



CHARITABLE TRUSTS IN INDIA VIS-A-VIS SECTION 8 OF COMPANIES ACT, 2013

By Rani Amol Adgulwar
PhD Scholar, School of Law, VIT Institute of
Technology, Pune

INTRODUCTION

“Charity ... is kind, it is not easily provok’d, it thinks no evil, it believes all things, hopes all things.”

Through the use of the old French word "charité," which came from the Latin word "caritas," the word "charity" entered the English language. In Latin, the term *caritas* originally meant preciousness, dearness, or high price. From this, *caritas* became the traditional Latin translation for the Greek word *agape* in Christian theology, meaning unlimited loving-kindness to all others, such as the love of God. *Agape* was not solely for charitable deeds and contributing to the needy, but this was gradually acquired by the term 'charity' in English as its core sense, in which it was first used in Old French at least after 1200 A.D. Charity is defined as willingly donating to those in need. It requires supplying both cash and selves through service to the poor.¹

The term is often used to refer to an agency or entity that supports people in need. The act of offering money, goods or time to the disadvantaged is charitable giving, either personally or by means of a charitable trust or

other worthy cause. Philanthropic donation as an act or obligation to worship is referred to as almsgiving or alms. The word derives from the clearest expression of the virtue of charity; the means they need to live are offered to the beneficiaries of it. Generally, the poor, especially those widowed or orphaned, and the ailing or disabled, are deemed to be the proper beneficiaries of charity. Most types of charity are concerned with supplying basic needs such as food, water, clothes, health care and housing, although other charitable efforts can be carried out: visiting the incarcerated or severely disabled, ransoming inmates, educating children, even community groups. Donations of organisations that implicitly support the disadvantaged, such as contributions of finance cancer treatment, are also generous.²

Charitable Organisation in India

Charitable organisations are entities serving the express purpose of charity. Trusts, trusts, unincorporated corporations and particular forms of organisations in some states can be founded for a charitable cause or may be founded for that purpose after creation. Philanthropic associations are non-profit organisations, but charity organizations may not all be non-profit organisations. As part of tax preparation plans, some charitable organisations can be founded by corporations. Though the origins of charity are to be found in religious belief and practise, its secular and formal representation is charitable trusts and voluntary organisations. Those who were unable to

¹ Sidel, Mark. "Recent Research on Philanthropy and the Nonprofit Sector in India and South Asia." *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 12, no. 2 (2001): 171-80.

Accessed October 19, 2020.
<http://www.jstor.org/stable/27927718>.

² Finlay, John. *Trusts Law Essentials*. Edinburgh University Press, 2012. Accessed October 19, 2020.
<http://www.jstor.org/stable/10.3366/j.ctt1g0b2fr>.



personally help society, but were able to provide money and other material support, either set up charitable organisations such as dharamshalas, schools, orphanages, women's homes and the like, and donated funds to manage them, or set up endowments to provide permanent monetary assistance to others is also a form of charity.³

A charity organization's main purpose is to serve the society by seeking out worthwhile projects that support the general public. All of the actions carried out by these organisations are also legitimate and their policies are in accordance with general public policy. Charitable groups normally take an aggressive course of action with a promotion or undertaking programmes to raise money. In times of crisis, its roles will vary from aiding others, delivering financial support, emergency care, infrastructure improvements, and undertaking human rights programmes. In general, they act as welfare organisations and serve by their voluntary work for the advancement of society.

According to Section 9(1) of the Maharashtra Public Trusts Act, 1950⁴,

Charitable purpose includes: any form of facility which is given to eradicate poverty; for education of boys and girls, for giving various forms of medical benefit and relief. It also provides that there should be a mechanism which also provides facilities for leisure activities and for recreational purposes. It is important for all of us to know and understand, that even for the public at large, and for improving the status of the society, and for advancement of any

public object, the charitable propose can be created.

However, through the act, it is established, that any activity which is for the purpose of religious workshop and even for worship is used, will not be a part of the charitable trust, because India as a country is wholly secular in nature.

The concept of charitable organization is wide enough to cover actions other than immediate relief of suffering caused by poverty or catastrophes. It requires education, medical assistance, and the advancement of some other item of general public service, such as the promotion and protection of the arts.

In India, the Charitable Organisation can be bifurcated into several types, but it is only 4 types, which is illustrated in the diagram below:

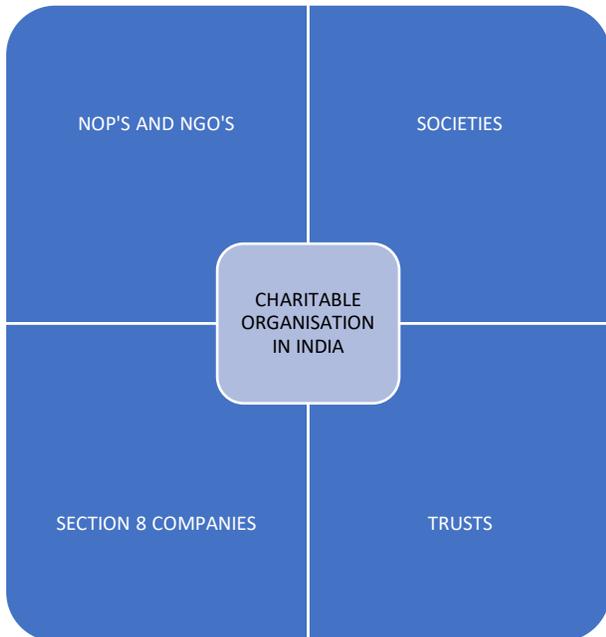
³ Development processes and the development industry- the role of NGOs, , CIVIL SERVICE INDIA | INDIAN CIVIL SERVICE EXAM TIPS | (2020), <https://www.civilserviceindia.com/subject/General->

Studies/notes/development-processes-and-the-development-industry.html (last visited Oct 19, 2020).

⁴ The Maharashtra Public Trusts Act, 1950



This segment of the paper shall discuss about Charitable organisation in India *vis a vis*



Section 8 companies.

CHARITABLE ORGANISATION

In different religious beliefs and traditions, the origins of charity law and non-profit foundations in India can be identified. Religious organisations, especially Christian missions, have traditionally worked in India to help the poor to develop their circumstances. This culminated in the creation of voluntary organisations dedicated to charity work. Mostly during fight for independence in India, non - governmental organizations gained more prominence, particularly with the activism of Mahatma Gandhi.⁵

With the industrialization, the number of foundations and associations to fund health and construction work has been extended to rich families and corporations. Through the passage of various laws, there have been drastic development which has taken place, for example, through the creation of such as the Societies Registration Act, 1860⁶ and the Indian Trusts Act, 1882⁷ (Trusts Act), the charitable organisations could get some form of official status which was not existing earlier. These legislation not only gave public attention to charity causes, but also expanded their income and property and gave security of the law.⁸

According to Section 2(15) of the Income Tax Act, 1961⁹, "charitable purpose" requires the assistance of the needy, education, medical treatment, the protection of the environment (including watersheds, parks and wildlife) and the protection of landmarks or places or items of artistic or historical interest] and the promotion of some other public utility property: given that some other cause is advanced.¹⁰ Furthermore, irrespective of the essence of the use, application or preservation of revenue from such activity, provided that the first clause does not extend if the total amount of the receipts from the operations related to therein is 10 lakh rupees or less in the preceding year.

Basic characteristics of a Charitable Organisation

1. Formal:

⁵ Charitable organisations in India: overview | Practical Law, <https://uk.practicallaw.thomsonreuters.com> (last visited Oct 23, 2020).

⁶ Act no 21 of 1860

⁷ Act no 2 of 1882

⁸ Supra note 5

⁹ Income Tax Act 1961

¹⁰ Charitable Purpose u/s. 2(15) of Income Tax Act ,1961, <https://taxguru.in/income-tax/charitable-purpose-215-income-tax-act-1961.html> (last visited Oct 19, 2020).



A charity should be codified and licensed that should have well-defined policy goals, as well as management legislation and rules.

2. Private:

It is necessary for a charitable entity to be systemically distinct from the government.

3. Self-governing

A voluntary organisation is generally governed by the 'Board of Trustees' or 'Governing Council.' Stake holders in the administration of a charitable entity may behave in a fiduciary position.

4. Not for profit

Profits should not be collected by a charitable organisation. It can make a profit, that is considered a surplus, and preserve it.

5. Voluntary

Any substantive volunteer involvement in the operations and administration of the organisation is necessary for an institution to be listed as charity organization.

6. Non-religious

In encouraging religious practice or religious instruction, a charitable entity may not be involved. However, it can cover solely service-oriented groups associated with religious groups.

7. Non-political

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

8. Works for public benefit:

A charitable organisation should not represent a commercial purpose, and it is very essential to include a public aspect in its activities.

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.

Constitutional Framework of Charities and Charitable Organisation

The subject 'Trust and Trustees' is listed in Entry No.10 of the Concurrent List under Schedule VII of the Indian Constitution and 'Charities & Charitable Organizations, Charitable and Religious Endowments and Religious Institutions' is listed in Entry No.28 of the Concurrent List.¹¹ The Centre and the States are also authorized to promulgate and control charitable organisations. However, Section 8 companies are governed by the Companies Act 2013, so only the central government controls the regulation and management of these companies.

Section 8 Companies in India, 2013

In India, the Section 8 Corporation is governed and administered by the Ministry of Corporate Affairs, Government of India by the Offices of Registrar of Companies ('RoC') in each of the states of India by the Indian Companies Act, 2013 (and the amendments thereto) and the rules & regulations rendered thereunder. The rules, criteria, process, and procedures of the Business Incorporation differ more or less depending on the form of organisation to be incorporated.

Section 8 Company is a company authorised under Section 8 of the Companies Act, 2013

¹¹ The Constitution of India, 1950



(the Act), formerly known as Section 25 Company under the Companies Act, 1956, the primary purpose of which was to encourage research, social welfare, worship, charity, commerce, art, technology, athletics, education, and environmental conservation or some other aim, given that the revenues, should be used for some objects of the company for which it is created.

Section 8 is, thus, a corporation that is authorized for charity or non-profit purposes. This Corporation is, however, equivalent to a Trust or Society; a distinction is that a Section 8 Company is licenced under the "Ministry of Corporate Affairs (MCA)" of the Central Government while the Societies and Trusts are licenced under the rules of the state legislature. However, as opposed to Faith or Community, this has multiple benefits and also has greater trust among donors, government departments, as well as other participants. "In addition, the main advantage of this corporation is that, as the case may be, the name of the company may be incorporated without the use of the term" Limited "or" Private Limited.¹²

The minimum requirements that are necessary for such company are:

- At least two shareholders must be present;
- At least 2 different directors must be available (directors and shareholders can be the same person);
- At least one of the Directors is resident in India.;
- No capital requirement is necessary.
- For Indian citizens, the income-tax PAN is a basic precondition;

¹² :: Ministry of Corporate Affairs ::, <http://www.mca.gov.in/Ministry/reportonexpertcommittee/chapter4.html> (last visited Oct 19, 2020).

- Any Identification Proof, be it Voter ID / Aadhar Card / Driving License / Passport, is required; Passport, however, in the relation to foreign citizens, is a necessary prerequisite for proof of identity;
- Any of the Energy Bill / Telephone Bill / Mobile Bill / Bank Statement Proofs of Residence;
- The Registered Office address evidence (that is the leasing arrangement along with the latest rental receipt and a copy of the latest utility bill on behalf of the landlord and a certificate of no complaint from the owner of the property if the property are leased);
- If the premises are operated either by the Director or the Developers, either of the possession papers including the receipt of Sale Deed / House Tax etc, along with the certificate of no objection.¹³

There are therefore certain rights and incentives for Section 8 firms under the Company Law:

- The creation of Company Section 8 is a simple operation.
- The required paid-up capital is not necessary.
- It is excluded from filing for Stamp duty.
- Each of the registered partnership companies can, in their individual capacity, be a member.
- U / s 12AA and u / s 80 G of the Income Tax Act, it gives a greater deal of benefits and facilities to the beneficiaries.
- It is more versatile.
- It usually takes approximately 30-45 working days for a Section 8 business to enroll. However, this period could be shorter if the Regional Director accepts the request sooner.¹⁴

¹³ Id

¹⁴ Id



Conclusion:

Non-profit organisations have long been used as a special purpose vehicle (SPV) that serves as tools and is perceived to be the guiding force of making the government do the tasks they long try to do to change society, but because of numerous circumstances, they could not do so. Non - profit organizations are the direct link between culture and its well-being, offering a forum for joining hands to work for society and the environment, and eventually to make this planet a better place. India is a diversified economy, lacking in many areas such as work creation, food and safety, schooling, health care, etc. Due to several variables, the fact that most of these problems are not resolved by government policies has created a need and room for the groups' seeking to solve them 'and thus the concept of the non-profit organisation comes into play.

