

Legal Definition And Operational Paradigm of Charitable Organisations

Every non-profit organisation must necessarily operate within the meaning and scope of the Act under which it is registered.

- According to section 9(1) of the Bombay 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 general definition of “charitable purpose” is more or less the same in all other states where the Bombay Public Trusts Act is not applicable.

- 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.”

Interestingly, the words, “charity” and “charitable society” have not been defined under this Act which is applicable (with certain modifications from state to state) throughout the Republic of India.

A charitable society, by implication, may therefore be established for one or more “charitable purpose” defined under the Trust Act in force in the state in which the society is sought to be registered or in the absence of a Trusts Act in the state, the Trusts Act of a neighbouring state or failing which, the Bombay Public Trusts Act which is, by far, the most comprehensive piece of state legislation governing charities.

- According to section 25(1)(a) and (b) of the Indian Companies Act, 1956, a “section 25 company” can be established “for promoting commerce, art, science, religion, charity or any other useful object”, provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members.

The Indian Companies Act, 1956 applies uniformly throughout the Republic of India.

- Finally, section 2(15) of the Income Tax Act which is a federal/central piece of legislation applicable uniformly throughout the Republic of India defines “charitable purpose” to include “relief of the poor, education, medical relief and the advancement of any other object of general public utility”. The qualifying line, “not involving the carrying on of any activity of profit”, in the last part of section 2(15) was omitted by the Finance Act, 1983.

“Any other object of general public utility” is a very wide expression. Its exact scope cannot be defined. It would naturally exclude the object of private gain such as an undertaking of commercial profit, though the undertaking may subserve general public utility.

All non-profit organisations in India have to work within the framework of the state and/or federal law under which they are registered.

What Constitutes Public Charitable Purpose

A **public** charitable or service organisation has, for the purpose of its objects, the members of **an uncertain and fluctuating body**.

In ascertaining whether a purpose is public or private, one has to see if the class to be benefitted, or from which the beneficiaries are to be selected, constitute a substantial body of the public. Hence, organisations which lack the public element, such as trusts for the benefit of workmen or employees of a company, however numerous, have not been held to be charitable.

Amalgamation Of Two Or More Organisations

In certain states like Maharashtra and Gujarat, the charity commissioner has the power to amalgamate two or more public trusts by framing a common scheme if he feels such amalgamation would be in the interest of proper effective and economical management and administration of these trusts.

Changing The Objects Of An Organisation

When the particular purpose for which an organisation is created fails or, by reason of certain circumstances, the objects cannot be carried out, the doctrine of cyprus can be applied, i.e., with due procedure of law, the object can be changed to one "as nearly as possible to that which has failed".

Sale of Immovable Properties

In states like Maharashtra and Gujarat, a trust's immovable property cannot be sold, exchanged or given away by gift without the previous sanction of the charity commissioner.

Contribution To The Charity Commissioner's Department

In states like Maharashtra and Gujarat, the charity commissioner's department maintains what is called the "Public Trusts Administration Fund". Every public charitable trust registered in such states have to pay an annual contribution at a rate not exceeding 5% (since the past few years, it has been 2%) of the gross annual income, or the gross annual collection or receipt, as the case may be.

Gross annual income includes income from all sources (including donations and offerings) but does not include corpus donations.

Public trusts exclusively for secular education, medical relief, veterinary treatment of animals, relief of distress caused by natural calamity are exempted from payment of contribution. In case of multi-purpose trusts, deductions are allowed for the portion of the gross income or collection or receipt spent for any one or more of the aforesaid purposes.

Investment Of Funds (Liquid Assets)

Non-profit organisations are generally allowed to park their liquid assets in scheduled banks, public securities and units of Unit Trust of India. Investment in shares of private companies is strictly prohibited.

The forms and modes of investment or deposit of funds of non-profit organisations have been clearly specified both in the Trusts Act and the Income Tax Act.

Foreign Contribution

All non-profit organisations having a definite cultural, economic, educational, religious or social programme may accept foreign contributions only after being registered with, or after seeking the prior permission of the Central Government in accordance with the rules made under the Foreign Contribution (Regulation) Act, 1976. A separate set of accounts and records should be maintained, exclusively for foreign contributions received and utilised, in the cash book and ledger account on double-entry basis, where foreign contribution relates to currency received and utilised, and a separate bank account should be maintained in respect of such contribution.

A return, along with receipts and payment account and balance sheet, in the prescribed form duly certified by a chartered accountant should be filed with the Ministry of Home Affairs within 120 days of the closure of the financial year. Organisations registered under the FC(R)A should file a 'Nil' return in the year or years when there is no receipt of foreign contribution.

The Foreign Contribution (Regulation) Act is a federal/central piece of legislation and affects all persons and associations uniformly throughout India.

Foreign contribution means donation, delivery or transfer made by a foreign source of:

1. any article, unless given to an individual for personal use, the value of such article in India at the time of the gift not exceeding Rs.1,000/-;
2. currency, foreign or Indian, however meagre the amount; it also includes money received from a foreign source in Indian currency;
3. foreign securities including all foreign debentures, bonds, shares, stocks and similar instruments of credit; here, too, the small or insignificant size of the foreign securities involved is no consideration for exemption.

"Foreign source" has been defined in section 2(1)(e) of the Foreign Contribution (Regulation) Act and includes:

1. the Government of any foreign country or territory and any agency of such Government,
2. any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification in the official gazette, specify in this behalf,
3. a foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956), and also includes -
 1. a company which is a subsidiary of a foreign company, and
 2. a multi-national corporation within the meaning of this Act,
4. a corporation, not being a foreign company, incorporated in a foreign country or territory,
5. a multi-national corporation within the meaning of this Act,
6. a company within the meaning of the Companies Act, 1956 (1 of 1956), if 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:
 1. Government of a foreign country or territory,
 2. citizens of a foreign country or territory,
 3. corporations incorporated in a foreign country or territory,
 4. trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory,
7. a trade union in any foreign country or territory, whether or not registered in such foreign country or territory,

8. a foreign trust by whatever name called, or a foreign foundation which is either in the nature of trust or is mainly financed by a foreign country or territory,
 9. a society, club or other association of individuals formed or registered outside India,
 10. a citizen of a foreign country,
- but does not include any foreign institution which has been permitted by the Central Government, by notification in the official gazette, to carry on its activities in India.

All non-profit organisations in India (trust, society or section 25 company, whether registered or not) come under the Act and they must report to the Government the foreign contribution received, within 30 days of the receipt of the amount, in form FC-3. **The law does not provide any lower limit for exemption from reporting. Any foreign contribution** received by an association has to be reported. **Foreign contributions, to repeat, include money received from foreign sources in India, in Indian currency.** As far as associations are concerned, the reception of articles, even of small value, have to be reported, i.e., even if the value in India of that article does not exceed Rs.1,000/- at the time of the gift (see section 6 of the FCRA). Only gifts that are given to individuals for their personal use and which are not worth more than Rs.1,000/- in the Indian market at the time of the gift will not come under the definition of foreign contribution.

Income Tax

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

Out of 298 sections of the Act, only a few, namely sections 2(15), 10, 11, 12, 13, 35 and 80G are of special importance to non-profit organisations.

An important principle under the Income Tax Act is that non-profit organisations in India **are not liable to any income tax**, provided certain conditions required under law are fulfilled.

Some of these conditions include:

1. the non-profit organisation must utilize 85% of its income in any financial year (1st April to 31st March) on the objects of the organisation. In case the organisation is unable to spend 85% of its income in the previous financial year due to late receipt of income or any other reason, the trustees may exercise the option to spend the surplus during the immediately following 12 months. Surplus income can also be accumulated for a specific project, for a specific maximum number of years, as prescribed;
2. the funds of the organisation are deposited according to the forms and modes specified u/s 11(5) of the Income Tax Act;
3. no part of the income or property of the organisation is used or applied directly or indirectly for the benefit of the founder, trustee, relative of the founder or trustee or a person who has contributed in excess of Rs.50,000/- to the organisation in a financial year;
4. the organisation files its return of income annually within the prescribed time limit, after applying for a PAN in Form 49A, along with audit report in Form 10B, if applicable;
5. in case the gross receipts of a public charitable trust being a school, educational institution or a hospital exceed Rs. 1 crore p.a., special exemption from the prescribed authorities will have to be sought each year for which the gross receipts exceed Rs. 1 crore.

Business Income

Section 11(4A) of the Income Tax Act, 1961 has been amended w.e.f. 1-4-1992 and, accordingly, if the income from business is incidental to the attainment of the objects of the non-profit organisation and separate books of account are maintained by such an organisation in respect of such business, the profit is not considered for taxation. In other words, the profit is fully exempt from tax.

Income from a business undertaking which is itself held under trust for charitable purpose [under section 11(1)(a)] is also exempt.

Further, an activity resulting in profit need not always be treated as income from business. Income of a non-profit organisation from letting out halls (for private or public functions), rest houses or auditoriums does not amount to business.

Capital Gains

If a non-profit organisation sells its capital asset, capital gain arising on such sale is not liable to tax if the net sale proceeds are invested in the purchase of new capital asset. Such re-investment should, as far as possible, be made during the same accounting year.

Disqualification For Exemption

All private religious trusts and non-profit organisations created after 1-4-1962 which are for the benefit of any particular religious community or caste are not eligible for tax exemption (u/s 11 and 12). However, a non-profit organisation for the benefit of scheduled caste, backward class, scheduled tribe, women and children is not considered as an organisation for a particular religious community or caste and as such, its income is exempt.

Special Exemption For Certain Institutions

The income of certain non-profit organisations 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.

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¹ http://www.capindia.org/helpguide_1.htm