are more particularly set out
hereunder.

AND WHEREAS THE TRUSTEES named are willing to accept the office of the Trustees for the purpose of carrying out the wishes of the **SETTLOR** of the Trust under the provisions and directions set forth herein, so as to enable to pursue its vowed objects.

THIS INDENTURE WITNESSETH AS FOLLOWS

- 1) The **SETTLOR** above named hereby establishes a Public Charitable Trust by the name of ----- for the purpose and upon the conditions set forth hereunder.
- 2) The **TRUSTEES** named above shall be the first trustees and have given their consent to be appointed as the trustees and as token thereof, they have set their hands to this instrument.
- 3) The **SETTLOR** hereby conveys, transfers and assigns to the TRUSTEES the above referred sum of ₹ ---- (Rupees ----- only) as corpus to the **TRUST**, the receipt of which, the **TRUSTEES** do hereby admit and acknowledge.
- 4) The **SETTLOR** of the Trust hereby conveys, transfers, assigns to the **TRUSTEES** the assets and properties mentioned in the Schedule hereunder, the possession of which the Trustees hereby admit and acknowledge, to have and to hold the same in trust as corpus of the Trust, to be used by the Trustees to carry out and fulfil the objects of the Trust set forth herein, and the **SETTLOR** of the Trust hereby relinquishes for all time any claim to or interest in the said assets and properties or fund forming the subject matter of the Trust.
- 5) The office of the Trust for the time being shall be at -----
---, with the power given to the Trustees to shift the same to any other place as they may mutually agree upon.
- 6) The **TRUSTEES** do hereby agree that they shall hold and stand possessed of the said trust assets, properties and funds (which expression shall include all investments in cash or kind or in any nature whatsoever into and for which, the said property or a part or parts thereof may from time to time be converted, varied or exchanged) and/ or such investments as may be held by the **TRUSTEES** from time to time in relation to these presents together with all income, profits, additions and accretions thereof, upon trust for the object set out herein with and subject to the provisions and conditions hereinafter contained in these presents.

I. OBJECTS

The objects of the Trust are:

1. Construction and running of schools, colleges, education institutions, free dispensaries, Centres for poor feeding and homes for the aged for the benefit of the public.
2. Providing for grants, scholarships, fellowships and other forms of financial assistance to the needy and deserving students for pursuing education, vocational training, skill development etc.
3. Granting of financial assistance to any educational institution for granting scholarships, prizes, medals, awards for excellence in studies, sports and scientific research, distribution of books and note books for poor and deserving students.
4. Establishment, conduct, maintenance of clinical laboratories, hospitals, nursing homes, dispensaries and institutions of similar nature and providing financial assistance to the deserving persons for medical treatment, in any medical institution.
5. Providing financial assistance for feeding the poor directly and through other institutions.
6. Establishment, conduct, maintenance of old age homes, homes for physically challenged men, women and children and persons with similar disabilities and also for granting financial assistance to institutions performing similar activities.
7. Grant of donation to any Temple, Mosque, Church, Gurudwara and other places of worship and/or religious institutions. However, the Trust shall not undertake any religious activities.
8. Providing for or contributing to education and scientific research and development.
9. Providing relief to the poor and advancing any other object of general public utility.
10. The Trust will not carry out any activities with the intention of earning profit and will perform with service motive only.
11. No activities of the Trust will be carried out outside India.

II. BENEFICIARIES OF THE TRUST

The Trust is established for the benefit of citizens of India and the class of people mentioned above without discrimination of caste, religion, creed or sex.

III. PROPERTIES

The Trust properties shall consist of

1. The amount Transferred by the **SETTLOR** as mentioned above, towards the Corpus fund of the Trust.
2. The immovable properties and other assets transferred by **SETTLOR** as mentioned above.
3. Any cash, kind, properties, movable and immovable that may be acquired by purchase or otherwise or all manner of rights, title or interest in or over any property movable or immovable.
4. All additions and accretions to the Trust properties and the income therefrom.
5. All donations, gifts, legacies or grants, in cash or kind accepted by the Trustees upon Trust.

The properties of the Trust shall be utilised for the objects set forth hereinabove and subject to the provisions and conditions herein mentioned.

IV. NUMBER OF TRUSTEES, THEIR TERM AND POWER TO CO-OPT

The Trust will be managed by a **Board of Trustees** consisting of not less than 3 trustees and not more than 9 trustees. The parties of the Second Part will be First Trustees and they shall automatically form the Board of Trustees

The first **Managing Trustee** shall be the **SETTLOR** and he will hold office for his life time. After the demise or relinquishment of office of the Managing Trustee or in the event of the first Managing Trustee failing to nominate his successor in office, the remaining trustees shall elect one of the other Trustees as Managing Trustee.

The term of office of First Trustees shall be for their respective lives. The Board of Trustees shall have the power to increase the total number of Trustees up to the maximum number stated above and fix their term as per provisions contained herein.

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Any Trustee, including the Managing Trustee may retire from the Trusteeship hereof by giving two calendar months notice in writing of his or her intention to do so, to the Board of Trustees and after the expiry of the period of notice, the Trustee giving the notice shall *ipso facto* cease to be a Trustee of these presents.

Any vacancy caused by death of any one of the First Trustees, or any vacancy caused by the resignation of any of the Trustees, may be filled up by co-option by the Board of Trustees.

The Trustees who are not First Managing Trustee or First Trustees shall hold office for a period of one year from their date of appointment by the Trustees. At the end of this one year period, the Board of Trustees may reappoint them for subsequent term or appoint other persons as Trustees in such a manner that the total number of Trustees does not exceed the approved maximum number of Trustees.

The Managing Trustee shall have the power to remove a Trustee suffering from physical or mental disability or if he is accused of misfeasance of trust funds or property or misconduct, after satisfying himself on enquiry and such action of the Managing Trustee shall be final.

The proceedings of the Board of Trustees shall not in any way be invalidated due to any post or posts remaining vacant. During the time when a vacancy is yet to be filled up, the remaining Trustees shall act as "Full Board", subject to the presence of Quorum in the meetings. Any vacancy in the Board of Trustees or illegality in the appointment of Trustees or their proceedings shall not invalidate any prior act or decision of the Board.

V. TRUST ADMINISTRATION AND POWER TO THE BOARD

A. The Board of Trustees shall have power to

1. To administer the Trust, its properties and affairs and do all the things which will fulfil the performance of the objects for which the Trust is established and for this purpose the Board can apply the whole or any part of the Trust property towards the payment of the expenses of the Trust.
2. The income and the properties of the Trust will be solely utilised towards the objects of the Trust and no portion of it will be utilised for payment to the Settler, or Trustees or their relatives by way of salary, allowances, profit, interest, dividend etc.

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3. To open one or more bank accounts and operate the same or provide for operation of the said accounts by any two among them authorised on their behalf.
4. To invest the Trust funds in the manner not prohibited by any provisions of the Income-tax Act, 1961.
5. To buy, sell, mortgage, grant, lease, hire or otherwise alienate all or any of the properties of the Trust in its discretion for adequate consideration, so however any sale or alienation of immovable properties of the trust can be done only after obtaining the prior approval of the Commissioner of Income Tax.
6. To execute power of attorney or powers of attorney to any person for the purpose of executing, administering or managing the whole or any part of the Trust for the purpose of all or some among the objects of the Trust.
7. To borrow money with or without security and to repay the same.
8. To receive, collect and enforce recovery of all monies due or payable to the Trust and grant receipts and discharges therefor.
9. To settle, compromise or compound any disputes or refer the same to arbitration or litigation.
10. To receive voluntary contributions from any person or persons from India or outside, after complying with the statutory formalities, by way of donation, gifts or in any other manner and to hold the same upon Trust for the objects set forth herein.
11. To appoint, suspend, dismiss or otherwise deal with the staff required for the administration of the Trust, to frame rules relating to their salaries and other benefits and generally to exercise all powers ancillary and incidental to effectively carry out the objects of the Trust.
12. The Board shall have power to make and rescind rules and regulations for the management and administration of the Trust.
13. No Trustee shall commit any act or breach of Trust of the Trust fund or property or cause any loss to the Trust property or commit fraud in the administration of the Trust fund/property.

A Study on Laws Governing Charitable Organisations in India

14. The Trustees shall hold honorary office and shall not be entitled to any salary, allowances or perquisites, except for the reimbursement of actual expenses incurred in connection with attending to the Trust matters.
15. The Board of Trustees will follow the instructions given by any donor who makes substantial contribution towards furtherance of the objects of the Trust, so long as such instructions are not detrimental to the attainment of the objects of the Trust and are in conformity with the provisions of the Income-tax Act, 1961.
16. For the management and administration of the Trust, the Trustees shall elect one amongst themselves for each of the offices of Vice President, Secretary and Treasurer. The term of office for Vice President, Secretary and Treasurer shall be for a period of one year from their date of appointment and they may be reelected for further terms. No Trustee including the Managing Trustee shall hold more than one of the above offices at the same time. The persons holding these offices of Vice President, Secretary and Treasurer shall be under the administrative guidance and supervision of the Managing Trustee and will report to him directly.

B. ROLES AND RESPONSIBILITIES AND POWERS

The roles, responsibilities and powers of all these officers are defined below. In addition to these, the Managing Trustee may grant additional roles, responsibilities and powers to any of the Trustees.

a) MANAGING TRUSTEE

In addition to discharging normal duties of a trustee, the Managing Trustee shall preside over meeting of the Board of Trustees. The Managing Trustee is authorised to sign all documents, including bank documents, acknowledgements for the contributions received, and agreements with individuals, Government Institutions and other organisations, on behalf of the Board of Trustees. The Managing Trustee shall have all the residuary powers, not explicitly assigned to any of the other officers in these presents.

The Managing Trustee is authorised to sign along with the Treasurer bank cheques, deposit release vouchers etc. The Managing Trustee is empowered

A Study on Laws Governing Charitable Organisations in India

to remove any Trustee from the Trust and its offices, if he/she finds that his/her activities are not congenial to the activities of the Trust.

The Managing Trustee is responsible for ensuring that the Trust pursues its Objects and for maintaining the dignity of the Trust organisation and shall use his/her influence to promote the activities of the Trust.

b) VICE PRESIDENT

The Vice President shall discharge the duties of the Managing Trustee, in the absence of the Managing Trustee of the Trust and shall have the power and authority delegated and assigned to him/her by the Managing Trustee.

c) SECRETARY

The Secretary shall maintain the records of the organisation prepare and circulate agenda and minutes of Board of Trustee meeting for the approval of the Managing Trustee.

The Secretary shall be also responsible for the day-to-day administration activities of the Trust. The Secretary shall deal with correspondence received by the Trust, send replies in consultation with the Managing Trustee, Vice President and/or the Treasurer where necessary. He/she is responsible for the safe custody of all the properties and records of the Trust. The Secretary shall represent the Trust in all legal matters, sign the papers related to legal cases, attend to courts or represent the Trust in Government offices.

d) TREASURER

The Treasurer will prepare Annual Budget, monthly and yearly expenditure statements get the expenditure audited by auditor duly appointed by the Board of Trustees and place them before the Board of Trustees for approval. The Treasurer is responsible to maintain cash book and prepare vouchers for the payments made, receive contributions, sign acknowledgements for the amounts or articles received by the Trust and prepare monthly and yearly statements of revenue and expenditure, as well as, the register of assets of the Trust and place them before the Board of Trustees for their approval.

The Treasurer is authorised to sign bank cheques, application for drafts and payment instructions jointly with the Managing Trustee and draw money from the bank, up to the limits defined by the Board of Trustees in their meetings. The Treasurer is responsible for safe custody of cash, bonds, securities etc. of the Trust.

VI. MEETING OF THE BOARD OF TRUSTEES

The Board of Trustees should meet at least once in every calendar quarter and may meet more often when required.

- 1) The meeting of Board of Trustees shall be convened by the Managing Trustee and he shall preside over the meetings. In his absence, the Managing Trustee may authorise the Vice President to be the Chairman of such meetings. In the event the Managing Trustee or Vice President are not able to attend the meeting already convened, any of the Trustees present in the meeting may elect one amongst themselves to be the Chairman of the meeting.
- 2) One half of the Board of Trustees or a minimum of two trustees, whichever is higher, shall constitute the QUORUM for the Board of Trustee meetings.
- 3) All decisions shall be carried out by the majority decision of the Board but in the event of equality of votes, the Chairman presiding over the meeting shall have a casting vote.
- 4) Any resolution in writing signed by all the Trustees by circulation shall have equal force as though it has been passed at a meeting of the Board of Trustees.
- 5) The meeting of the Board shall be conveyed after giving at least a week's notice unless all the Trustees agree to accept a shorter notice.
- 6) The Board of Trustees may invite other persons interested in the objects and functioning of the Trust to attend the meetings of the Board, but they shall not be entitled vote in the meetings of the Board.

VII. BANK ACCOUNT

The Managing Trustee and the Treasurer shall jointly operate Bank Accounts on behalf of the Trust. In their absence, any of the Trustees may be authorised by the Board of Trustees, by a resolution, to operate the bank accounts. One or more Bank Accounts may be opened in any Bank and or Banks in the name of the Trust.

VIII. INVESTMENT OF TRUST FUNDS

- 1) The Board of Trustees shall have the power to invest the funds, assets and properties of the Trust at their discretion in accordance with the provisions of the Income-tax Act, 1961.
- 2) The Board shall also determine from time to time, the amount it shall spend on the various activities of the Trust.

IX. ACCOUNTS AND AUDIT

- 1) The financial year of the Trust shall be from 1st April to 31st March of the following year, unless otherwise decided by the Board of Trustees.
- 2) The Board of Trustees shall maintain true and correct accounts of the Trust.
- 3) The accounts of the Trust shall be annually audited by a Chartered Accountant appointed by the Board of Trustees and the audited statement of account shall be placed before the Board for its approval within three months of the close of the financial year.

X. AMENDMENTS

- 1) While this Trust shall be irrevocable, the Board of Trustees may amend any of the clauses except those relating to objects of the Trust, the First Managing Trustee and First Trustees, at a duly convened meeting of the Board with at least 2 weeks' notice, and by a resolution passed by at least three-fourths majority of the Board of Trustees present and voting. The amendments to the Trust deed can only be passed by a resolution of the Board of Trustees in an actual meeting and not by circulation.
- 2) If any alteration or amendment is necessary, the same shall be effected through supplementary deed/deeds with the previous approval of the Commissioner of Income Tax and these shall be read together with the main Trust deed.

XI. INDEMNITY

The Board of Trustees shall be indemnified for any act done by them in good faith in the course of the administration of the Trust.

XII. SETTLOR AND THEIR RELATIVES

Notwithstanding the powers vested with the Trustees under the proceeding clause, no part of the income of the Trust shall benefit directly or indirectly the trustees and no part of the income of the property of the Trust shall be used or applied directly or indirectly for the benefit of:

- (a) **SETTLOR, Managing Trustee, Trustees** or any person who makes a substantial contribution to the Trust or of any relative of the **SETTLOR, Managing Trustee, Trustees** or the person who makes a substantial contribution.
- (b) Any **“related concern”** in which any of the above persons has substantial interest.
- (c) For the purpose of this clause, the word **“relative”** and the phrases **“related concern”, “substantial interest”** and **“substantial contribution”** shall have the meanings assigned to them in the Income-tax Act, 1961.

XIII. APPLICABILITY OF TRUST ACT

The provisions of the Maharashtra Trust Act, 1950 (any other Public Trust Act) shall apply to all matters not specifically mentioned in these presents.

XIV. APPLICATION OF INCOME-TAX ACT

All clauses herein are intended to secure exemption from Income Tax on the income of contributions and donations to the Trust and any clause or portion of this Deed of Trust which is inconsistent with or repugnant to the sections of the Income-tax Act, 1961 as amended, substituted or modified from time to time, shall be deemed to be deleted or modified with effect from the date on which the sections to which the clause or part of a clause is repugnant or inconsistent comes into force.

XV. THIS TRUST IS DECLARED IRREVOCABLE

XVI. DISSOLUTION

In the event of dissolution of the Trust, the entire Trust funds shall be realized and first be used for payment of liabilities of the Trust. The assets left if any, shall be disbursed to other Trusts or Associations having similar objectives after obtaining previous approval of Commissioner of Income-tax and in no event it shall be distributed in any manner, to any of the Board of Trustees or their relatives or related concerns.

SCHEDULE

At present, the Trust has no property or assets, either movable or immovable, other than the Trust Fund and the immovable properties, donated by the SETTLOR, as described in the Schedule below:

- 1. **Cash contribution to the Corpus Fund of the Trust of Rupees -----
(Rupees ----- only)**

- 2. **Properties of -----**

- 3. **Assets of -----**

IN WITNESS WHEREOF THE SETTLER AND THE FIRST TRUSTEES here to have set their hands on the day, month, and year first above written.

SIGNATURE OF SETTLOR

Signature: -----
Name:
Address:

SIGNATURE OF FIRST TRUSTEES

- 1. Signature: -----
Name:
Address:

- 2. Signature: -----
Name:
Address:

- 3. Signature: -----
Name:
Address:

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Witnesses:

1) Signature: -----

Name and address

4. Signature: -----

Name:

Address:

2) Signature: -----

Name and address

5. Signature: -----

Name:

Address:

Chapter 8

Stamp Duty for Charitable Organisations

Stamp duty for Trust Deed in Karnataka

The stamp duty is ₹ 500/- only, if money is contributed by the author of the trust or if immovable property is conveyed wherein the author remains as the sole trustee. It is the same for declaration of – concerning any money or amount conveyed by the author to the trust as the corpus.

If the immovable property is conveyed and the author is not a trustee or a sole trustee then the stamp duty is the same as that of conveyance. The stamp duty applicable for conveyance is 6% of the market value of the property.

As per Article III of table of fees under Karnataka Registration Rules, 1965, fee shall be paid at 1 per cent on the total of value shown by the trustee or value of movable or immovable property shown in the trust deed.

Levy of Stamp duty on Trust deed entirely depends on the intention and the wordings used in the Trust deed. A Trust deed either can be stamped as a settlement as defined in Section 2 (q) of the Karnataka Stamp Act, 1957, read with Article 48 or as per Article 54 of the Schedule to the Karnataka Stamp Act, 1957 as the case may be.

The fee for registration of Memorandum of association and rules and regulations of Society is ₹ 1000 - if society is situated within Bengaluru Metropolitan Regional Development Authority limits and ₹ 500 - if society is situated in any other area.

Stamp duty for Trust Deed in Tamil Nadu

In case of declaration of Trust or concerning any property when made by any writing not being a Will – the same duty as a Bottomry Bond for a sum equal to the amount or value of property concerned, as set forth in the instrument but not exceeding One hundred & eighty rupees.

In case of revocation of trust or concerning any property when made by an instrument other than a Will – same duty as a Bottomry Bond for a sum equal to

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the amount or value of property concerned, as set forth in the instrument but not exceeding One hundred & twenty rupees.

(Bottomry Bond is any instrument whereby the master of a sea going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage. The stamp duty is Four rupees for every ₹ 100 or part thereof up to ₹ 1,000 and twenty rupees for every ₹ 500 or part thereof in excess of ₹ 1,000.)

Stamp duty for trust in Maharashtra

The Bombay Stamp Act applies to the entire State of Maharashtra. Only the instruments specified in the Schedule I to the Act are covered by this Act. All other instruments are either chargeable under the Indian Stamp Act (e.g., transfer of shares) or are not chargeable at all (i.e., if they are not specified under the Act as well as under the Indian Stamp Act). Following are the rates of stamp duty –

- a. Where there is disposition of property for charitable or religious purpose - ₹ 10 for every ₹ 500 or part thereof (approx. 2%)
- b. In any other case where there is no disposition - Same as on a conveyance on the amount settled
- c. Revocation of trust – ₹ 200

Chapter 9

Applicability of FCRA, 2010 for Charitable Organisations

Foreign Contribution is regulated under the provisions of the Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011. Till 30th April, 2011, receipt and utilisation of foreign contribution used to be regulated under the provisions of the Foreign Contribution (Regulation) Act, 1976 and the Foreign Contribution (Regulation) Rules, 1976. Thereafter, FCRA, 1976 was repealed. Foreign contribution is now regulated under the provisions of the Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011. Both FCR Act, 2010 and FCR Rules, 2011 have come into force simultaneously with effect from 1st May, 2011 through notifications in the Gazette of India [S.O. 999 (E) dated the 29th April, 2011] and G.S.R. 349 (E) dated the 29th April, 2011. While the basic features of the repealed Act have generally been retained, the FCR Act, 2010 is an improvement over the repealed Act as more stringent provisions have been made in order to prevent misutilisation of the foreign contribution received by any person.

The FCR Act of 2010 seeks to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

Applicability of the Act

The Act is applicable to all citizens of India, including even citizens residing outside India and to all associate branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India. However the Act is not applicable to a foreigner while outside India.

Regulation of Foreign Contribution

The Act regulates receipt of foreign contribution by the following broad categories of Associations/individuals:

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(i) Category I (Section 3):

Section 3 of the Act prohibits receipt of foreign contribution by the following categories of persons:

- i. Candidates for election;
- ii. Correspondents, columnists, cartoonists, editors, owners, printers or publishers of registered newspapers;
- iii. Judges, Government servants or employees of any Corporation or any other body controlled or owned by the Government;
- iv. Members of any legislature;
- v. Political parties or office-bearers thereof;
- vi. Organisations of a political nature as may be specified under sub-section (1) of Section 5 of the Act by the Central Government;
- vii. Associations or companies engaged in the production or broadcast of audio news or audio visuals or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (i) of section 2 of the Information Technology Act, 2000 or any other mode of mass communication;
- viii. Correspondents or columnists, cartoonists, editors, owners of the Associations or companies referred to in clause (g); and
- ix. Individuals or Associations who have been prohibited from receiving foreign contribution.

ii) Category II [Section 11]:

Section 11 of the Act provides that no Association having a definite cultural, economic, educational, religious or social programme can receive foreign contribution without seeking registration or prior permission from the Central Government.

Any Association which has a defined programme for carrying out specific activities, which may fall in the five generic categories as mentioned above, may seek registration or prior permission for receipt of foreign contribution.

After grant of registration or prior permission under the Act, the Association is permitted to receive foreign contribution only in the single Bank Account

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mentioned in the order for registration or prior permission granted by the Central Government. This account number would be the same as has been intimated by the organisation in their application for registration/prior permission. However, one or more accounts, in one or more scheduled banks, may be opened for utilising the foreign contribution provided that no funds other than the foreign contribution received should be deposited in such account or accounts. An Association which has received foreign contribution is also required to inform the Central Government of the amount of each foreign contribution received by it, the sources thereof, the manner in which such foreign contribution was received and the purposes for which such foreign contribution was utilised by it.

(iii) Category III (Sections 9 and 12):

Section 9 of the Act empowers the Central Government to prohibit any individual or Association not specified in section 3 from accepting any foreign contribution, or to require any Association specified in Section 11 to receive foreign contribution only after obtaining prior permission of the Central Government. Such prohibition or requirement for prior permission is made only after the Central Government is satisfied that the receipt of foreign contribution by such Association or person or class of persons, as the case may be, is likely to prejudicially affect:

- (i) the sovereignty and integrity of the nation; or
- (ii) the security, strategic, scientific or economic interest of the State; or
- (iii) harmony between religious, racial, social, linguistic or regional groups, castes or communities; or
- (iv) friendly relation with any foreign State; or
- (v) the public interest; or
- (vi) freedom or fairness of election to any legislature; and that the acceptance of foreign contribution-
 - (a) shall not lead to incitement of an offence;
 - (b) shall not endanger the life or physical safety of any person.

The illustrative programmes permitted to be carried out by associations having different nature are indicated below —

1. Religious

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- Celebrations of religious functions/festivals etc.
- Construction/repair/maintenance of places of worship, religious schools.
- Education of priests and preachers; (dissemination of the message of goodwill etc. from their holy books).
- Publication and distribution of religious books/ literature.
- Maintenance of priests/preachers/other religious functionaries.
- Any other activities related to the above.

2. Educational

- Construction and maintenance of school/college.
- Construction and running of hostel for poor students.
- Grant of stipend/Scholarship/assistance in cash and kind to poor/ deserving children.
- Purchase and supply of educational material—books, notebooks etc.
- Conducting adult literacy programmes.
- Conducting Research.
- Education/Schools for the mentally challenged.
- Non-formal education projects/coaching classes.
- Any other activities related to the above.

3. Economic

Following activities (Not being commercial or profit making activities)

- Micro-finance projects, including setting up banking co-operative and self-help groups.
- Self-sustaining income generation projects/Schemes.
- Agricultural activity.
- Rural development.
- Animal husbandry projects.

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- Setting up and running handicraft centre/cottage and khadi industry/social forestry projects.
- Vocational training, tailoring, motor repairs, computers etc.
- Any other activities related to the above, not being commercial activities.

4. Social

- Construction/Running of Hospital/dispensary/clinic.
- Construction of community halls etc.
- Construction and Management of old age home.
- Welfare of the aged widows.
- Construction and Management of Orphanage.
- Welfare of the orphans.
- Construction and Management of dharamshala/shelter.
- Holding of free medical/health/family welfare/immunisation camps.
- Supply of free medicine, and medical aids, including hearing aids, visual aids, family planning aids etc.
- Provision of aids such as tricycles, callipers etc. to the handicapped.
- Treatment/Rehabilitation of drug addicts.
- Welfare/Empowerment of women.
- Welfare of children.
- Provision of free clothing/food/to the poor, needy and destitute.
- Relief/Rehabilitation of victims of natural calamities.
- Help to the victims of riots/other disturbances.
- Digging of bore wells.
- Sanitation including community toilets etc.
- Awareness camp/seminar/workshop/meeting/conference.

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- Providing free legal aid/Running legal aid centre.
- Holding sports meet.
- Awareness about Acquired Immune Deficiency Syndrome (AIDS)/ Treatment and rehabilitation of persons affected by AIDS.
- Welfare of the physically and mentally challenged.
- Welfare of the Schedules Castes.
- Welfare of the Scheduled Tribes.
- Welfare of the Backward Classes.
- Environmental programmes.
- Survey for Socio-economic and other welfare programmes.
- Preservation & maintenance of Wild Life.
- Preservation of Natural Resources.
- Awareness against social evils.
- Rehabilitation of victims of heinous crimes.
- Rehabilitation of beggars, bootleggers, child labour etc.
- Creating awareness of Government schemes & Law to general public.
- Any other activities related to the above.

5. Cultural

- Celebration of national events (Independence/Republic day/ festivals).
- Theatre/Films etc.
- Maintenance of places of historical and cultural importance.
- Preservation of ancient/tribal art forms.
- Preservation & promotion of Cultural Heritage & Literature of India.
- Cultural shows.
- Any other activities related to the above.

Foreign Hospitality

“Foreign Hospitality” means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment.

“Foreign source” includes —

- (i) The Government of any foreign country or territory and any agency of such Government;
- (ii) Any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such agency as the Central Government may, by notification, specify in this behalf;
- (iii) A foreign company;
- (iv) A corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) A multi-national corporation referred to in sub-clause (iv) of clause (g)*;
- (vi) A company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:—
 - (A) The Government of a foreign country or territory;
 - (B) The citizens of a foreign country or territory;
 - (C) Corporation incorporated in a foreign country or territory;
 - (D) Trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
 - (E) Foreign company:
- (vii) A trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
- (viii) A foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;

A Study on Laws Governing Charitable Organisations in India

- (ix) A society, club or other association of individuals formed or registered outside India;
- (x) A citizen of a foreign country.

*A corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation, if such corporation –

- (a) Has a subsidiary or branch or place of business in two or more countries or territories; or
- (b) Carries on business, or otherwise operates, in two or more countries or territories.

The Act regulates acceptance of foreign hospitality by certain individuals, which includes members of a legislature, office-bearers of a political party, judges, government servants or employees of any Corporation, while visiting any country or territory outside India. Such individuals can receive foreign hospitality only with the prior permission of the Central Government by applying in Form FC-2.

Every application for acceptance of foreign hospitality should be accompanied by an invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or Department concerned in case of visits sponsored by a Ministry or Department of the Government. Every application for grant of permission to accept foreign hospitality, complete in all respects, should reach the Ministry of Home Affairs, Foreigners Division at least 10 working days before the scheduled date of departure of the person(s) concerned.

Prior permission is not required when such individuals are to receive any emergent medical aid on account of a sudden illness contracted during foreign visit, but they are mandated to intimate the Central Government within 60 days from the date of receipt of such hospitality. The intimation should include the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilised. No such intimation is required if the value of such hospitality in emergent medical aid is up to one lakh rupees or equivalent thereto.

Prior Permission/Registration

Associations applying for prior permission or registration should ensure the following –

- ✓ Any Association/NGO wishing to receive foreign contribution (FC) must have a definite cultural, economic, educational, religious or social programme.

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- ✓ It should neither receive nor utilise any Foreign Contribution without obtaining either prior permission or registration from the Central Govt.
- ✓ Details of Foreign Contribution received prior to obtaining either prior permission or registration should be mentioned clearly at the time of applying for prior permission or registration, as the case may be.
- ✓ Application for grant of registration is to be made online in Form FC-3.
- ✓ Application seeking prior permission to accept foreign contribution is to be made online in Form FC-4.
- ✓ The application should be complete in all respects and no column should be left blank.
- ✓ Each Prior permission application should be sent for receiving a specific amount, for a specific purpose and from a specific donor.

Following documents should be enclosed with the application for grant of Registration:

- i. Hard-copy of the online application, duly signed by the Chief Functionary of the association;
- ii. Certified copy of registration certificate or Trust deed, as the case may be;
- iii. Details of activities during the last three years;
- iv. Copies of audited statement of accounts for the past three years (Asset and Liabilities, Receipt and Payment, Income and Expenditure);
- v. If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Registrar of Newspaper for India that the publication is not a newspaper in terms of section 1(1) of the said Act.
- vi. A copy of the PAN, if issued by Income Tax authorities.
- vii. Fee of by means of demand draft or banker's cheque of ₹ 2000/- in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

Following documents should be enclosed with the application for grant of Prior Permission:

- i. Hard-copy of the online application, duly signed by the Chief Functionary of the association;

A Study on Laws Governing Charitable Organisations in India

- ii. Certified copy of registration certificate or Trust deed, as the case may be;
- iii. Commitment letter from foreign donor specifying the amount of foreign contribution;
- iv. Copy of the project report for which foreign contribution is solicited/being offered;
- v. If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Registrar of Newspaper for India that the publication is not a newspaper in terms of section 1(1) of the said Act.
- vi. A copy of the PAN, if issued by Income Tax authorities.
- vii. Fee of by means of demand draft or banker's cheque of ₹ 1000/- in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

The hard copy of the online application along with all the documents mentioned above must reach the Ministry of Home Affairs, Foreigners Division (FCRA Wing) within thirty days of the submission of the online application, failing which the request of the person for grant of registration or prior permission, as the case may be, will be deemed to have ceased.

Associations who have been granted prior permission or registration under FCRA, 1976

An association granted prior permission or registration under the repealed Foreign Contribution (Regulation) Act, 1976 will be deemed to have been registered or granted prior permission, as the case may be, under the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) and such registration will be valid for a period of 5 years from the 1st May, 2011, i.e., up to the 30th April, 2016.

An association granted prior permission or registration under the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) should receive the foreign contribution in the same exclusive designated Bank Account mentioned in the order granting prior permission or registration. This account number would be the same as has been intimated by the organisation in their application for prior permission/registration. Deposit of any local fund in this bank account is not allowed. One or more accounts in one or more scheduled banks may be opened for utilizing the foreign contribution provided that no funds other than foreign contribution shall be received or deposited in such account or accounts.

Maintenance of Accounts

An association granted prior permission or registration should maintain a separate set of accounts and records, exclusively for foreign contribution received and utilised. If the foreign contribution relates only to articles, the intimation should be submitted in Form FC-7. If the foreign contribution relates to foreign securities, the intimation should be submitted in Form FC-8. Every report submitted shall be duly certified by a chartered accountant.

Every account giving details of the receipt and purpose-wise utilisation of the foreign contribution, including the interest earned on the foreign contribution amount, should be maintained on an yearly basis, commencing on the 1st day of April each year, and every such yearly account is to be submitted, in prescribed Form FC-6 along with the income and expenditure statement, balance sheet and statement of receipt and payment, duly certified by a chartered accountant in duplicate, within nine months of the closure of the year, i.e., before 31st December. Every such return in Form FC-6 should also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank. The cash book and ledger account on double entry basis, where the foreign contribution relates to currency received and utilised. The annual return in Form FC-6 should reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.

The accounting statements should have to be preserved by the NGO/association for a period of six years.

Even if no foreign contribution is received during a year, a 'Nil' return is required to be filed with the Ministry of Home Affairs. Any transfer of foreign contribution should be reflected in the returns in Form FC-6 as well as in Form FC-10 by the transferor and the recipient.

Associations/NGOs granted registration or prior permission, which have received foreign contribution in excess of one crore rupees, or equivalent thereto, in a financial year, should place the summary data on receipts and utilisation of the foreign contribution pertaining to the year of receipt as well as for one year thereafter in the public domain.

Other compliances

Foreign contribution should not be mixed with local funds being handled by the organisation.

A Study on Laws Governing Charitable Organisations in India

An association granted prior permission or registration is required to carry out the activities, for which foreign contribution is received, in India only and the amount should not be utilised for purposes other than for which it is received.

Any fixed asset acquired out of the foreign contribution and any article received in kind from the foreign source should be in the name of the association and not in the name of any individual in the association.

Change of name, address, registration, nature of activities or aims and objectives of an association should be intimated to the Ministry of Home Affairs within 30 days of effecting the change, along with the documentary evidence effecting the change.

Prior permission of Ministry of Home Affairs should be obtained for replacing 50% or more of the office bearers.

Prior permission of Ministry of Home Affairs should be obtained for changing bank account for valid and convincing reasons.

Penalty

Any person who gives false information or seeks prior permission or registration by fraud or false representation or concealment of material fact will be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Any person who contravenes any other provisions of the Act will be punishable with imprisonment for a term which may extend to five years or with fine or with both.

List of Forms under the Act

Form	Description
FC-1	Intimation to the Central Government of receipt of foreign contribution by way of gift from relative.
FC-2	Application for seeking prior permission of the Central Government to accept foreign hospitality.
FC-3	Application for 'registration' under section 11(1) of the Foreign Contribution (Regulation) Act, 2010 for the acceptance of foreign contribution by an Association having definite cultural, economic, educational, religious or social programme.
FC-4	Application for 'prior permission' under sub-section (2) of section 11 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) for the acceptance of foreign contribution by an Association having definite cultural, economic, educational, religious or social programme.

A Study on Laws Governing Charitable Organisations in India

Form	Description
FC-5	Application for seeking renewal of 'registration certificate' under section 13 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010).
FC-6	Yearly account of Foreign Contribution received and utilised.
FC-7	Intimation about Foreign Contribution (Articles) Account.
FC-8	Intimation about Foreign Contribution (Securities) Account.
FC-9	Intimation to the Central Government of Receipt of Foreign Contribution received by a candidate for Election [section 21 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010).
FC-10	Application for seeking permission for transfer of foreign contribution to other registered/unregistered persons.

Chapter 10

Religious and Charitable Endowments

Hindu Religious and Charitable Endowments

From the earliest times, Hindus have been donating property for religious and charitable purposes. This has been mainly under two heads: Ishta and Pushta. The former indicates the Vedic sacrifices and rites and gifts associated with such sacrifices. The latter stands for all other religious and charitable acts and purposes unconnected with the vedic sacrifices. The Ishta-Pushta have been considered as means for going to heaven. Various types of gifts were emphasized, but merely by making gifts or performing sacrifices, a charitable or religious endowment doesn't come into existence. It will come into existence only when some property or fund is dedicated for a religious or charitable purpose or object.

It is to be noted that definition of the phrase "charitable purpose" is inclusive and it covers a wider field than the field covered by the words "religious purpose". Further, in some cases, even a religious activity by a particular sect would be a charitable activity; for some, supply of fodder to animals and cattle is a religious object, while to others it may be a charitable purpose, according to Hindu religious activity. Similarly, Khairat under the Mohammedan law would be considered to be a religious activity. The said activities may be for a charitable purpose to some. Hence, in many cases, both the purposes may be overlapping. The purposes may have both the elements, charity as well as religious.

While dealing with what is "religious" or "charitable purpose" it is observed by the Supreme Court in the case of *Ramchandra Shukla vs. Shree Mahadeoji*, (AIR 1970 SC 458) that there is no line of demarcation in the Hindu system between religion and charity. Indeed, charity is regarded as part of religion. While discussing this aspect, the Supreme Court has further observed as under:

"Hindu piety found expression in gifts to idols to religious institutions and for all purposes considered meritorious in the Hindu social and religious system. Therefore, although courts in India have for a long time adopted the technical meaning of charitable trusts and charitable purposes which the courts in England have placed upon the term 'charity' in the Statute of Elizabeth, and, therefore, all purposes which according to English law are charitable will be

A Study on Laws Governing Charitable Organisations in India

charitable under Hindu law, the Hindu concept of charity is so comprehensive that there are other purposes in addition which are recognised as charitable purposes. Hence, what are purely religious purposes and what religious purposes will be charitable purposes must be decided according to Hindu notions and Hindu law."

Essentials of a valid endowment

1. The dedication must be complete,
2. The subject matter must be specific,
3. The object must be definite,
4. The settler must have the capacity to make the endowment.

Math and Mahant

In the ordinary parlance, Math means an abode or residence of ascetics. In its legal connotation, it is a monastic institution presided over by its head, known as Mahant, a superior ascetic, and established for the use and benefit of ascetics generally or of ascetics belonging to a particular order, ordinarily, the disciples of Mahant. The basic purpose of a math is to encourage and foster spiritual learning and knowledge, by maintenance of a competent line of teachers who impart religious instruction to disciples and followers of the Math and to strengthen the doctrines of the sect or school to which Math subscribes. There can be Sudra maths also. Although, the Mahant is the head of the math, the property dedicated to a math doesn't vest in him, but it vests in the math itself as a juristic person.

The Mahant is neither a trustee nor a corporate sole. He is just the manager of the math, with wider powers than those possessed by a manager, trustee or *dharmakarta* of a temple. He has a dual capacity as he is the manager of the properties, and the spiritual head of the math.

10.1. Wakf

Under Muslim rule in India, the concept of wakf was more widely comprehended as aligned with the spirit of charity endorsed by the Quran. Wakf implies the endowment of property, moveable or immovable, tangible or intangible to God by a Muslim, under the premise that the transfer will benefit the needy. As a legal transaction, the Waqif (settler) appoints himself or another trustworthy person as Mutawalli (manager) in an endowment deed (Waqfnamah) to administer the wakf (charitable Trust).

A Study on Laws Governing Charitable Organisations in India

In consonance with the spirit of Islam, Indian Muslim rulers generously dedicated property such as land and its revenue rights to Waqf created with the purpose of maintaining mosques, tombs, orphanages (yatimkhanas), madrasas etc. Land could also be Waqfed for the creation of a graveyard. In many cases, donations to a Waqf were made with the intent of promoting the tenets of Islam. Under Muslim rule, the presence of Islamic courts overseen by Qazis ensured that the Mutawallis discharged their duties fairly. Mismanagement of Waqf property was considered breach of the trust reposed in them for which they were duly punished.

In the 14th century, Sultan Allauddin Khilji came down heavily on a number of Mutawallis. During the Mughal rule, Akbar appointed an Inquiry Officer to go into the allegations of misappropriation of Waqf funds by Shaikh Hassan and removed him from Mutawalliship. Ain-e-Akbari records an instance when Akbar dismissed many Qazis who had taken bribes from the holders of Waqf lands.

After the collapse of the Mughal Empire, for a long period, the Waqf administration remained loosely controlled. During the first phase of the British Rule in India, the colonial administration too, apart from maintaining oversight over endowments, did not give much attention to this issue as they had a very scanty knowledge of the Islamic legal system. After 1857, when the British started expanding the Common law regime in the country, they began exercising control over Waqfs. Their interference was mostly on charges of corruption in management of Waqf properties. Immediately after the revolt of 1857, the British Government confiscated Waqf properties such as the Jama Masjid and the Fatehpuri Mosque in Delhi. They were restored to the Trustees (Mutawallis) only after the enactment of the Charitable and Religious Endowments Act by the government in 1863. Another practice the British came down heavily on was the attempt to create family Waqfs by wealthy Muslim families desirous of keeping their property within the family yet safe from future sell-off by irresponsible progeny. In 1894, the Privy Council spoke of such efforts as concealed means for the aggrandizement of family, and noted that their provision for charity is so illusory that as long as the lineage of the donor family continues, the poor do not have any chance of receiving even a rupee from the Waqf.

The first specific law on the subject came only in 1913 when the British Government enacted the Mussalman Waqf Validating Act, 1913. Thereafter, a succession of laws came up to streamline Waqf management in India.

A Study on Laws Governing Charitable Organisations in India

Under Section 3(r) of the Wakf Act 1995:

“Wakf” means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes -

- (i) a Wakf by user but such Wakf shall not cease to be a Wakf by reason only of the user having ceased irrespective of the period of such cesser;
- (ii) “grants” , including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
- (iii) a Wakf-al-al-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, and ‘Wakif’ means any person making such dedication;

Under Sec.19 of Maharashtra Public Trusts Act, 1950, “Wakf” means a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable and includes a wakf by user and grants (including mashrutulkhidmat) for any purpose recognised by the Muslim Law as pious, religious or charitable and a wakfallalaulad to the extent to which the property is dedicated for any purpose so recognised; but does not include a wakf such as is described in Section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any member of his family or descendants.

Wakf is a permanent dedication of movable or immovable properties for religious, pious or charitable purposes as recognized by Muslim Law. The Wakf Institutions deal with the religious, social and economic life of Muslims. They not only support Mosques, Dargah etc. but many of them support Schools, Colleges, Hospitals and Musafirkhanas which are meant for social welfare.

Administration of wakf

The Central Government is responsible for the implementation of the Wakf Act. The Wakf Act, 1954 had provisions for survey of Wakfs, constitution of Central Wakf Council and State Wakf Boards etc. For better interpretation of the provision of the Act keeping in view the objective of the legislation, the Wakf Act, 1954 was amended many times. Finally a comprehensive and land mark legislation i.e. Wakf Act, 1995 was enacted by the Government of India in November, 1995, which became effective from 01.01.1996. In contrast to the previous Act, this Act

A Study on Laws Governing Charitable Organisations in India

is applicable throughout the country except for Jammu & Kashmir and Dargah Khwaja Saheb, Ajmer.

Essentials of Wakf

- Wakf has to be a permanent endowment in perpetuity.
- It cannot be either contingent or revocable.
- No instrument in writing is required to create a wakf. An oral dedication can as well create a wakf.
- Neither delivery of possession nor appointment of mutawallis is required. But the subject of wakf must be clearly defined.
- A wakf can also be made by a will or by long user.
- Any Muslim who has attained majority and is of sound mind can make a wakf. A minor or his guardian as on behalf of the minor cannot make a wakf. A wakf cannot be made for an illegal object.
- A wakf nama by which immovable property of value of Rs.100 or more is dedicated by way of wakf requires registration.
- The property which is either capable of being used without being consumed or which is though consumable in itself but is capable of being converted into property of a permanent nature can form the subject matter of a wakf.
- A wakf can be created for any purpose which is considered religious, pious, or charitable by the Mohammadan law.
- Any wakf created with the object of obtaining the approval of the almighty or a reward in the next world is pious as per Mohammadan law.
- Few instances of a pious or a religious purpose may be mosques, provisions for imams, colleges, bridges, assistance to poor people to perform pilgrimage to Mecca, and distribution of alms to the poor.
- Wakf may be made for the rich as well poor people alike or for the affluent and thereafter for the poor or for the poor people alone. All persons regardless of their financial status can be made beneficiaries of a wakf.
- Even family members and descendants of the wakif, that is the person creating the wakf, can be made beneficiaries. Under Hanafi law, the wakif himself can also be a beneficiary.

A Study on Laws Governing Charitable Organisations in India

- Under Muslim law, the administration of a wakf is vested in the Mutawalli but since 1923 a number of Central and State Acts have restricted and regulated the administration powers of a mutawalli so as to ensure transparency and proper execution of a wakf. For instance the Wakf Act, 1954 makes registration of a wakf, whether created before or after the commencement of the Act, at the office of a wakf commissioner mandatory.
- Thereafter, the Mutawalli's of these registered wakfs are required to prepare budget and accounts of the wakf for the appraisal of the wakf commissioner and the wakf board.
- In certain cases, the wakf board can assume direct Management of the wakf.

10.2. Sikh Gurdwaras Act, 1925

The Sikh Gurdwaras Act of 1925 is a legislation passed by the Punjab Legislative Council which marked the culmination of the struggle of the Sikh people from 1920-1925 to wrest control of their places of worship from the mahants or priests into whose hands they had passed during the eighteenth century when the Khalsa were driven from their homes to seek safety in remote hills and deserts. When they later established their sway in Punjab, the Sikhs rebuilt their shrines endowing them with large jagirs and estates. The management, however, remained with the priests, belonging mainly to the Udasi sect, who, after the advent of the British in 1849, began to consider the shrines and lands attached to them as their personal properties and to appropriating the income accruing from them to their private use. Some of them alienated or sold gurdwara properties at will. They had introduced ceremonial which was anathema to orthodox Sikhs. Besides, there were complaints of immorality against them. All these factors gave rise to what is known as the Gurdwara Reform movement during which Sikhs had to court jail on a large scale and suffer atrocity and death.

The British government who took the part of the priests, eventually relented under popular pressure and passed, in the first instance, Sikh Gurdwaras and Shrines Act, 1922, which envisaged a committee nominated by the government to take over control of the gurdwaras. This, however, was not acceptable to the Akali leaders and remained for this reason a dead letter. The agitation continued and the government had another draft worked out. Akali counsel was sought this time and the principal demand about the shrines being handed over to or management to a representative body of the Sikhs was conceded. The bill was moved in the Punjab Legislative Council

A Study on Laws Governing Charitable Organisations in India

by Sardar Tara Singh of Moga on 7 May 1925 and piloted by another Sikh member, Bhai Jodh Singh, eminent educationist and theologian. The bill was, in the first instance, referred to a select committee which presented its report on 20 June. The Council passed the bill on 7 July. It was published in the Punjab Government Gazette on 7 August and it became operative on 1 November 1925 as The Sikh Gurdwaras Act, 1925 (Punjab Act. VIII of 1925).

The Act is applicable only to the territories which, immediately before the 1st November, 1956, were comprised in the State of Punjab and Patiala and East Punjab States Union. The act, as it's preamble declares, aimed at providing for the better administration of certain Sikh gurdwaras and for enquiries into matters and settlement of disputes connected there with.

The Act contains detailed provisions regarding the finances of the S.G.P.C. (Shiromani Gurdwara Parbandhak Committee) and its committees. The General Fund not exceeding ten per cent of the total annual income is for the maintenance of historical gurdwaras with insufficient income. The surplus, if any, may be utilized for religious or charitable purposes or for social or general welfare of the Panth. Religious Fund is for the propagation of Sikh religion and connected matters. Research Fund to which a minimum annual contribution of Rs 20,000 is to be made by the S.G.P.C. is for carrying out research in Sikh history and for publication of books. The Committee can also create and administer funds for specific purposes such as industrial or educational advancement of the community.

The Board can also hold and administer trust funds for purposes of a religious, charitable educational or industrial nature whether such funds are derived from allotments duly made by a committee out of the surplus funds or income of a gurdwara under its management or from donations, or contributions or endowments made direct to the Board for such purposes.

Chapter 11

Taxation Aspects of Charitable Organisations

The Income-tax Act, 1961 is a federal/central piece of legislation, which affects all charitable organisations (trust, society or company) uniformly throughout India.

The legal frame work, granting exemption to a public charitable Trust, a company registered under section 25 of the Companies Act, 1956 (Section 8 of Companies Act, 2013) or a society registered under the Societies Registration Act, 1860, or any other institution is contained in one or more of the following sections of the Act:-

- (i) Section 2(15) – Definition of charitable purpose;
- (ii) Section 2(24)(ia) – Income includes voluntary contributions;
- (iii) Section 10 – Incomes not included in total income;
- (iv) Sections 11,12, 12A – Income from property held for charitable purposes and income of trusts or institutions from contributions;
- (v) Sections 12AA and 13 – Procedure for registration and non-applicability of Section 11 in certain cases; and
- (vi) Sections 35(1)(ii) and 35(i)(iii) – Expenditure on scientific research.
- (vii) Section 115BBC – Anonymous donations to be taxed in certain cases

11.1. Definition of Charitable Purpose

Sec.2(15) of the Income-tax Act, 1961 defines charitable purpose as follows -

“Charitable purpose includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

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

A Study on Laws Governing Charitable Organisations in India

in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year;”

The purposes similar to those mentioned in the aforesaid definition could also constitute ‘charitable purpose’ under the Act. Courts have held that the expression ‘charitable purpose’ is sufficiently wide in scope to include a variety of activities. For instance, promotion of sports and games is a charitable purpose, as is promotion of trade and commerce, even when the beneficiaries are confined only to a particular line of trade or commodity. At the same time, however, the fact that remote and indirect benefits are derived by members of the public will not be sufficient to make the purpose a “charitable purpose” under the Act.

Following are some of the cases, where it will be construed as charitable purpose under the Income-tax Act.

- i. The word ‘Charity’ connotes altruism in thought and action. It involves an idea of benefiting others rather than oneself. (*Andhra Chamber of Commerce [1965] 55 ITR 722 (SC)*)
- ii. A commercial concern is not an object of relief of the poor on the ground that it provides employment. The object should provide relief directly and not indirectly. (*Yograj Charity Trust [1976] 103 ITR 777(SC)*)
- iii. The establishment of an industrial or commercial concern ordinarily envisages a profit making activity and cannot be said to be a charitable purpose on the ground that it will provide employment to some poor persons. (*Jaipur Charitable Trust [1971] 81 ITR 1 (Del); Yogiraj Charity Trust [1976] 103 ITR 777 (SC)*)
- iv. The running of a private coaching institute for the purpose of training the students to appear at certain specified examinations upon taking specified sum from the trainees is not a charitable purpose. (*Bihar Institute of Mining and Mine Surveying [1994] 208 ITR 608 (Pat.)*)
- v. To serve a charitable purpose, it is not necessary that the object should be to benefit the whole of mankind or all persons in a particular

country or state. It is sufficient if the intention to benefit a section of the public, as distinguished from a specified individual, is present. However, the section of the community sought to be benefited must be sufficiently defined and identifiable by some common quality of a public or impersonal nature. (*Ahmedabad Rana Caste Association [1971] 82 ITR 704 (SC)*)

11.2. Registration of Charitable Trusts and Institutions

One of the main conditions for charitable trusts and institutions to claim exemption under the Income Tax Act, 1961 is registration under the Act.

According to Section 12A, the provisions of Section 11 and Section 12 which provide for exemption of income to such trusts and institutions, will not be applicable unless such trust or institution has made an application in the prescribed form for registration to the Commissioner or Director, and it has been registered by the Commissioner or Director.

Another important condition for claiming exemption under Sections 11 and 12, requires a trust or an institution whose income for the previous year before claiming the deduction contemplated under Sections 11 and 12 falls within the tax bracket (i.e., its income exceeds the maximum amount which is not chargeable to income-tax without giving effect to the provisions of Section 11 and Section 12), to get its accounts audited by an Accountant. The Accountant's report in Form No.10B has to be filed along with the return of income. A Chartered Accountant or other authorised person should carry out such an audit.

“Section 12A

- (1) *The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—*
 - (a) *the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA :*

A Study on Laws Governing Charitable Organisations in India

[Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—

- (i) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;*
- (ii) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied:]*

[Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;]

[(aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Commissioner and such trust or institution is registered under section 12AA;]

- (b) where the total income of the trust or institution as computed under this Act without giving effect to [the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year], the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.]*
 - (c) [***]*
- (2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.”*

A Study on Laws Governing Charitable Organisations in India

Section 12AA of the Income-tax Act, 1961 and Rule 17A of the Income Tax Rules, 1962 prescribe the procedure for registration of a trust where an application for registration under Section 12A has been received by the Commissioner or Director. The application for registration has to be made in Form No. 10A. It should be accompanied by the following documents:-

- (ix) Copy of the instrument by way of which the trust or institution etc. is created;
- (x) If it has been in existence in the years prior to the year in which application is made, accounts of the prior years (not exceeding three years).

On receipt of the application, the Commissioner of Income Tax has to pass an order either registering the trust or institution or rejecting the application. The registration may be rejected on the ground that the trust or its activities are not genuine. Under sub-Section (2) of Section 12AA such an order registering or refusing registration has to be passed within a period of six months from the end of the month in which the application is made.

Before granting registration, the Commissioner should satisfy himself about the objects of the trust or institution and the genuineness of its activities.

“Section 12AA. (1) The Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) of sub-section (1) of section 12A, shall—

- (a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and*
- (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—*

A Study on Laws Governing Charitable Organisations in India

- (i) shall pass an order in writing registering the trust or institution;*
- (ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :*

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

- (1A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.*
- (2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of sub-section (1) of section 12A.*
- (3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:*

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.”

A Study on Laws Governing Charitable Organisations in India

Following are the requirements before making an application for registration –

- there should be a legally existent entity which can be registered;
- it should have a written instrument of creation or written document evidencing its creation;
- all its objects should be charitable or religious in nature;
- its income and assets should be made applicable exclusively towards the objects mentioned in the object clauses, and the rules and by-laws;
- no part of its income should be distributable or distributed, directly or indirectly, to its members, directors or founders, related persons or relatives etc. claiming through them;
- in case of dissolution, its net assets after meeting all its liabilities, should not be revertible or reverted to its founder, members, directors or donors etc., but used for the objects.

11.3 Assessment of Income of a Charitable trust or institution

Income of charitable trust or institution

The term “income” has been defined under Section 2(24) of the Act to include a number of specified things. It is noteworthy that the definition, although very wide in scope, is still only an inclusive one, and not an exhaustive or exclusive one. In other words, in addition to the things specifically mentioned under Section 2(24), such other things which the word signifies in natural or common usage will also fall within the meaning of “income”.

Further, the concept of income in the case of a religious or charitable trust or institution differs from the concept of income in the case of other assesseees under the income tax law in one very significant respect. Under Section 2(24)(iia) of the Act, voluntary contributions (donations) received by these entities from their donors are to be taken as their income. This provision applies equally to a trust or institution which was created or established only partly for religious or charitable purposes. The Act deals with such voluntary contributions which are deemed to be the income of the trust or institutions under clause (iia) of Section 2(24) primarily in three ways. Firstly, anonymous contributions (if any) out of these are dealt with in the manner provided under Section 13(7) and 115BBC. Secondly, voluntary contributions which are in the

A Study on Laws Governing Charitable Organisations in India

nature of corpus donations are eligible for unconditional exemption (i.e., rules regarding the extent of application or accumulation of income do not apply to corpus donations) under Section 11(1)(d). Thirdly, voluntary contributions which are neither anonymous nor corpus donations are eligible for exemption under the other provisions of Section 11, subject to fulfillment of conditions specified therein.

“Sec.2(24) - "income" includes -

- (i) profits and gains ;
- (ii) dividend ;
- (iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiia) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10 or by an electoral trust.

Explanation.—For the purposes of this sub-clause, "trust" includes any other legal obligation;

- (iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17 ;
- (iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit ;
- (iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living ;]
- (iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid ;

A Study on Laws Governing Charitable Organisations in India

- (iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary;
- (v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59;
- (va) any sum chargeable to income-tax under clause (iia) of section 28;
- (vb) any sum chargeable to income-tax under clause (iib) of section 28;
- (vc) any sum chargeable to income-tax under clause (iic) of section 28;
- (vd) the value of any benefit or perquisite taxable under clause (iv) of section 28;
- (ve) any sum chargeable to income-tax under clause (v) of section 28;
- (vi) any capital gains chargeable under section 45;
- (vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule;
- (viiia) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;
- (viii) [Omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Original sub-clause (viii) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964;]
- (ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

[Explanation.—For the purposes of this sub-clause,—

- (i) "lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;

A Study on Laws Governing Charitable Organisations in India

- (ii) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game ;
- (x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees ;
- (xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in the Explanation to clause (10D) of section 10 ;]

- (xii) any sum referred to in clause (va) of section 28;
- (xiii) any sum referred to in clause (v) of sub-section (2) of section 56;
- (xiv) any sum referred to in clause (vi) of sub-section (2) of section 56;
- (xv) any sum of money or value of property referred to in clause (vii) or clause (viiia) of sub-section (2) of section 56;
- (xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viib) of sub-section (2) of section 56;"

Submission of Returns

A charitable or religious trust or institution is mandatorily required to file a return of income under Section 139(4A) if its income *without giving effect to the provisions of Sections 11 and 12* exceeds the maximum amount not chargeable to income-tax. In other words, such a trust or institution must file a return of income if it has taxable income for the year before claiming exemption under Sections 11 and 12. The report of the auditor in Form 10B has to be filed along with the return.

Anonymous Donations

According to Section 115BBC, tax treatment of anonymous donations (i.e., donations in respect of which the assessee fund/trust/institution etc. does not

A Study on Laws Governing Charitable Organisations in India

maintain records of identity indicating the name and address, or other particulars of the donor as are prescribed under the Income Tax Act would be as follows:

- Anonymous donations received by wholly religious institutions shall remain exempt from tax.
- In the case of partly religious and partly charitable institutions, anonymous donations to medical or educational institutions run by them will be taxable at 30 percent if the same exceed 5 per cent of total donations received by such trust/institution or ₹ 1 lakh, whichever is more. Donations to partly religious and partly charitable institutions which do not run such medical or educational institutions shall remain exempt from taxation.
- In the case of wholly charitable institutions, anonymous donations will be taxable at 30 percent if such donations exceed 5 per cent of total donations received by such trust or institution or ₹ 1 lakh, whichever is more.

“Anonymous donations to be taxed in certain cases.

115BBC. (1) *Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—*

- (i) *the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—*
 - (A) *five per cent of the total donations received by the assessee; or*
 - (B) *one lakh rupees, and*
 - (ii) *the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received.*
- (2) *The provisions of sub-section (1) shall not apply to any anonymous donation received by—*
- (a) *any trust or institution created or established wholly for religious purposes;*

A Study on Laws Governing Charitable Organisations in India

- (b) *any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.*
- (3) *For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (ia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed."*

Exemption of Income

Exemption of income is covered under Sec.11 of the Income Tax Act, 1961 in the following manner –

- 1) Income “applied to” charitable/religious purposes in India -

Section 11(1)(a) permits exemption of income derived from property held under trust wholly for charitable or religious purposes to the extent it is actually applied to such purposes during the financial year. Courts have held that the word “applied” means “to put to use”, “to turn to use” or “to make use” or “to put to practical use.

It also provides for relaxation of the rule that at least 85 per cent of the income must be applied to charitable/religious purposes during the previous year. Under Clause (2) of the Explanation to Section 11(1), it has been provided that where income so applied by a trust or institution falls short of 85 percent of the income derived during the year because such income was not actually received by the assessee during the year, it would be sufficient for the assessee to apply such amount in the year in which it is actually received or in the immediately following previous year. Where the amount applied during the year falls short of 85 percent for any other reason (i.e., for reason other than non-receipt during the year), it can be applied in the year immediately following the previous year in which such income was derived. In either of these circumstances, the assessee is required to exercise its option of postponing the application of income in writing before the due date for filing of return under Section 139 of the Act. Where the assessee has duly exercised such an option, the said amount will be treated as having been applied to charitable/religious purposes in the previous year in which the income was derived. As a natural corollary, the assessee cannot claim

A Study on Laws Governing Charitable Organisations in India

the amount as application of income again in the year in which it is actually applied.

2) Income applied outside India (in certain cases) -

Section 11(1)(c) permits deduction of expenditure incurred outside India provided that such application of income promotes international welfare in which India is interested. However, for deduction of such expenditure, prior approval of the Board is required

3) Corpus Donation -

Corpus donations are to be excluded entirely from the assessable income of the trust or institution under Section 11(1)(d). In other words, voluntary contributions received with a specific direction from the donor that they shall form part of the corpus will get excluded from the taxable income of the trust or institution under Section 11(1)(d). The requirements of application during the year, the quantum of accumulation allowable and the procedural requirements such as filing of forms or exercising an option in writing etc., would not apply to these amounts.

4) Capital Gains -

Section 11(1A) of the Act deals with capital gains arising or accruing to a charitable trust or institution. In the case of a charitable trust or institution eligible for exemption under Section 11, capital gains, whether long term or short term, will be deemed to have been applied to charitable purposes and will be exempt from tax to the extent they are reinvested in a new capital asset. The provision applies with necessary modifications to cases where the capital asset is held only partly (and not wholly) for religious or charitable purpose.

5) Income “accumulated or set apart for application -

Under Section 11(1)(a), in addition to the income actually applied to charitable/religious purposes, income of the trust/institution to the extent of 15 per cent of the income derived during the year, if accumulated or set apart for future application to such purposes, is also eligible for exemption. No procedural requirements have been laid down for such accumulation of upto 15 per cent of the income derived during the year.

Apart from accumulation of 15 per cent of income permitted under Section 11(1)(a), however, a trust or institution is permitted under Section 11(2) to accumulate or set apart income for specific purpose(s). Such accumulation or setting apart of income has to be for definite and concrete purposes

A Study on Laws Governing Charitable Organisations in India

and should not be vague. The Calcutta High Court in *Singhania Charitable Trust [1993] 199 ITR 819 (Cal)* has held that while the purposes for which the income is accumulated cannot under any circumstances travel beyond the objects of the trust, listing all the objects of the trust as the purpose of accumulation would not satisfy the requirements of Section 11(2).

Hence the amount sought to be accumulated under Section 11(2) will be excluded from taxable income provided the following conditions are satisfied –

- A notice is given in Form No.10 before the due date of filing the return, to the assessing officer setting out the amount and purpose for which it is accumulated, and
- The money so accumulated or set apart is invested in the forms or modes mentioned in Section 11(5).

Subject to certain conditions, the Commissioner may extend the aforesaid time limit if good and sufficient reason is shown for the inability to give the notice in time.

Income accumulated or set apart under Section 11(2) for attainment of specific purposes has to be used for the specified purposes within specified period. An infringement of the conditions of accumulation can occur on any or all of the following grounds:-

- It is applied to purposes other than charitable or religious purposes;
- It ceases to remain invested in the manner specified under Section 11(5);
- It is not applied for the purposes for which it was accumulated, or
- It is credited or paid to any other charitable or religious trust or institution or other such institution mentioned under Section 11(3)(d).

Upon the occurrence of any of the aforesaid events, the amount will be taken as the income of the previous year in which such event takes place. It may happen that an assessee is unable to apply accumulated income for the purposes for which it was accumulated because of reasons beyond his control. In such a situation, Section 11(3A) allows the assessee to make an application to the assessing officer requesting for change of purpose(s) for application of income. Upon such application, the Assessing Officer may allow the change if the substituted purposes are in conformity with the objects of

the charitable trust or institution. However, transfer of income to another charitable trust will not be allowed under this provision.

6) Business income –

According to Sec.11(4), a business undertaking can be held as property under trust. Therefore, a legitimate claim can be made that the income of such business may not be included in the total income of the person receiving such income. In such a case, the assessing officer is required to assess the income of such business under the normal provisions of the Act. If there is a difference between income so determined and the income shown in the accounts, such difference shall not be regarded as having been applied to religious or charitable purpose, but shall be deemed to have been applied to purposes other than charitable/religious purposes. The income of the business has to be calculated under the normal assessment related provisions of the Act and not as per Chapter III which otherwise applies to income of charitable trusts and institutions.

7) Modes of Investment –

The modes of investment in which income accumulated and set apart under Sec.11(2) should be kept are covered under Sec.11(5).

- investment in savings certificates, any other securities or certificates issued by the Central Government under the Small Savings Schemes of the Government;
- deposit in any account with the Post Office Savings Bank or with a scheduled bank or a co-operative society engaged in carrying on the business of banking
- investment in units of the Unit Trust of India
- investment in any security for money created and issued by the Central Government or a State Government;
- 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;
- investment or deposit in any public sector company:

A Study on Laws Governing Charitable Organisations in India

- deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;
- deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;
- deposits with investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.
- investment in immovable property.
- deposits with the Industrial Development Bank of India
- any other form or mode of investment or deposit as may be prescribed
- Rule 17C specifies the following other modes –
 - o investment in the units issued under any scheme of the mutual fund referred to in clause (23D) of section 10 of the Income-tax Act, 1961;
 - o any transfer of deposits to the Public Account of India;
 - o deposits made with an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or Improvement of cities, towns and villages, or for both;
 - o Investment by way of acquiring equity shares of a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);

8) Rate of tax –

Income derived from property held under trust wholly for charitable or religious purpose (including voluntary contributions received from donors),

A Study on Laws Governing Charitable Organisations in India

to the extent it is not exempt under Sections 11 and 12, is liable to tax at the normal rates applicable to an Association of Persons (AOP), except for anonymous donations. Where, however, there is any default of the nature specified under Section 13(1)(c)26 or 13(1)(d)27, Section 164 lays down that its income would be liable to tax at the maximum marginal rate, i.e., the rate of income-tax (including surcharge) applicable to the highest slab of income for the relevant assessment year.

An association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains. (Sec.2(31) (explanation))

Income tax rates for Assessment Year 2013-14 for Association of Persons is as follows –

	Income Slabs	Tax Rates
i.	Where the total income does not exceed ₹ 2,00,000/-.	NIL
ii.	Where the total income exceeds ₹ 2,00,000/- but does not exceed ₹ 5,00,000/-.	10% of amount by which the total income exceeds ₹ 2,00,000/-
iii.	Where the total income exceeds ₹ 5,00,000/- but does not exceed ₹ 10,00,000/-.	₹ 30,000/- + 20% of the amount by which the total income exceeds ₹ 5,00,000/-.
iv.	Where the total income exceeds ₹ 10,00,000/-.	₹ 1,30,000/- + 30% of the amount by which the total income exceeds ₹ 10,00,000/-.

Surcharge: Nil

Education Cess: 3% of the Income Tax.

11.4 Forfeiture of Exemption

Section 13 mentions the circumstances under which benefit of provisions of Section 11 and Section 12 will not be available to an assessee. These circumstances are as follows –

- Income from property held under trust for private religious purposes and not for the benefit of public;
- Income of a charitable trust or institution created or established for the benefit of a particular religious community or caste (other than SC/ST/ Backward Classes, women and children);
- Income of a charitable or religious trust or institution under whose terms or rules any part of its income directly or indirectly benefits the author/ founder/trustee/ manager or other such person specified under Section 13(3);
- Income of a charitable or religious trust or institution if any part of its income or property is used or applied during the previous year either directly or indirectly for the benefit of any person specified under Section 13(3);
- Income of a charitable or religious trust or institution, if any of its funds are invested or continue to remain invested otherwise than in the modes specified under Section 11(5) during the previous year (this is subject to certain specified exceptions such as assets held as corpus, accretions to the same by way of bonus shares, debentures acquired under certain circumstances etc.);
- Income of a charitable trust or institution engaged in the advancement of “any other object of general public utility” if it involves carrying on of any trade, commerce or business activity.

The Act has stringent provisions with regard to use of property or income of a charitable or religious trust or institution in any manner whatsoever for the benefit of the author, founder, trustee, manager, a substantial contributor, or even a relative of any of these persons. In *Agappa Child Centre [1997] 226 ITR 211 (Ker)*, where a charitable trust had purchased a refrigerator and kept it at the disposal of the managing trustee while its own buildings were not ready, and no compensation was charged from the managing trustee, the Kerala High Court held that the trust was hit by Section 13 and was not entitled to claim exemption.

“Section 11 not to apply in certain cases

13. (1) *Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—*

- (a) *Any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;*
- (b) *In the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;*
- (c) *In the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—*
 - (i) *If such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or*
 - (ii) *If any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3) :*

Provided *that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:*

Provided *further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970;*

A Study on Laws Governing Charitable Organisations in India

- (d) *In the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—*
- (i) *Any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or*
 - (ii) *Any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or*
 - (iii) *Any shares in a company, other than—*
 - (A) *Shares in a public sector company ;*
 - (B) *Shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11, are held by the trust or institution after the 30th day of November, 1983:]*

Provided *that nothing in this clause shall apply in relation to—*

- (i) *Any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973;*
- (ia) *Any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;*
- (ii) *Any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;*
- (iia) *Any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, [1993], whichever is later;*
- (iii) *Any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any subsequent assessment year.*

A Study on Laws Governing Charitable Organisations in India

Explanation.—Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.]

[Explanation.—For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 [other than sub-clause (ii) of clause (a) thereof] of the Finance Act, 1972.]

(2) Without prejudice to the generality of the provisions of clause (c) [and clause (d)] of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

- (a) If any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;*
- (b) If any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;*
- (c) If any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;*
- (d) If the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;*
- (e) If any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;*

A Study on Laws Governing Charitable Organisations in India

- (f) *If any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;*
 - (g) *If any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):*

Provided *that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;]*
 - (h) *If any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.*
- (3) *The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—*
- (a) *The author of the trust or the founder of the institution;*
 - (b) *Any person who has made a substantial contribution to the trust or institution, [that is to say, any person whose total contribution up to the end of the relevant previous year exceeds [fifty] thousand rupees];*
 - (c) *Where such author, founder or person is a Hindu undivided family, a member of the family;*
 - (cc) *Any trustee of the trust or manager (by whatever name called) of the institution;*
 - (d) *Any relative of any such author, founder, person, [member, trustee or manager] as aforesaid;*
 - (e) *Any concern in which any of the persons referred to in clauses (a), (b), (c), (cc)] and (d) has a substantial interest.*
- (4) *Notwithstanding anything contained in clause (c) of sub-section (1) [but without prejudice to the provisions contained in clause (d) of that sub-section], in a case where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in sub-section (3) has a substantial interest, does not exceed five per cent of the capital of that concern, the exemption under section 11 [or section 12] shall not be denied*

A Study on Laws Governing Charitable Organisations in India

in relation to any income other than the income arising to the trust or the institution from such investment, by reason only that the [funds] of the trust or the institution have been invested in a concern in which such person has a substantial interest.

- [(5) *Notwithstanding anything contained in clause (d) of sub-section (1), where any assets (being debentures issued by, or on behalf of, any company or corporation) are acquired by the trust or institution after the 28th day of February, 1983 but before the 25th day of July, 1991, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such assets, by reason only that the funds of the trust or the institution have been invested in such assets if such funds do not continue to remain so invested in such assets after the 31st day of March, 1992.*]
- [(6) *Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3).*]
- [(7) *Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.*]
- [(8) *Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.*]

[Explanation 1.—For the purposes of sections 11, 12, 12A and this section, "trust" includes any other legal obligation and for the purposes of this section "relative", in relation to an individual, means—

- (i) Spouse of the individual;*
- (ii) Brother or sister of the individual;*

A Study on Laws Governing Charitable Organisations in India

- (iii) *Brother or sister of the spouse of the individual;*
- (iv) *Any lineal ascendant or descendant of the individual;*
- (v) *Any lineal ascendant or descendant of the spouse of the individual;*
- (vi) *Spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);*
- (vii) *Any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.]*

Explanation 2.—A trust or institution created or established for the benefit of Scheduled Castes, Backward Classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (1).

Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

- (i) *In a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);*
- (ii) *In the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.”*

11.5. Exemption to Donor

Apart from exemption of income of the trust or institution itself under Sections 10(23C), 11 and 12, a donor to such entities is also entitled to benefit of deduction from his own income on account of the donations made by him. The extent of deduction allowable is prescribed in **Section 80G(1)(i)**. While contributions to certain funds/entities such as the Prime Minister’s National Relief Fund, contributions to a university or educational institution of national eminence, and to specified funds set up by State Governments for disaster relief etc. are entitled to 100 per cent deduction, others are eligible for

A Study on Laws Governing Charitable Organisations in India

exemption to the extent of 50 per cent of the amount donated. With effect from 1-4-2013, donations exceeding ₹ 10,000/- must be made other than in cash in order to be eligible for deduction.

Section 80G(5) lays down the preconditions which must be satisfied cumulatively before a trust or institution can qualify for approval under Section 80G. These conditions are as follows –

- i. The income of the fund or institution would not be includible in its total income by virtue of provisions contained in Sections 11 and 12, Section 10(23AA) or Section 10(23C);
- ii. As per instrument under which the fund or institution was created and as per rules governing it, no part of its income or assets is transferable, or to be applied for any purpose other than charitable purpose. Charitable purpose here would not include religious purpose in view of Explanation 3 below Section 80G. However, Section 80G(5B) permits application up to 5 per cent of the income for the year towards religious purposes;
- iii. The fund or institution is not expressed to be for the benefit of any particular religious community or caste;
- iv. It maintains regular books of account regarding its receipts and expenditure;
- v. The institution or fund is either constituted as a public charitable trust, or a society registered under Societies Registration Act (or its equivalent legislation), or a company registered under Section 25 of the Companies Act, or a statutory university or recognised educational institution, or an institution financed by the Central or State Government;
- vi. The institution or fund is approved by the Commissioner (or Director) in accordance with the rules made in this behalf.

Rule 11AA of the Income Tax Rules, 1962 prescribed the requirements for approval of an institution or fund under Sec. 80G. The application should be made in triplicate in Form No.10G. It should be accompanied by copies of the following documents:

- Copy of registration granted under section 12A or copy of notification issued under section 10(23) or 10(23C);

A Study on Laws Governing Charitable Organisations in India

- Notes on activities of institution or fund since its inception or during the last three years, whichever is less;
- Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

The application (Form No. 10G) made by the assessee should be disposed of within six months of the date on which the application was made. However, the time taken by the assessee in providing information called for by the Commissioner of Income Tax or in responding to enquiries made by him shall be excluded while calculating the aforesaid limitation period of six months. Approval once granted is now valid forever unless withdrawn by the Commissioner where he is satisfied that the activities of the institution or fund are not genuine or are not being carried on in accordance with its objects.

In *East India Industries (Madras) Pvt. Ltd.* the Hon'ble Madras High Court held that the question whether donation to an institution are deductible under Section 80G has to be decided with reference to all the objects of the institution. If some objects are non charitable, the institution is not eligible for approval.

In *Upper Ganges Sugar Mills Ltd.*, the Hon'ble Supreme Court has held that even if one object is wholly or substantially religious in nature, the institution is not eligible for approval under Section 80G.

11.6 Approval of Award or Reward

Section 10(17A) exempts from tax any payment made, whether in cash or kind, in pursuance of an award instituted in the public interest by the Central Government, the State Government or by a body approved in this behalf by the Central Government. Similarly, a reward by the Central or State Government for the purposes approved by the Central Government in this behalf in the public interest is also exempt from tax. Thus, approval by the Central Government in the public interest is the only necessary precondition for exemption of the award or reward.

To get approval for the exemption of awards from tax in the hands of the recipients, the institution is required to furnish information on the following points –

1. Name, address & PAN of the institution:
2. Assessment Year for which approval is sought:

A Study on Laws Governing Charitable Organisations in India

3. Instrument of creation of the institution containing *inter alia* MOA and rules & regulations:
4. Whether the institution is registered under Section 12A or notified or approved under Sections 10(23), 10(23C), 35(1)(ii) or 35(1)(iii):
5. Purpose of award:
6. Copy of the scheme of the award, and rules and regulations for grant of award:
7. Amount and periodicity of the award:
8. Method of selection of the person(s) to be awarded:
9. Constitution of the Jury/ Selection Committee including *inter alia* name, address & qualification of its members:
10. Name, address and qualification of the persons given awards in the last five years:
11. Copies of audited accounts since inception or last three years whichever is less:
12. Any other information in support of approval of the award:

The following points should also be noted, while instituting awards –

- (i) Whether the award is in public interest;
- (ii) Whether the object clauses, and rules and regulations of the institution permit grant of the award;
- (iii) Whether the grant of award is in furtherance of aims and objects of the institution;
- (iv) Whether the objects of the institution are charitable in nature;
- (v) Whether selection criteria are fair and reasonable;
- (vi) Whether permission of the Board has been obtained under Proviso to Section 11(1)(c) in case the expenditure on award is to be incurred outside India.

11.7. Approval under Sec.10(23C)

Sub-clauses (iv), (v), (vi) & (via) of Section 10(23C) of the Income-tax Act, 1961 deal with exemption of income of various kinds of religious or charitable institutions which are either notified by the Central Government or approved by the prescribed authority.

A Study on Laws Governing Charitable Organisations in India

Clause (iv) deals with exemption of income of any fund or institution established for charitable purposes which may be notified by the Central Government taking into account the objects of the fund etc. or its importance throughout India or throughout any State or States. In order to be eligible for exemption, such trust or institution should not be involved in any trade, commerce or business activity or rendering of any service in relation to such activity.

Sub-clause (v) deals with exemption of income of any trust or institution set up wholly for public religious purposes or public religious or charitable purposes, which may be notified by the Central Government taking into account the manner in which its affairs are administered and supervised so as to ensure that the income is applied for its objects. The restriction on trade, commerce or business activity or rendering of any service in relation to it which applies to sub-section (iv) also applies to this sub-section.

Sub-clause (vi) deals with exemption of income of any university or educational institution, which may be approved by the prescribed authority, provided that it is existing solely for educational purposes and not for purposes of profit.

Sub-clause (via) deals with exemption of income of any hospital or institution, which may be approved by the prescribed authority, and which engages itself in reception and treatment of persons suffering from illness or mental defectiveness or during convalescence or requiring medical attention or rehabilitation, provided that it exists solely for philanthropic purposes and not for profit.

The “prescribed authority” for the purposes of all the above sub-clauses is the Chief Commissioner (CCIT) or the Director General of Income Tax (DGIT). The fund, trust, institution or other entity seeking exemption under each of the above sub-clauses [i.e., sub-clauses (iv), (v), (vi), and (via)], is required to make an application in the prescribed forms, namely, Form No. 56 and 56D to the CCIT or DGIT concerned for grant or continuation of exemption. Such application is required to be made before 30th September of the relevant Assessment Year from which exemption is being sought. Application for approval by the prescribed authority under sub-clause (iv) or (v) of Section 10(23C) has to be made in Form No. 56, while application for approval by the prescribed authority under sub-clause (vi) or (via) has to be made in Form No. 56-D.

A Study on Laws Governing Charitable Organisations in India

The prescribed authority is empowered to call for the requisite documents, audited annual accounts and other relevant information as it considers necessary and is also empowered to make necessary enquiries to satisfy itself about the genuineness of the activities of the fund/trust/institution etc. within 12 months from the end of the month in which such application was received. Prescribed authority has to either grant the approval sought or has to pass an order rejecting the application.

Conditions specified under sub-sections 11(1), 11(2) and 11(3) regarding application of income, accumulation of income and its use, are applicable to such a fund, trust, institution etc. As in the case of trusts or institutions claiming exemption under Sections 11 and 12, a fund/trust/ institution seeking to claim exemption under Section 10(23C)(iv), (v), (vi) or (via) is also required to get its accounts audited where its total income without giving effect to the said provisions exceeds the maximum amount not chargeable to tax during the year.

The provisions of Section 11(5) relating to the forms and modes in which funds of the assessee trust, institution, etc. are to be invested are also applicable, subject to the specified exceptions including assets held as part of corpus, contributions received and maintained in kind in certain circumstances, etc. Similarly, as regards business income too, provisions parallel to Section 11(4A) have been incorporated into Section 10(23C) to specify that business income of such a fund, trust, institution etc. shall not be exempt unless the business is incidental to the attainment of its objects and separate books of account are maintained by it in respect of such business.

As in the case of trust or institutions claiming exemption under Section 11, assessees seeking to claim exemption under Section 10(23C) too are barred from paying any amounts accumulated for future application to any other entity registered under Section 12AA or approved under Sections 10(23C)(iv), (v), (vi) or (via). Such amounts, if paid or credited to any such entity shall not be treated as application of income to the objects of the fund, trust, institution etc., but shall be treated as its income chargeable to tax in the hands of the assessee fund, trust, institution etc.

Anonymous donations (donations in respect of which the assessee fund/ trust/ institution etc. does not maintain records of identity indicating the name and address, or other particulars of the donor as are prescribed), also, will not be exempt but shall be included in the total income of the assessee fund, trust, institution etc.

A Study on Laws Governing Charitable Organisations in India

The considerations which the prescribed authority will keep in mind are different in each case. For Sub-clause (iv), consideration has to be given to the charitable objects of the fund or institution and its territorial importance. Sub-clause (v) lays greater emphasis on the manner in which the affairs are administered so as to ensure that the income is applied properly for the objects of the trust. Sub-clause (vi) lays emphasis on the factual position, namely, that the university or institution should be existing solely for educational purposes and not for profit. Therefore, if the aims and objects of the institution include objects other than educational, then such an institution will not be eligible for approval. For the same reason, the issue as to how the income of the institution is actually applied assumes great significance for the purposes of this sub-clause. Sub-clause (via) lays emphasis on existence solely for philanthropic purposes and not for the purposes of profit.

The prescribed authority is also empowered to withdraw the approval granted to any such fund, trust, institution etc. where subsequent to grant of approval, the authority is satisfied that the assessee fund, trust, institution etc. has not applied its income wholly and exclusively to its objects or has invested its funds in modes other than those prescribed or that the activities of the assessee fund, trust, institution etc. are not genuine or are not being carried out in accordance with one or more of the conditions subject to which approval was granted by the prescribed authority. Before withdrawing such approval, however, the prescribed authority is required to give a reasonable opportunity to the assessee to show cause why the approval should not be withdrawn.

11.8. FAQs

Q. Are NGOs and other charitable and non-profit organisations entitled to claim tax exemption under income tax laws in India? Are donors who contribute to such organisations also entitled to any tax deduction?

Ans. Yes, such exemption is available to, (i) public charitable trusts or other legal obligations, (ii) university or other educational institutions, (iii) hospitals or other institutions for treatment of persons, (iv) research associations, (v) a company formed under Section 25/8 of the Companies Act. Grant of exemption in each case is, however, subject to fulfilment of a set of specified conditions. Donors who contribute to such organisations can also claim tax deduction to the extent of a specified proportion of their contribution (50 per cent in most cases).

Q. What is a “trust”?

Ans. Under general law, a ‘trust’ is defined as an obligation attached to the ownership of property, and arising out of the confidence reposed by the author of the trust in the trustees. In the I-T Act, however, the word has been used in a wider sense to include any other legal obligation, even where the legal requirements for creation of a trust are not strictly met.

Q. Section 11 exempts income from property held for “charitable purposes”. What is meant by “charitable purpose”?

Ans. “Charitable purpose” under Income Tax law as it now stands includes, (a) relief of the poor, (b) education, (c) medical relief, (d) preservation of the environment (including watersheds, forests and wildlife), (e) preservation of monuments or places or objects of artistic or historic interest and (f) advancement of any other object of general public utility (as distinguished from benefit of individuals or narrowly defined interest groups).

From 1-4-2009 onwards, “advancement of any other object of general public utility” does not include carrying on of business activity of any kind, regardless of the manner in which income earned from such business activity is intended to be utilised (an exception, has been made in cases where receipts from such business activity do not exceed ₹ 10 lakhs, which stands increased to ₹ 25 lakhs w.e.f. 1-4-2012).

Q. How is “income” defined in case of a charitable trust or institution?

Ans. “Income” in the case of a charitable trust or institution has to be understood in the broadest of terms. As in the case of any other assessee, it will include income falling under different heads of income, including profits and gains of business or profession, capital gains, income from house property and income from other sources (such as dividends, interest on securities, etc.). Additionally, in the case of a charitable trust or institution, donations received (“voluntary contributions”), which otherwise do not possess the character of “income”, are also to be included in income. All these amounts will, in the first instance, be included in the income of the charitable trust or institution, and, thereafter, exemption can be claimed subject to fulfilment of prescribed conditions.

A Study on Laws Governing Charitable Organisations in India

Q. What conditions are required to be fulfilled by a charitable or religious trust seeking exemption under Section 11?

Ans. To ensure that only organisations engaged in *bona fide* charitable or religious activities are allowed to claim exemption from tax, the law has prescribed a number of legal and procedural requirements. The relevant provisions in this regard are Sections 11, 12, 12A, 13, 115BBC and 139(4A) of the Income-tax Act, and Rules 17, 17A, 17B and 17C of the Income Tax Rules. For the sake of brevity and easy reference, however, the DO's & DON'Ts for the claim of exemption by a charitable or religious trust under Section 11 are summarised below:—

Dos

- (i) The trust must be a public charitable or public religious trust and not a private trust.
- (ii) Income claimed to be exempt must be derived from property held under trust.
- (iii) The trust must be wholly for charitable or religious purposes.
- (iv) If the trust or institution has taxable income for the year *before claiming exemption under Sections 11 and 12*, its accounts must be audited by a Chartered Accountant (or other person competent to audit accounts under Income-tax Act) and audit report in the prescribed Form must be filed with the return of income.
- (v) The trust must be registered by Commissioner/Director of Income Tax under Section 12AA.
- (vi) Activities of the trust must be carried out in India.
- (vii) 85 per cent or more of the income for the year must be applied to (i.e., put to use) for charitable or religious purposes, and the balance (i.e., 15 per cent or less) must be accumulated or set apart for future application to charitable or religious purposes, **or** if 85 per cent of the income is not applied to charitable or religious purposes during the year, the same must be accumulated or set apart for future application for definite and specified purposes. For this purpose, the assessee must give a notice in writing (in Form No.10) to the Assessing Officer within the due date of filing of return of income; invest the money so accumulated or set apart only in specified modes. The maximum period

A Study on Laws Governing Charitable Organisations in India

for which such income can be accumulated or set apart is 5 years.

- (viii) If income of the trust or institution includes any income from business, such business must be incidental to the objectives of the trust, and separate accounts must be maintained for such business.
- (ix) If the trust or institution had taxable income during the year *without giving effect to Sections 11 and 12*, it must file a return of income.
- (x) Capital gains, if any during the year (whether short or long-term), must be reinvested in a new capital asset in order to be deemed to have been applied to charitable purposes.

Don'ts

- (i) Property must not be held under trust for private religious purposes but for the benefit of public.
- (ii) The trust or institution must not have been created or established for the benefit of a particular religious community or caste (other than SC/ST/Backward Classes, women and children).
- (iii) Under the terms of the trust or rules of the institution, no part of its income must directly or indirectly be for the benefit of the author/founder/trustee/ manager or other such interested person.
- (iv) No part of the income or property of the trust or institution must actually be used or applied during the previous year person.
- (v) None of its funds should be invested or continue to remain invested during the previous year otherwise than in the modes specified under Section 11(5) (this is subject to specified exceptions such as assets held as corpus, accretions to the same by way of bonus shares, debentures acquired under certain circumstances etc.).
- (vi) Anonymous donations, if any, will be taxable at the rate of 30 per cent.
- (vii) The purposes for which income is sought to be accumulated or set apart for future accumulation must not be vague or non-specific, and cannot travel beyond the objects of the trust. The amount so accumulated cannot be applied to a different purpose, must continue to remain invested in the specified modes, and cannot be credited or paid to any other trust or institution.

A Study on Laws Governing Charitable Organisations in India

Q. What is the procedure for registration of a trust by the Commissioner of Income Tax?

Ans. The procedure for registration by CIT under Section 12AA is briefly as follows:

1. Application to be made by the trust or institution in Form 10A accompanied by, (a) original/certified copy of trust deed/instrument and an extra copy, (if created without an instrument, original or certified copy of documents evidencing creation of the trust/institution and an extra copy), (b) in case the trust is not a new one, two copies of accounts for preceding three years;
2. CIT to verify the application and call for any documents/information necessary to satisfy himself about the genuineness of the activities of the trust;
3. The CIT to pass order in writing granting or refusing registration (where he refuses registration, he must give an opportunity of being heard to the trust/institution);
4. Such order to be passed within six months from the end of the month in which the application was received.

Q. When is registration ordinarily refused by the CIT?

Ans. The CIT will ordinarily refuse registration if,

- (i) The trust is not a public charitable/religious trust;
- (ii) The objects of the trust are not charitable;
- (iii) Some objects exist for the benefit of the settler or trustees or their relatives;
- (iv) A provision exists for transfer of any part of the income or the assets of the trust to any private individual or body;
- (v) The trust is created for the benefit of any specific religious community or caste or individual and not for the public at large.

Q. Upon registration, from which Assessment Year does an assessee become eligible for exemption under Sections 11 and 12?

Ans. Upon registration exemption under Sections 11 and 12 are available from the Assessment Year immediately after the financial year in which the application was made.

Q. Who is competent to Audit the accounts of the trust for the purpose of Section 12A?

Ans. A Chartered Accountant or a person entitled to be appointed as an auditor of companies is authorised to carry out the requisite audit.

Q. What are “anonymous donations”? To what extent are they exempt in the hands of a charitable or religious trust or institution?

Ans. “Anonymous donation” has been defined as a voluntary contribution where the trust or institution receiving such contribution does not maintain record of identity indicating the name and address and other requisite particulars of the person making such contribution.

Q. What are “corpus donations”? Are they taxable in the hands of a charitable or religious trust or institution?

Ans. Income in the form of voluntary contributions made with a specific direction from the donor that they shall form part of the corpus of the trust or institution, are generally referred to as “corpus donations”. Such donations are fully exempt from tax under Section 11(1)(d) of the Act.

Q. What is the rate of taxation applicable to the taxable income if any, of a charitable or religious trust or organisation?

Ans. Income derived from property held under trust wholly for charitable or religious purposes, to the extent it is not exempt under Sections 11 and 12 is liable to tax at normal rates applicable to an Association of Persons (AOP) except when the same is in the nature of anonymous donations which will be dealt with as mentioned above. Further, in cases where exemption under Section 11 is forfeited by a trust or institution on account of a default under Section 13(1)(c) or 13(1)(d) (i.e., where the trust or institution either directly or indirectly benefits its author, founder or any other person mentioned under Section 13(3), or because the funds of the trust or institution were invested otherwise than in the specified modes), income of such trust or institution will be taxable at the rate (including surcharge) applicable to the highest slab of income for the assessment year under consideration.

Q. What is the extent of tax deduction available to a donor who contributes to charitable or religious trust or institution?

Ans. Under Section 80G of the I-T Act, donors to such organisations are eligible for deduction as a percentage of the amount donated by them.

A Study on Laws Governing Charitable Organisations in India

In most cases the rate of exemption applicable is 50 per cent of the amount donated. For a donor to claim such exemption, the trust or institution to which the donation has been made must be one which has been approved by the Income Tax Department for this purpose.

Chapter 12

Charitable Organisations and Money Laundering

Charities are at risk of being misused by individuals or other organisations to finance or support terrorist activity or assist money laundering.

Terrorist activity requires financial support, concealment or opportunities for recruitment, whereas money launderers aim to legitimise money sourced in illegal activities.

Some of the common techniques used include:

- o Raising funds in the name of the charity or charitable purposes and then redirecting the funding with or without the knowledge of the charity;
- o Using the charity as a legitimate front for transporting cash or other financial support from one place to another;
- o Using charity vehicles or premises to transport or hide people, cash, weapons or terrorist propaganda;
- o Using a charity partner who distributes aid or relief as a front to conceal other illegal activities or recruitment for terrorism;
- o Offering large donations in cash or foreign currency with the opportunity to earn interest over a period of time, conditional on returning the principal in rupees;
- o Those within the charity "skimming" off money from legitimate collections for terrorist purposes;
- o The establishment of a sham charity.

Terrorists or money launderers may target charities because they:

- o Enjoy high levels of public confidence
- o Are diverse in nature, providing a broad range of activities and reaching all parts of society
- o May depend on one or two individuals who play a key, and often unsupervised role, particularly with smaller charities

A Study on Laws Governing Charitable Organisations in India

- o May have a global presence that provides a framework for national and international operations and financial transactions
- o Often have complex financial operations including multiple donors, investments and currencies, often receiving and using cash, having to account for high volume of small transactions and using informal money transfers
- o May regularly work within or near those areas that are most exposed to terrorist activity
- o May have complex programmes of operation and pass funds through intermediary partner organisations to deliver their services
- o May have unpredictable and unusual income and expenditure streams, so suspicious transactions may be harder to identify.

Prevention of Money Laundering Act, 2002 (PMLA)

PMLA forms the core of the legal framework put in place by India to combat money laundering. PMLA is applicable to charitable institutions w.e.f. 1-6-2009 and provides for rigorous punishments for acts treated as Money laundering. The law provides that whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend upto seven years and shall also be liable fine which may extend to five lakh rupees. Therefore, due care should be taken not to accommodate persons not known to trusts by encashing foreign cheques and drafts.

Charitable trusts, whether temples, churches or mosques, non-government organisations (NGOs), educational institutions or societies, if registered as non-profit organisations (NPOs), will not only have to disclose the source of their funds, but also be scrutinised for large monetary transactions.

Earlier, the non-profit organisations were not forced to disclose the source of their funds, except in some specific cases. However, now they will have to adhere strictly to know-your-customer norms in case of any donations they receive, according to banking standards, and will have to regularly maintain detailed statements of their funds received and investments made and will have to disclose this, when called up on to do so.

Best practices for charitable organisations

- Transparency and accountability in the way in which charitable organisations collect and transmit funds. Solicitation for donations should transparently tell donors the purpose for which donations are being collected.
- To strengthen self-regulation, charitable organisations should ask the following general questions:
 - o Have projects actually been carried out?
 - o Are the beneficiaries real?
 - o Have the intended beneficiaries received the funds that were sent for them?
 - o Have the funds been utilised by the beneficiaries for the intended purposes?
 - o Are all funds, assets and premises accounted for?
- Programmatic verification to ensure that funds have been spent as advertised and planned. Direct field audits of programmes may be the only method for detecting misdirection of funds.
- When two jurisdictions are involved, special care should be taken to monitor fund raising and fund disbursement.
- Trustees should be vigilant to ensure that a trust's premises, assets, staff, volunteers or other resources cannot be used for activities that may, or appear to support or condone terrorist activities.

Chapter 13

Authorities Regulating Charitable Organisations

Charity Commissioner of Maharashtra

A Charity Commissioner with headquarters at Mumbai has been appointed to administer the Maharashtra Public Trusts Act, 1950. The first Charity Commissioner was appointed on the 14th August, 1950. An Assistant Charity Commissioner has been appointed for Aurangabad region which is composed of the districts of Aurangabad, Parbhani, Nanded, Bhir and Osmanabad. The Assistant Charity Commissioner is directly responsible to the Charity Commissioner.

The State Government may, by notification in the Official Gazette, appoint an Officer to be called the Charity Commissioner who shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act, and shall, subject to such general or special orders as the State Government may pass, superintend the administration and carry out the provisions of this Act throughout the State of Maharashtra.

Section 69 of the Maharashtra Public Trusts Act, 1950 deals with the duties, functions, and powers of the Charity Commissioner.

For purposes of this Act, the following shall be the duties to be performed and powers to be exercised by the Charity Commissioner,

- (a) The general superintendence of the administration and carrying out the purposes of this Act under Section 3;
- (b) Power to entertain and dispose of appeals from the findings of a Deputy or Assistant Charity Commissioner under Sections 20, 22 or 28;
- (c) Power to determine which of the Deputy or Assistant Charity Commissioners shall proceed with an inquiry relating to the registration of any public trust under Section 25;

A Study on Laws Governing Charitable Organisations in India

- (d) Power to direct a special audit of the accounts of a public trust under Section 33;
- (e) Power to require an auditor to forward to him a copy of a Balance Sheet and Income and Expenditure Account under Section 34;
- (f) Power to permit a trustee to invest money of a public trust in any manner other than in public securities under Section 35;
- (g) Power to sanction a sale, mortgage, exchange, gift or lease of immovable property belonging to a public trust under Section 36;
- (h) Power to enter on and inspect any trust property, to call for and inspect any proceedings of a trustee, and to call for any return, statement, account or report from trustees or any person connected with a public trust under Section 37;
- (i) Power to hold an inquiry in regard to any loss caused to a public trust under Section 40, and to order a surcharge under Section 41;
- (j) Power to the Charity Commissioner, to act as the Treasurer of Charitable Endowments under the Charitable Endowments Act, 1890, under Section 43;
- (k) Power to act as trustee of a public trust;
 - (l) Power to file suit under Section 50;
 - (ll) Power to frame, or modify scheme under Section 50A;
- (m) Power to give or refuse consent to the institution of a suit under Section 51;
- (n) Power to give notice to trustee for the Cy Pres application of the trust money and to make an application to the Court under Section 55;
- (o) Deleted;
- (p) To exercise such other powers and perform such other duties and functions as may be prescribed.

The State Government may, by notification in the Official Gazette appoint one or more Officers to be called Joint Charity Commissioners who shall subject to the control of the Charity Commissioner and to such general or special orders, as the State Government may pass, exercise all or any or the powers and perform all or any of the duties and functions of the Charity Commissioner.

A Study on Laws Governing Charitable Organisations in India

The State Government may, by general or special order, declare a Joint Charity Commissioner to be the regional head to superintend, subject to the control of the Charity Commissioner, the administration in one or more regions or sub-regions, as may be specified in such order.

Registrar of Societies

Registrar of Societies is the officer appointed by the respective State Governments to perform the duties and functions of the Registrar under the Societies Registration Act of states. In case no such officer is appointed, the Inspector General of Registration will be regarded as the Registrar of Societies.

The Registrar or the person authorised by him generally has the following powers –

- (a) he shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof;
- (b) he may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath;
- (c) he may, notwithstanding anything contained in any Act or in any rule or regulation prescribing the period of notice for a general meeting of the society, require the governing body of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him. If the governing body of the society refuses or fails to call a meeting, he shall have power to call it himself.

Registrar of Companies (ROC)

Registrars of Companies (ROC) appointed under Section 609 of the Companies Act, 1956 / Section 396(2) of Companies Act, 2013, covering the various States and Union Territories are vested with the primary duty of registering companies floated in the respective states and the Union Territories and ensuring that such companies comply with statutory requirements under the Act. These officers function as registry of records, relating to the companies registered with them,

A Study on Laws Governing Charitable Organisations in India

which are available for inspection by members of public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.

Chapter 14

Laws Governing Charitable Organisations In Other Countries

1) UNITED KINGDOM (UK)

The main legislation regulating charities in UK is the **Charities Act of 2011**. It came into effect on 14th March, 2012. It is the Act of Parliament which sets out how all charities in England and Wales are registered and regulated.

It replaces: most of the Charities Acts 1992, 1993 and 2006 and all of the Recreational Charities Act, 1958. It doesn't replace the sections in the Charities Acts about fund raising which haven't taken effect yet, eg charitable collections in public places.

The 2011 Act is intended to make the law easier to understand by replacing four Acts of Parliament with one. It doesn't make any changes to the law.

Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are over 160,000 registered charities in England and Wales. In Scotland, the framework is different, and the Commission does not regulate Scottish charities.

The Commission maintains the Public Register of Charities that contains key particulars of all registered charities.

The Commission has been assigned with the following general functions:

- Decide whether institutions are, or are not, Charities;
- Encourage and facilitate the better administration of Charities;
- Identify and investigate when Charities are being mismanaged or misused and take action to put things right or to protect Charity property;

A Study on Laws Governing Charitable Organisations in India

- Carry out its new role in issuing public collections certificates;
- Maintain an accurate and up-to-date register of Charities, and use this and other information to support its work and help achieve its objectives; and
- Provide information and advice or make proposals to the Minister concerned on matters relating to its objectives and functions.

The Commission has to comply with certain duties which are as follows:

- the Commission must, as far as is practicable, act in a way which is compatible:
 - o With its objectives and which is appropriate for achieving those objectives; and
 - o With encouraging charitable giving and voluntary participation in charity work.
- The Commission must, in appropriate cases, consider the need for Charities to be able to innovate or to support innovation which affects Charities generally.
- The Commission must have regard to best regulatory practice. This includes applying the principles that regulatory activities should be proportionate, accountable, consistent and transparent, and targeted only at cases in which action is needed.
- As an organisation, the Commission must have regard to the principles of good corporate governance and to the need to use its resources in the most efficient, effective and economical way.

Registration of charity

- The minimum requirement for registration is that a charity must have an income of more than £ 5,000 a year.
- Application for registration from an organisation below the minimum income, will be considered in exceptional circumstances. For example-
 - o High profile organisations likely to receive significant funding in a very short time
 - o Where the organisation can provide specific evidence that significant grant funding rests upon it being a registered charity

A Study on Laws Governing Charitable Organisations in India

- Institutions exempt from the Charities Act, 2011 are mentioned in Schedule 3 of the Act. It consists mainly of educational institutions, museums and galleries.
- The procedure for applying for registration as a charity, requires applicants to provide, in addition to their constitutional documents, a range of information about their actual or proposed activities, plans for funding and trading, and trustees.
- Registration means that while the organisation remains on the Public Register of Charities it will be legally presumed to be a charity and must be accepted as a charity by other bodies such as the Inland Revenue. Although registration does not necessarily indicate approval of the management of the charity, it does mean that it is subject to supervision by the charity Commission and that information about it, including its governing document and accounts, is open to examination by the public.
- Once a charity is registered, the trustees must inform the Charity Commission about any change to the charity's registered details. The organizations have to submit their annual accounts to the Charity Commission and may be asked periodically to complete a return or supply additional information.

Type of charitable organisation recognized in UK

- Charitable companies:

The law considers a company to have the same legal status as a person. So a charitable company, like an individual, can own land and enter into contracts in its own name. These charities also have 'limited liability' for debts or lawsuits. A charitable organisation can be set up – if the organization will be quite large; have many employees, enter into commercial contracts, including contracts to deliver services and own freehold or leasehold land or other property.

- Charitable trusts:

Trusts are usually set up with a specific sum of money by a group of people who become its trustees. This could suit a charity that meets from time to time to distribute grants, where trustees make decisions without involving a

wider membership.

- Charitable incorporated organisations (CIOs):

Charitable incorporated organisations (CIOs) are like companies in that they have the same legal status as a person. This means they can enter into contracts in their own name and their trustees normally have limited or no liability for the charity's debts. However, they are not companies and do not have to register with Companies House.

- Charitable unincorporated associations

Governing document

All charities need a governing document. The governing document sets out how the charity's income can be spent, how the trustees are appointed and how the charity will operate. There are three main types of governing document, and the type chosen will determine the type of organisation the charity will be. The three main types of governing document are:

- Constitution or Rules;
- Trust deed; and
- Articles of association.

Audit, Accounts and Annual Returns

- (i) A Charity that is not a company must have a professional audit of its accounts if the following conditions apply:
 - Its gross annual income is above £ 500,000; or
 - It has an annual income of over £100,000 and assets exceeding £ 2.8 million; or, regardless of these conditions, if: its governing document states that it must have a professional audit; or the Commission orders the accounts of the Charity to be professionally audited.
- (ii) A charitable company with an annual income of more than £ 500,000 or assets of more than £ 2.8 million must have a professional audit.
- (iii) All registered Charities that have to submit annual returns to the Commission must do so within ten months of the end of the Charity's financial year.

A Study on Laws Governing Charitable Organisations in India

Penalty has been prescribed for failure by any of the trustees to file the returns within the prescribed deadline.

- (iv) The auditors of unincorporated Charities have a specific duty to report abuse or significant breaches of Charity Law to the Commission. They already have statutory protection against legal action for breach of confidence or defamation where they do so. The Act recognises that duty and extends both the duty and the associated protection to auditors of unincorporated charities' and charitable companies' accounts, as well as to reporting accountants and independent examiners of charity accounts.

Charity Tribunal

In the past, the Charities, if dissatisfied with some decision of the Charity Commission, could go in appeal to the High Court. This was prohibitively expensive and complicated, particularly for small organisations. The Charities Act has established a Charity Tribunal as a first level of appeal. It is convenient, cheaper and less formal. This arrangement allows smaller Charities an accessible means of grievance redressal. Access to the High Court is still possible as second appeal.

2) UNITED STATES OF AMERICA (USA)

In the United States, charities are created under the State Law but they are subject to control by both Federal and the State Governments. The charity administration is managed at the Federal level under the Federal Tax Code by way of preferential tax treatment. Charities are granted tax exemption status under Section 501(c)(3) of the Federal Tax Code subject to organisational and operational conditions. Organisations claiming tax exemption must adhere strictly to their intended charitable objectives as provided in the governing document. The Tax Code makes a distinction between Public Charities and Private Foundations for the purpose of regulations. Private Foundations are more strictly regulated as compared to the Public Charities. The Internal Revenue Service (IRS) is responsible for enforcing federal regulations with regard to the administration and governance of charitable organisations.

In the United States a charitable organisation is an organisation that is organised and operated for purposes that are beneficial to the public interest; however, a distinction is made between types of charitable organisations.

Legal definition of Charity is specified in section 501(c)(3) of the Internal

A Study on Laws Governing Charitable Organisations in India

Revenue Code. Under State Law, these organisations are considered to be “public charities”. The Legal definition has 2 components – (1) purpose = public benefit; and (2) benefit = to indefinite class of beneficiaries not specific individuals.

In most states, the Attorney General is empowered to supervise and regulate charities. Charities are required to file annual reports regarding their activities and finances to the office of the Attorney General. In most states, the Attorney General has powers to inspect and review a charity’s books and records to safeguard the interests in charitable assets. The public also may inspect any of these reports which are easily available on request. The members of the charity’s governing body owe a fiduciary duty to the charity. If a director breaches the duty, the state attorney general has powers to compel the director to repair any damage that the charity suffered as a result.

The Internal Revenue Service supervises the operations of charities in three ways:

- Through the information provided in the annual returns;
- Through its power to audit the finances and operations of charities; and
- Through its power to assess penalties and fines and in extreme cases to revoke a charity’s exempt status for abuses and violations of the law.

3) PAKISTAN

Just like in India, charitable organisations in Pakistan are also governed by various laws depending on the type of organisation. Some of the legislations governing charitable organisations in Pakistan are –

- The Societies Registration Act, 1860
- The Trusts Act, 1882
- The Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961
- The Companies Ordinance, 1984
- The Charitable Endowments Act, 1890
- The Mussalman Wakf Validating Act, 1913
- The Mussalman Wakf Act, 1923

A Study on Laws Governing Charitable Organisations in India

- The Mussalman Wakf Validating Act, 1930
- The Charitable and Religious Trusts Act, 1920
- The Income Tax Ordinance, 1979
- The Income Tax Ordinance, 2001
- The Registration Act, 1908
- The Charitable Funds (Registration of Collection) Act, 1953

The Societies Registration Act, 1860—This is the oldest of the four registration laws, and was promulgated by the British in pre-partition India. This was created largely to regulate professional, scientific and fine arts activities and was extended later on to encompass charitable and social organisations as well. To establish a society a Memorandum and Rules and Regulations of Association must be printed and filed with the Registrar of Societies. These documents must contain clauses, which not only state the objectives for which the society is being established, but also how it will operate.

The Trusts Act, 1882 – The Trusts Act provides legal cover for private acts of public charity, and allows the creators of the trust tremendous flexibility in their operations. The procedure for the creation of the trust is very simple. A mere declaration on a stamp paper will ensure creation. Registration is optional and not mandatory. The Act has also been used to establish public trusts and this has been vindicated through case law. For a trust the three conditions of a creator, trustee and beneficiary being present are unconditional requirements. A public charitable trust is a trust, which is established for the benefit of the society at large or at the very least a certain section of society. There are no particular laws relating to public trusts. However, the rules in the Trust Act of 1882 can be and have been applied to public charitable trusts, and the conditions governing private trusts are equally important. A public and charitable trust can be created merely by a declaration to that effect on a non-judicial stamp paper of a value (which differs across provinces) stated in the Stamp Act. Registration is optional.

The Charitable Endowments Act, 1890 – The Act grants authority to the Government to appoint a Treasurer for better financial management of Trusts, thus ensuring that the property of any Trust, which is in financial difficulty, is ensured.

Section 42 of the Companies Ordinance, 1984 – Section 42 permits the

A Study on Laws Governing Charitable Organisations in India

registration of a Company for promoting commerce, art, science, religion, sports, social services, charity or other useful object. Registration is achieved in two stages: one, an application for a licence to the Securities and Exchange Commission of Pakistan (SECP) in Islamabad; and two, an application for registration to the Registrar, Joint Stock Companies at the Provincial Level. Once the licence has been granted the Memorandum and Articles of Association may not be altered without prior approval of the SECP. Following registration the issue of a certificate of incorporation, the legal status of the concerned association becomes that of a 'body corporate, having established succession, and a common seal'.

The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 – The Ordinance was conceived for controlling the grass roots level organisations providing welfare services to those in need. The registration authority lies with the Directorate of Social Welfare. This ordinance is based on the premise that the "poor and destitute" in society need institutional, rather than only charitable, support. The Ordinance requires that all organisations engaged in social welfare or charitable works must be registered with the Social Welfare Departments (SWDs) of the provincial governments. Registration is mandatory for organisations working in, and seeking funds from the Government for any one of the twelve specified areas. The Government has the discretionary right to dissolve an agency through due process or replace the governing body arbitrarily. The reporting requirements are stringent and require that even small organisations submit annual reports, audited accounts, statement of receipts and list of members.

4) CANADA

An organisation that wants to become a registered charity must apply to the Charities Directorate of the Canada Customs and Revenue Agency (CCRA). The application needs to include the purposes for which the charity wishes to be registered. It should also contain information about how the charity will achieve these purposes. The application is reviewed by a Charities Directorate examiner. There is no legislated definition of charity, so the examiner has to compare the application against court cases that have helped explain what is considered to be charitable. Collectively, these cases form what is sometimes known as the 'common law of charity'.

A Study on Laws Governing Charitable Organisations in India

The courts have said there are four types or “heads” of charities. Charities can be created for:

- The relief of poverty;
- The advancement of religion;
- The advancement of education; or
- Other purposes benefiting to the public and analogous (or similar) to purposes, which the courts have found to be charitable.

The charity must be resident in Canada, and cannot use its income to benefit its members. A charity also has to meet a public benefit test. To qualify under this test, an organisation must show that:

- Its activities and purposes provide a tangible benefit to the public;
- Those people who are eligible for benefits are either the public as a whole, or a significant section of it, in that they are not a restricted group or one where members share a private connection, such as social clubs or professional associations with specific membership;
- The charity's activities must be legal and must not be contrary to public policy.

To register as a charity, the organisation has to be either incorporated or governed by a legal document called a trust or a constitution. This document has to explain the organisation's purposes and structure.

If an organisation is registered as a charity, its name appears on the list of charities that is maintained on the CCRA website (www.ccr-aadrc.gc.ca). Any member of the public has the right to ask the Charities Directorate for a copy of a registered charity's application for registration. However, if an organisation is denied registration, or if it drops out of the process, no information about the application is made available to the public.

The Charities Directorate is responsible for ensuring that charities comply with the Income-tax Act and with the rules that have been established for charities.

HAGUE CONVENTION ON THE LAW APPLICABLE TO TRUSTS AND RECOGNITION

The Hague Convention on the Law Applicable to Trusts and on their Recognition, or Hague Trust Convention is a multilateral treaty developed by the Hague Conference on Private International Law on the Law Applicable to Trusts. It concluded on 1st July, 1985, entered into force 1st January, 1992, and is as of March 2011 ratified by 12 countries namely Australia, Canada, China (Hong Kong only), Italy, Luxembourg, Liechtenstein, Malta, Monaco, Netherlands, San Marino, Switzerland and United Kingdom.

(With 75 Members (74 States and the European Union) representing all continents, the Hague Conference on Private International Law is a global inter-governmental organisation. A melting pot of different legal traditions, it develops and services multilateral legal instruments, which respond to global needs.)

Many states do not have a developed law of trusts, or the principles differ significantly between states. It was therefore necessary for the Hague Convention to define a trust to indicate the range of legal transactions regulated by the Convention and, perhaps more significantly, the range of applications not regulated. The definition offered in Article 2 is:

...the legal relationship created, *inter vivos* or on death, by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the following characteristics:

- (a) The assets constitute a separate fund and are not a part of the trustee's own estate;
- (b) Title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- (c) The trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law. The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

A Study on Laws Governing Charitable Organisations in India

Article 3 provides that the Convention only applies to express trusts created voluntarily and evidenced in writing. It will therefore not cover oral trusts, resulting trusts, constructive trusts, statutory trusts or trusts created by judicial order.

Article 6 allows the settlor to select the applicable law in the *inter vivos* or testamentary document. Under normal circumstances, the settlor will be acting on professional advice and will make an express selection or it will be implied from the facts of the case. But, under Article 6(2), if the settlor selects a law with no relevant provisions or the provisions in the municipal law selected would be inappropriate, or there is no selection, Article 7 applies to select the law which is most closely connected with the transaction. This is judged by reference to four alternative connecting factors which are to be considered as at the time the putative trust is created:

1. The place where the trust is to be administered;
2. The place where the assets are to be found (for immovables, there is no problem – the *lex situs* is easily identified; for movables, the most common form is chosen in action such as shares and bonds, and their location does not change (bearer bonds and other instruments where title is determined by mere possession are relatively uncommon), but for tangible assets, this will usually be the place where the assets are located at the time of the hearing given that this represents the place where any Court Order would have to be enforced;
3. The place where the trustee is resident or conducts his or her business;
4. The place where the purpose or object of the trust is to be fulfilled.

Under Article 8, the law specified by Article 6 or 7 shall govern the validity of the trust, its construction, its effects, and the administration of the trust.

Articles 9 and 10 allow the Applicable Law by which the validity of the trust has been established, to sever aspects of the trust and its administration so that separate laws shall apply to each component. In fact, the settlor may expressly select an Applicable Law for each component and the forum court should respect his or her wishes.

Under Article 11, a trust complying with the Applicable Law shall be recognised as a trust which implies, as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his

A Study on Laws Governing Charitable Organisations in India

capacity as trustee, and that he or she may appear or act in this capacity before a notary or any person acting in an official capacity.

This general difficulty of municipal laws failure to support trusts is addressed in Article 13, which considers the situation of those who wish to create a trust but can only do so by invoking laws entirely outside their own state. As an application of comity, no forum state is bound to recognise a trust the significant elements of which, except for the choice of the applicable law, the place of administration and the habitual residence of the trustee, are more closely connected with States which do not have the institution of the trust or the category of trust involved. But, because this could be interpreted as an invitation not to validate otherwise perfectly appropriate financial arrangements for deserving beneficiaries, Article 14 provides that the Convention shall not prevent the application of rules of law more favourable to the recognition of trusts.

Chapter 15

Useful Websites

1. <http://charity.mah.nic.in/index.php> – Charity Commissioner, Maharashtra
2. <http://www.incometaxindia.gov.in/> – Income Tax Department, India
3. <http://www.mha.nic.in> - Ministry of Home Affairs, Government of India
4. www.charitycommission.gov.uk – Charity Commission, UK
5. <http://www.cra-arc.gc.ca/> – Canada Revenue Agency
6. <http://www.irs.gov/> – Internal Revenue Service, USA

