

Study on definition of charity among various existing laws regulating voluntary organizations in the state of Gujarat.

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Abstract:-

In majority of religion charity is one of the major component and different charitable activities are part of individual religious belief. Over the period of time legal frame work for regulating such charitable works were developed and even in the state of Gujarat there are four major acts regulating voluntary organizations 1] Gujarat public trust act 1950 2] The society registration act 1860 3] The company act 2013 4] WAQF act 1995.

The study will focus on four major acts regulating voluntary organizations in the state of Gujarat and the definition of the charity in all four major acts will be discussed and gaps in interpretation of the word charity and charitable objects is discussed in this study.

Introduction:-

India has an ancient history of society based on the concept of philanthropy. Vedas, a large body of texts originating in ancient India are the oldest scriptures of Hinduism. The Rig Veda, one out of the four Vedas, refers to some elements of collective social entrepreneurship which manifested in the form of charity as a duty and responsibility of a conscious human being.

During the reign of the Mauryas and Guptas (4th century BC to 5th century AD) and even later, a strong village community based on collective entrepreneurship and social collectiveness was in existence across the country. These practices of philanthropy and a strong and collective community life transformed into the modern concept of social capital. These in contemporary form are Non-Profit Organization that we understand. India has a long history of civil society based on the concepts of daana (giving) and Seva (service). Voluntary organizations that are voluntary in spirit and without profit-making objectives were active in cultural promotion, education, health, and natural disaster relief as early as the medieval era. They proliferated during British rule, working to improve social welfare and literacy and pursuing relief projects.

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.¹

VO have a long history in India. In the past, people in this country have been found to have provided help to others in trouble. Since centuries there exists the tradition of voluntary service to the needy and helpless in the country. In the beginning, these services were rendered by people motivated by their religious feelings. They believed that service to people would be the service to God and, therefore, would be a means to attain spiritual salvation and sometimes to atonement for any sinful act. Spirit of charity and altruism guided the voluntary action in the past, which had found expression in diverse forms even outside the formal established religious channels. Many people including rulers have trod the path of service to their fellow beings and adopted it as their life mission.

There are four major Acts regulating voluntary organizations in the state of Gujarat.

1. The Gujarat Public Trust Act-1950
2. The Society Registration Act -1860
3. Waqf Act- 1995
4. Company’s Act-2013

In this study researcher will focus on the definition of Charity in four major Acts regulating voluntary organization in state of Gujarat. This study will include the meaning of Charity in different Acts and gaps in interpretation of the same.

Hypotheses:-

- There is a no clear definition of Charity in all existing laws governing voluntary organizing in the state of Gujarat.
- All existing Laws regulating voluntary organizations definitions and the actual work carried out by voluntary organizations have gaps in the interpretation of word Charity.

Objectives:-

- To study definition of Charity under different existing Laws in Gujarat.
- To study the limitation and gaps in definition of Charity under different Acts laws governing voluntary organizing in the state of Gujarat.

¹ See, Evolution and growth of non-profit organization in India, available at: <https://caknowledge.com/evolution-growth-non-profit-organisations-india/>,(last visited on January 1, 2020)

Scope of the study:-

In present study, researcher is focusing only on the definition of Charity under various Laws in Gujarat further the study can be extended to the national and international level. And it can be used to co relate national and international level studies.

Observations:-

(1) Definition of Charity under Gujarat Public Trust Act-1950 :-

The Act defines various designations as Charity Commissioner, Joint Charity Commissioner and Assistant Charity Commissioner in section 2.2, 2.3, 2.5 and the explanation of the designation is given in section 3, 3(A) and 5.

• 3 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],

[Provided that on and after the commencement of the Bombay Charity Commissioner (Regional Reorganisation) Order, 1960, made under the Bombay Statutory Corporations (Regional Reorganisation) Act, 1960, (Bombay XXI of 1960) the State Government of Bombay may, by notification in the *Official Gazette*, appoint separate officers to be called the Charity Commissioner, Bombay and Charity Commissioner, Gujarat, whose jurisdiction shall extend over the Maharashtra region and Gujarat region respectively, as defined in that Act. Where two separate Charity Commissioners are appointed, any reference in this Act to the Charity Commissioner shall unless the context otherwise requires, be construed as a reference to the Charity Commissioner having jurisdiction.]

• 3A. Joint Charity Commissioners:-

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 control of Charity Commissioner and to such general or special order as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions of the Charity Commissioner.]

4. Qualifications for appointment of Charity Commissioner and Joint Charity Commissioner :-

[A person to be appointed as the Charity Commissioner or a Joint Commissioner shall be one-
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(a) who is holding or has held a judicial office not lower in the rank than that of a District Judge, or a Judge of the Bombay City Civil Court or the Chief Judge of the Presidency Small Cause Court, or

(b) Who has been for not less than ten years-

(i) An advocate enrolled under the Indian Bar Councils Act, 1926 (XXXVIII of 1926).

(ii) An attorney of the High Court, or

(iii) A pleader enrolled under the Bombay Pleaders Act, 1920 (Bombay XVII of 1920).

5. Deputy and Assistant Charity Commissioners :-

(1) The State Government may also appoint such number of Deputy and Assistant Charity Commissioners for such regions or sub-regions or for such public trust or such class of public trusts as may be deemed necessary.

[(2A) A person to be appointed as a Deputy Charity Commissioner shall be one-

(a) who is holding or has held a judicial office not lower in the rank than that of a Civil Judge (Senior Division) or a Judge of the Court of Small Causes of Bombay or any office which in the opinion of the State Government is an equivalent office, or

(b) Who has been for not less than eight years-

(i) An advocate enrolled under the Indian Bar Councils Act, 1926.

(ii) An attorney of the High Court, or

(iii) A pleader enrolled under the Bombay Pleaders Act, 1920.]

(2A) A person to be appointed as an Assistant Charity Commissioner shall be a person-

(a) who is holding or has held a judicial office not lower in the rank than that of a Civil Judge (Junior Division) or any office which in the opinion of the State Government is an equivalent office, for not less than four years, or

(b) Who has been for not less than seven years-

(i) An advocate enrolled under the Indian Bar Councils Act, 1929.

(ii) An attorney of the High Court, or

(iii) A pleader enrolled under the Bombay Pleaders Act, 1920.

(3) The Deputy and Assistant Charity Commissioner shall exercise such powers and perform such duties and functions as may be provided by or under the provisions of this Act.²

The Charitable Object is defined in section-9 of Gujarat Public Trust Act-1950 is as below:-

For the purposes of this Act, a charitable purpose includes-

- Relief of poverty or distress,
- Education,
- Medical relief, and
- The advancement of any other object of, general public utility, but does not include a Purpose which relates
- Exclusively to sports, or
- Exclusively to religious teaching or worship.

So as per, The Gujarat Public Trust Act 1950 there is definition of charitable objects and Charity Commissioner, Joint Charity Commissioner and Assistant Charity Commissioner but there is no specific definition of word Charity in the Act. Even Activity like sports and activity exclusively to religious teaching or worship are not included in charitable objects.

3 Definition of Charity in Society Registration Act-1860 :-

In Societies registration Act charitable objects are define in section 20 which is as follows:

Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the 3 [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.³

In entire Act word Charity is not define anywhere. Only Charitable objects are define in Section 20 which is also very limited and many of the philanthropic objects are not involved in the Act.

² See, definition of charity under Gujarat Public Trust Act-1950, available at: <https://www.latestlaws.com/bare-acts/state-acts-rules/gujarat-state-laws/bombay-public-trusts-act-1950>, (last visited on December 31, 2022)

³ See, definition of charity in Society Registration Act-1860, available at: https://www.mca.gov.in/Ministry/actsbills/pdf/Societies_Registration_Act_1860.pdf, (last visited on December 31, 2022)

(3) Companies Act -2013:-

Section 8: Formation of companies with charitable objects, etc.

(1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company--

- 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 members,

the Central Government may, by license issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

(2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by license, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the license granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a license is issued or the affairs of the company are conducted fraudulently or in a manner violate 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 action that may be taken under sub-section (7), 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:

Provided further that a copy of every such order shall be given to the Registrar:

(7) Where a license is revoked under sub-section (6), 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:

(8) Where a license is revoked under sub-section (6) 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.

(9) 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, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to [Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)].

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this section, 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 ^{2***} with fine which shall not be less than twenty-five thousand rupees but which may extend to ³ [twenty-five lakh rupees]:

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 447.⁴

In Section 8 (2) objects for which company for charitable, nonprofit work can be established is defined but word Charity is not define in entire Act.

⁴ See, Companies Act-2013, section-8 formation of companies with charitable objects, available at: <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, (last visited on January 17, 2022)

(4) Waqf act 1995:-

In WAQF act the word beneficiary, benefit and WAQF is defined as below:

- (a) “beneficiary” means a person or object for whose benefit a waqf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law;
- (b) “Benefit” does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;
- (c) “Board” means a Board of Waqf established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common Waqf Board established under section 106;
- (d) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 23;
- (e) “Council” means the Central Waqf Council established under section 9;
- (f) “Executive Officer” means the Executive Officer appointed by the Board under sub-section (1) of section 38;
- (g) “List of waqfs” means the list of waqfs published under sub-section (2) of section 5;
- (h) “Member” means a member of the Board and includes the Chairperson;
- (i) “mutawalli” means any person appointed, either verbally or under any deed or instrument by which a waqf has been created, or by a competent authority, to be the mutawalli of a waqf and includes any person who is a mutawalli of a waqf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any waqf or waqf property: Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation;
- (j) “Net annual income”, in relation to a waqf, means net annual income determined in accordance with the provisions of the Explanations to sub-section (1) of section 72;
- (k) “Person interested in a waqf” means any person who is entitled to receive any pecuniary or other benefits from the waqf and includes—
- (i) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khangah, maqbara, graveyard or any other

religious institution connected with the waqf or to participate in any religious or charitable institution under the waqf;

- (ii) the wakif and any descendant of the wakif and the mutawalli;

(l) “Prescribed”, except in Chapter III, means prescribed by rules made by the State Government;

(m) “Regulations” means the regulations made by the Board under this Act;

(n) “Shia waqf” means a waqf governed by Shia law;

(o) “Sunni waqf” means a waqf governed by Sunni law;

(p) “Survey Commissioner” means the Survey Commissioner of Waqf appointed under sub-section (1) of section 4 and includes any Additional or Assistant Survey Commissioners of Waqf under sub-section (2) of section 4;

(q) “Tribunal”, in relation to any area, means the Tribunal constituted under sub-section (1) of section 83, having jurisdiction in relation to that area;

(r) “Waqf” means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes—

- a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;
- “grants”, including mashrut-ul-khidmat for any purpose recognized by the Muslim law as pious, religious or charitable; and
- a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable, and “wakif” means any person making such dedication;

(s) “Waqf” deed” means any deed or instrument by which a waqf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;

(t) “Waqf Fund” means a waqf fund formed under sub-section (1) of section 77.⁵

⁵ See, Waqf act-1995, available at:

<https://indiankanoon.org/doc/631210/>, (last visited on January 22, 2022)

Waqf Fund :-

(1) All moneys received or realized by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fund to be called the Waqf Fund.

(2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(3) Subject to any rules that may be made by the State Government in this behalf, the Waqf Fund shall be under the control of the Board, so, however, that the Waqf Fund under the control of common Waqf Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The Waqf Fund shall be applied to—

- Repayment of any loan incurred under section 75 and payment of interest thereon;
- Payment of the cost of audit of the Waqf Fund and the accounts of waqf;
- Payment of the salary and allowances to the officers and staff of the Board;
- Payment of travelling allowances to the Chairperson, members, of the Board;
- Payment of all expenses incurred by the Board in the performance of the duties Imposed, and the exercise of the powers conferred, by or under this Act;
- Payment of all expenses incurred by the Board for the discharge of any obligation Imposed on it by or under any law for the time being in force.
- If any balance remains after meeting the expenditure referred to in sub- section (4), the Board may use any portion of such balance for the preservation and protection Of waqf properties or for such other purposes as it may deem fit.⁶

In WAQF act 1995 there is no specific definition of charity. Only beneficiary is defined and that definition charitable objects are mentioned which is not sufficient to explain charitable work.

Findings

(1) Word Charity is not defining in any of the Act regulating voluntary organization in the state of Gujarat.

(2) Only Charitable Objects are defined in Gujarat Public Trust Act-1950, Society Registration Act-1860, and Companies Act-2013. But all major Acts no exhaustive definition of Charity or Charitable Objects are defined.

(3) Person wants to form voluntary organization in the state of Gujarat will be always in a dilemma to decide to get registered under which Act.

⁶ See, Waqf Fund, available at:

https://www.indiacode.nic.in/show-data?actid=AC_CEN_44_74_00001_199543_1517807323904§ionId=10422§ionno=77&orderno=80, (last visited on January 22, 2022)

- (4) There is no clarity on the word Charity so without functional definition of Charity it is improper to decide Charitable Objects and due to which there may be gaps in registered instrument of charitable organizations registered under this Acts.
- (5) Gujarat Public trust act 1950 defines only charitable objects in four broad categories and with the change in time there are many charitable objects other than defined in section 9 and how to get registered for objects other than section 9 is a area of concern.
- (6) Activities like sports and religious activities are excluded in section 9 of Gujarat Public trust act 1950 and why they are excluded; there is no justification for the same.
- (7) The society registration act 1860 has no definition of charity but in section 20 charitable objects for which society can be registered is explained but again as per change in time if someone wants to register society for object other than mention in section 20 what should be the option is the area of concern.
- (8) Company act 2013 explains not for Profit Company under section 8 but there is no specific definition of charity and charitable objects.
- (9) WAQF act 1995 defines words beneficiary and benefit and in definition of beneficiary charitable objects are mentioned but there is no definition of charity. Only definition of WAQF that is Permanent dedication of movable or immovable property as per the Muslim law.
- (10) Gujarat Public trust act 1950 defines charity commissioner, joint charity commissioner and assistant charity commissioner but there is no definition of word charity.

Conclusion

In all four major acts regulating voluntary organizations in the state of Gujarat does not have specific definition of charity. Charitable objects defined in all major acts are very general and not as per the need of an hour if a person wants to register voluntary organization for any other charitable purpose other than defined then there is confusion as there is a no clarity given in all four major acts.

Charitable objects mentioned in existing laws are very limited for example if person wants to register organization for human rights or wild life there is no provision for such objects in all four major acts.

All major acts should be amended as per the need of an hour, word charity should be defined very clearly and on the basis of the definition of the word charity charitable objects should be defined.