

Traditional Hindu Law on Charitable & Religious Endowments

By *Manvee*¹

Introduction

Endowments can be defined as gifts given to deities or properties set apart for the deity or to some religious institutions like temples which are used by the general public. Endowments also include beneficial works and social welfare done for mankind. Endowments are most gifted in the field of social welfare, health, education, orphanages and old age homes, etc. and the reason behind this practice is that it is believed in Hindu dharma that doing such stuff will lead to attaining moksha after the death of the person and another reason for doing so is to nullify the past sins of oneself of previous birth according to Hindu dharma.

A person who is a Hindu and is not a minor, is of sound mind may dispose of his/her property by will or by a gift for charitable and religious purposes and these religious purposes include worship and establishment of idols, feeding the poor, and Brahmanas, performing religious ceremonies like Lakshmi Puja, Durga puja and Shradha and the endowments to the university or a hospital. Although this is not an exhaustive list merely a shortlist, in Hindu law what constitutes religious merit is exhaustive. Nevertheless, whenever any purpose is claimed to be a valid one for a continuous dedication on the ground of religious merit it must be shown to be of a shastric basis. The English laws don't apply to the Hindu religious endowments, only Hindu Law applies to this hence a gift in favor of an idol or for the performance of worship of a deity is valid according to the Hindu laws. Hindu Law highly favors dispositions for religious purposes and the courts also lean in the same directions. In Hindu Law dedication of property by a Hindu to a deity is highly commendable but also lawful at the same time.

It is important to note that during the Vedic period temples and Mutts didn't exist, even in the Sutra period there was no existence of Mutts although temples did exist during that time. According to Gautama-Dharmasutra, we get to know about the mentions of temples of God that time at more than one place but we don't know which deities were worshipped in Hinduism at that time.

¹ Student of B.B.A LL.B (Hons.) at Chanakya National Law University Patna (Batch of 2025).

Indexed at **Manupatra**

It's a bit difficult to say that when exactly the existence of Idols came but it's one thing for sure that idols didn't exist during the Vedic period. So far Hindus have been worshipping puranic gods and the age of these pourannas is still uncertain. During the 4th & 8th centuries A.D., the worship of Puranic gods became popular among people. Today what we worship the idea of the trinity of God - Brahma, Vishnu & Mahesh is a puranic concept.

With the advent of idol worship, the dedication of property for the construction and maintenance of temples, idols & mutts came into existence and from this time onwards people have been dedicating their property for charitable and religious purposes and this has been done under mainly 2 heads Ista & Purta. Ista indicates the Vedic sacrifices and the rites associated with these Vedic sacrifices whereas Purta stands for all other charitable and religious acts and purposes rather than the Vedic sacrifices. In the Hindu religion, the Ista-Purta has been considered as a means to go to heaven.

Formation of Charitable & Religious Trust

Every Country, Every Society, Every Community have poor and needy people variously, so there are people too to tackle the needs of the poor and marginalized people of the society. Here Charitable Trusts or Organizations serve the purpose for these needy people; instead of donating a high amount of donations to the Government or Semi-Government Organizations, people find it convenient to form Charitable trusts and work for welfare of the poor and needy people.

If someone aspires to form a charitable trust then it's a must for him to know the meaning of charitable purpose. Under section 2(15)² of the Income Tax Act, 1961 we get to know about the definition of Charitable Purpose, and another legislation that covers the definition of Charitable

² **“Charitable purpose”** includes relief of the poor, education, [yoga,] 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, unless—

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year

Indexed at **Manupatra**

Purpose is Bombay Public Trust Act, 1950 under its Section 9. Legally we do have the definition of Charitable Purpose in our legislation but Religious Purpose hasn't been defined anywhere in our existing legislation. But Religious purposes would include support, propagation, advancement of religious idols, and performance of religion and its tenets. Therefore, it is evident from the Income-tax Act, 1961 that trusts established for the worship of idols and performance of religious fests are exempted under section 11 of the aforementioned act yet they may be beneficial for the particular community, caste, or religion. The exemption under Section 11 also includes education, medical relief, relief of the poor, and the advancement of any other general public utility object. Henceforth it is advisable not to form charitable trust with an aim to carry on profit-making activities or tasks and if it is formed accordingly then will be liable for maximum marginal rate taxes.

Another critical question that often strikes to mind is most of the time while reading about trust is *What is the purpose behind the formation of Trust?* The answer to this question is Religious Institutions and Charitable Trusts are formed in order to create and maintain the following establishments for the interest of the public;

➤ **Education**

In the name of trust education includes activities to open, establish, maintain, support, acquire, grant monetary assistance to schools, colleges, research labs, imparting education to students in these institutes and it also includes an activity to support and establish fellowships, lectureship, professorship, prizes and medals at any Schools, colleges or other educational or professional institutes.

➤ **Relief of the Poor**

Looking in the context of trust deeds, the charity may only sound relief of poor although benefit doesn't need to be confined to poor only also relief of poor means doesn't need to provide something without recovering any cost for less than its cost.

➤ **Medical Relief**

Similar to the relief of the poor, medical relief also doesn't mean only the poor and downtrodden people of the society will be treated for free or low bono basis. Hospitals or other medical institutes may be considered for other charitable purposes if it is capable to maintain itself by running special rooms for the patients who, who pay the full price over and above donation. If certain fees are charged to people who could afford to take the benefit

Indexed at **Manupatra**

of hospitals, then the hospital wouldn't lose its charitable character. Therefore, the benefit of trust doesn't have to be only available to poor and marginalized people. In hospitals and medical institutions, there may be general wards, special wards, A.C rooms for patients who are capable enough to afford these elite services.

➤ **General public Utility**

It is not necessary that for making a purpose charitable it should be beneficial to the poor and marginalized people of the society but instead what is required is a benefit to a specific section of the society. *An object of general public utility includes benefit to a section of the public and it is not necessary³ that the object should benefit the whole of mankind or all persons of that country or state.*

Different kinds of Religious and Charitable Institutions

Religious and Charitable Institutions can be constituted in various forms such as Societies, Public Charitable Trusts & Companies.

Public Charitable Trusts – Basically Public Trust is a Trust for the general public for charitable purposes and this includes Temples, Churches, Mosques, and societies for the purpose of religious offerings. Society may have a charitable or a religious object but if it's not there then it can't be called a 'Public Trust'.

Societies – In order to form a Society, one needs to register it under Section 20⁴ of the Societies Registration Act, 1860. Once registered then it's a legal entity apart from its members, trustees, or secretary.

Companies – It is pertinent to know that if an association wants to register a company in order to promote charity, then it can be done by registering the association under Section 8 of The Companies Act, 2013 and in such cases where the company is formulated with the aim of charity

³ *Ahmedabad Rana Caste Association v. Commissioner of Income Tax* (1971) 82 ITR 704.

⁴ **To what societies Act applies.**—*The following societies may be registered under this Act:— Charitable societies, the 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, collections of natural history, mechanical and philosophical inventions, instruments, or designs.*

Indexed at **Manupatra**

the central government may by license register such association as a company with limited liability without the word 'Private Limited' or 'Limited'.

Laws Governing Public Charitable Trusts in India

In India Public trust in individual states is governed by the Public Trust Act in that relevant state, let us say for example The public charitable trust formulated or registered in the state of Maharashtra is governed by the Bombay Public Trusts Act, 1950. The first law which came in India for regulating the Trusts was in 1882 and it was The Indian Trusts Act, 1882, and this act was enacted for the management of Private Trusts in India at that time. Similar to the Bombay Public Trusts Act, 1950 states such as Gujarat, Rajasthan & Madhya Pradesh also have their state-specific legislation for the regulation of Trusts. Madhya Pradesh has an act of 1951 whereas Rajasthan has an act of 1959. Moreover, there are also endowment acts in some southern states such as Andhra Pradesh, Madras, etc. Madras has an endowment act of 1951 titled *Madras Hindu Religious Endowments Act 1951* for regulation of Endowments. Whereas in Most of the Northern and Northeastern states we do not have any specific legislation for the regulation of Trusts. Even our National Capital New Delhi doesn't have any Trust Act; In such cases where no specific trust act exists in the state or union territory then the public trusts in these states are governed by the Indian Trusts Act, 1882. Although the Indian Trusts Act, 1882 is not wholly applicable to Public Charitable Trusts there still exists a bare minimum requirement to create charitable Trusts they are as follows:

- A declaration of Trust will be binding on the settlor of the trust
- Setting a part of a definite property & settlor had deprived herself/himself of the ownership of the trust
- The beneficiary or beneficiaries for which the properties are thereafter to be held.

Another important aspect to look after is the trustees should signify their acceptance for acting as trustees to make the trust legally valid. Also, the transfer of the property by the settlor or the authority of the trust should be competent enough to sign a contract and along with this, the trustees should also be competent to sign a contract.

Indexed at **Manupatra****Applicability of Taxation Laws to Public Charitable Trusts in India**

The taxes on Public charitable Trusts in India are governed by the Income Tax Act of 1961. In India, Public Charitable Trusts are exempted from Income taxes. These exemptions are provided in the Section 11,12 & 13 of the Income Tax Act, 1961.

Section 11 of the Income Tax Act talks about the modes of exemption from the Income-tax to such public charitable trusts whereas **Section 12⁵** talks about the exemption from the contribution of the income of the trust, Income of these trusts from these contributions, any voluntary contributions received by the trust for any of the charitable or religious purposes or by an institution established for this purpose wholly. **Section 13** of the Income-tax act acknowledges the details related to the forfeiture of the exemption of Income Tax by a public charitable trust.

In India all the trusts have the obligation to file annual reports and these annual income reports should be filed to relevant authorities having the jurisdiction of the state where the trusts are registered. For example: If any trust has been established in the state of Gujarat, then the annual income tax return report needs to be filed in the jurisdiction of Gujarat only. One can't file the annual income report in the jurisdiction of Rajasthan if their trust is registered in the state of Gujarat. The Income of the authors of the trust can be taxed as personal income under section 60-63 of the Income Tax Act, 1961 in those cases where there is a provision for the revocation of the trust under the trust deed.

⁵ [(1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.]

[(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

2 [(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G 3 [in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or] which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 4 [2004] shall be deemed to be the income of the previous year and shall accordingly be charged to tax.]

Indexed at **Manupatra**

Under the Income Tax Act, 1961 we get to know about the detailed privileges available to the donors of the Public Charitable Trusts from Section 80 G⁶. Under Section 80 G of the act, an Individual donor is granted a specific deduction⁷ if any such donations are made to these Public Charitable Trusts, and in order to acquire the benefit of its donors, public charitable trust is required to obtain a valid certificate. If any author of a Public Charitable trust wants to get this certificate, he/she is required to fill out an application form 10G along with the trust deed to the Income Tax Office in their jurisdiction where the Trust has been formulated.

The first and foremost prerequisite of obtaining this certificate is that the income gained from the property of the trust should only be used for the purpose of charity and not any other profitable purposes and the donations made by the donors should not go in vain or used of any other purposes other than charity.

TABULAR CHART⁸ OF EXEMPT INCOME IN CASE OF CHARITABLE OR RELIGIOUS TRUST

SL. NO.	NATURE OF INCOME	TO WHAT EXTENT IS EXEMPTION ALLOWED	CONDITIONS APPLICABLE	RELEVANT PROVISION
A	Income derived from the property held under the trust wholly for charitable purposes	To the extent, such income is applied in India for such purposes	Accumulation allowed up to 15% of such income. Accumulation in excess of 15% is allowed subject to certain conditions being satisfied.	Section 11 (1) (a) Section 11(2)
B	Income derived from the property held under the trust which is applied in part for charitable or religious purposes	To the extent such income is applied in India for such purposes	(i) Accumulation allowed up to 15% of such income. Accumulation in excess of 15% allowed subject to certain conditions being satisfied. (ii) Trust should have been created before 1.4.1962	Section 11 (1) (b)

⁶ Deduction in respect of donations to certain funds, charitable institutions, etc.

⁷ IPleaders Blog, *What laws apply to a public charitable trust in India? Process compliance, best practices, and applicable law*, Kshitij Datta Rishi, April 17, 2017, <https://blog.ipleaders.in/charitable-trust/> accessed on 7th October 2021.

⁸ *Concise Commentary on Income Tax*, Dr. Girish Ahuja & Dr. Ravi Gupta, Chap. 19, Pg. 1224-1225, 19th Edn., Vol.2, Wolters Kluwer.

Indexed at **Manupatra**

C	<i>Income derived from property held under trust –</i>	<i>To the extent such income is applied to such purposes outside India</i>	<i>The purpose of the trust is to promote international welfare in which India is interested. Further general or special order of Board for exemption is necessary No accumulation allowed.</i>	Section 11 (1) (c) (i)
(I)	<i>Created on or after 1.4.1952 for charitable purposes to be used for charitable purposes outside India (Religious Trust not Covered).</i>			
(II)	<i>Created before 1.4.1952 for charitable or religious purpose to be used for such purposes outside India</i>	<i>To the extent such income is applied outside India for such purposes</i>	<i>No condition applicable but general or special order of Board for Exemption is Necessary.</i>	Section 11(1) (c) (ii)
D	<i>Voluntary contribution forming part of corpus</i>	<i>100% exempt with no condition of application of accumulation</i>	<i>There should be specific direction that such contribution to from part of corpus of the trust or institution.</i>	Section 11 (1) (d)

Applicability of Code of Civil Procedure, 1908 to Public Charitable Trusts

The Code of Civil Procedure Section 92 acknowledges the Public Charitable Trusts. The main objective of this section is to discourage impoverished and improper persons indulging in vexatious and improper suits against trustees and requiring the Advocate-General to institute a suit, or permission of the court before suits are instituted is to protect public interests and the interests of the institution.

Applicability of Foreign Contributions (Regulation) Act, 2010 to Public Charitable Trusts

Those public charitable trusts which receive foreign contribution from the foreign donors are required to obtain the registration under section 6 (1) of the said act and such registration is called an FCRA registration. Once the application is done several additional criteria are need to be met before the FCRA registration is provided. Even⁹ after the registration are done in the trusts, they should be careful while accepting the foreign donations and grants from the entities as these funds may sometimes go against the nations of public wellbeing.

Apart from The Income Tax Act, The Code of Civil Procedure & Foreign Contributions (Regulation) Act other legislations which are applicable to Public & Religious endowments and

⁹ Supra Note 6.

Indexed at **Manupatra**

Trusts are Religious Endowments Act (1863), Charitable & Religious Trusts Act (1920), Charitable Endowments Act (1890), Registration Act (1908), Indian Stamp Act (1899) & Hindu Religious and Charitable Endowments Act (1951).

Landmark Cases

➤ **G.S Kaha Lakshmi v. Shah Ranchod Das**¹⁰

In this case, the Supreme Court held that the temple of Sri Gokulnath Nadeyad is a public temple and the trust created by the supporters of Nadiad and Ballabh cult is of Public Nature and dedicated to the public. It was also observed that any individual could make an entry inside the temple only after the worshipping by Goswami is over and it doesn't in any manner influence the public nature of the temple. Also, the fact that the appearance of the temple is like a house doesn't establish that the temple is not a public temple.

➤ **Radha Kant Deo v. The Commissioner, Hindu Religious Charitable**¹¹

It was observed by the Supreme Court that under the English Law a religious endowment of private nature can't be conceived and it can only be possible under the Hindu law.

➤ **Swami Parmatmanand Saraswati v. Ramji Tripathi**¹²

In this case, it was observed by the Supreme Court that a suit under Section 92 of the Code of Civil Procedure is a suit of special nature where the presumption is that the existence of the public trust or charitable character or is religious character and such suit can proceed only on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section.

➤ **Kailash Chand v. Bhupal Nath**¹³

¹⁰ 1970 AIR 2025.

¹¹ AIR 1981 SC 798.

¹² 1974 AIR 2141.

¹³ AIR 1973 All 238.

Indexed at **Manupatra**

We are aware of the fact section 92 of the code of civil procedure applies only to public trust and the main distinction between a public and a private trust is that in public trust the beneficiaries are the general public or a class thereof and they constitute a body which is incapable of ascertainment whereas in a Private Trust the beneficiaries are specific individuals who are ascertained or capable of being ascertained. So, it needs to be established that beneficial interest in the trust is vested in an uncertain and fluctuating body of individuals and the trust is of a permanent character. Therefore, a religious endowment according to the need of the beneficiaries is held to be public or private.

Conclusion

We are not unaware of the fact that the Hindu religion is one of the oldest religions of the world and the Hindu religion includes in itself several other castes and subcastes which vary from state to state or region to region. The practice of these castes varies to a large extent worldwide. The Hindu religion is based on the scriptures of Vedas, Puranas, Upanishads, Bhagwadgeeta, etc. We can say that Hindu Religion can be considered as a case of University in Diversity. Under Hindu Religion worshiping of inanimate objects such as Naga devatas are worshipped, Soil, Sea even Trees are worshipped. Charitable and Religious endowments shatter light on how people have been dedicating their properties in the name of religion to non-Profitable trusts and Deities. The reason behind doing this is to attain moksha after death and to overcome the sins committed in one's previous birth.