

**Critical Analysis of provisions related to public trust administration  
fund under Gujarat Public Trust Act-1950**

**First Author**

**Mr. Anant Christian**

Research Scholar

Faculty of Law

The Maharaja Sayajirao University  
of Baroda

anantchristian1@gmail.com

**Co-Author**

**Dr. Ganshyam Solanki**

Research Guide

Faculty of Law

The Maharaja Sayajirao University  
of Baroda

**Abstract**

All trusts and societies registered in the state of Gujarat are considered as a trust as per Gujarat Public Trust Act-1950. All voluntary organizations registered under Gujarat Public Trust Act-1950 must contribute to the public trust administration fund as define in section-57 and section-58 of the Gujarat Public Trust Act-1950. As per the proportion of gross annual income of the trust the contribution is calculated and direction for calculating the contribution is given in rule 32 of The Bombay Public Trust (Gujarat) Rules, 1961. Before the existence of Gujarat State, it was governed by Bombay Public Trust Act-1950. Voluntary organization working for health, education and animal veterinary activity are exempted from paying contribution to the public trust administration fund and other organizations must contribute 2% of their income. In this study section-57 and section-58 of the Gujarat Public Trust Act and Rule 32 of The Bombay Public Trust (Gujarat) Rules, 1961 is critically analyzed.

**Introduction:**

Gujarat Public Trust Act-1950 came into existence in the year 1961. Before that voluntary organizations in the state of Gujarat were registered under Bombay Public Trust Act-1950 with the separation of state of Gujarat from Maharashtra the Gujarat Public Trust Act came into existence. Before the enactment of Bombay Public Trusts Act, 1950 in the state, i.e., in the pre-freedom era, there were as many laws as the Princely states. Added to it were laws for various communities, e.g., Parsi, Muslims etc. and those enacted under the British rule.

Hence there was a need to have a structured and systematic way to administer the Trusts and Trust Properties. To achieve this in the State of Maharashtra, a committee in the chairmanship of the then Hon. Judge of Hon. Bombay High Court Shri. S. R. Tendulkar was formed on 15th January, 1948. It submitted its elaborate report spanned in 17 parts to the then Mumbai Government which was presented to the Vidhan Sabha. Based on this report the Bombay Public Trust Act's draft was prepared and presented to public at large for its opinions and suggestions.

Based on the feedback a comprehensive bill on Bombay Public Trust Act, 1950 (the Act) was prepared and passed. The bill received Hon. President of India's accent on 31st May, 1950, and was published in the State Gazette on 14th August, 1950 (part IV).

Public Trust Administration Fund is defined under section-57 of public trust administration fund and contribution by public trust to public trust administration fund is defined in section-58 and penalties as recovery of contribution is defined in section-59 of the Gujarat Public Trust Act-1950 and guideline for calculating the contribution is provided in Rule-32 of The Bombay Public Trust (Gujarat), 1961.<sup>1</sup>

**Provision Related to Public Trust Administration Fund under the Gujarat Public Trust Act-1950: -**

**❖ Section-57 Public Trust Administration Fund :-**

- (1) There shall be established a fund to be called Public Trust Administration Fund. The Fund shall vest in the Charity Commissioner.
- (2) The following sums shall be credited to the said fund, namely: -
  - (a) Fees and administrative charges leviable under section-18 and 48;
  - (b) Contributions made under section-58;
  - (c) The amount from the funds or the portion thereof credited under section-61;
  - (d) Any sum received from a private person;
  - (e) Any sum allotted by the State Government or any local authority, and
  - (f) Any other sum which may be directed to be credited by or under the provisions of this act or the inter State Corporation Act, 1957 (XXXVII of 1957) for the Bombay Statutory Corporations Regional (Reorganization) Act, 1960 (Bom. XXI of 1960).

<sup>1</sup> [https://itatonline.org/articles\\_new/contribution-by-charitable-trusts-current-legal-status-in-maharashtra/](https://itatonline.org/articles_new/contribution-by-charitable-trusts-current-legal-status-in-maharashtra/), (last visited on March 25, 2021).

❖ **Section-58 Contributions by public trusts to public Trusts Administration Fund:**

- (1) Every public trust shall pay to the Public Trusts Administration Fund annually such contribution on such date and in such manner as may be prescribed;

Provided that the contribution prescribed under this section shall-

- (i) In the case of Dharmada, be fixed at rates in proportion to the gross annual collection or receipts of the Dharmada.
- (ii) In case of other public trusts, be fixed at rates in proportion to the gross annual income of such public trust.

Explanation: - For the purpose of this section the gross annual income shall include gross income from all sources in a year excluding donations given or offerings made with a specific direction that they shall from part of the corpus of public trust:

Provided that interest or income accruing from such donation or offerings in the years following that in which they were given or made shall be taken into account in calculating gross annual income.

- (2) Notwithstanding any contained in sub-section 1, the State Government may, be rules, provide for exemption of any public trust or class of public trusts from the whole or any part of the contribution payable under that sub-section, subject to such conditions, if any, as may be prescribed.

❖ **Rule-32 Contribution to the Public Trust Administration Fund. –**

- (1) Every public trust other than a trust exclusively for the purpose of advancement and propagation of secular education or exclusively for the purpose of medical relief or veterinary treatment of animals shall pay annually to the Public Trusts Administration Fund out of its property or funds a contribution at the rate of 2 per cent of its gross annual income, or, where the public trust is Dharmada, its gross annual collection or receipts.

Provided that no such trust shall be liable to pay the annual contribution exceeding Rs. 50,000.

If in any case a question arises whether a public trust is for the advancement and propagation of secular education or not, the Charity Commissioner may, either at the request of the party concerned or Suo-Moto refer the question to the State Government and the decision of the State Government thereon shall be final.

- (1A) Notwithstanding anything contained in sub-rule (1), the contribution to be assessed under sub-rule (2) in the case of a public trust in respect of the year commencing on any date between 1 April, 1978 and 31 March, 1979 shall be assessed at the rate of 1 per cent of the gross annual income or as the case may be, the gross annual collection or receipts of the public trust.
- (2) The contribution shall be assessed on the basis of the gross annual income or collection or receipts, as the case may be, during previous twelve months ending with the thirty-first day of March or such other day in regard to a particular trust or class of trusts as may have been fixed by the Charity Commissioner in this behalf under sub-section (1) of section-33.
- (3) In calculation the gross annual income of a public trust, or where the public trust is a Dharmada, its gross annual collection or receipts, for the purpose of assessing the contribution, the following deductions shall be allowed, namely: -
- (i) In the case of a public trust having advancement and propagation of secular education as one of its purposes, the portion of the gross income or collection or receipts spent for that purpose;
  - (ii) In the case of a public trust having medical relief as one of its purposes, the portion of the gross income or collection or receipts for that purpose;
  - (ii-a) in the case of a public trust having veterinary treatment of animals as one of its purposes, the portion of the gross income or receipts spent for that purpose;
  - (iii) Donation received during the year from any sources;
  - (iv) Deleted
  - (v) Grants received from Government or local authorities;
  - (vi) Allowances for an annual repairs at 8/13 percent, of the estimated gross annual rent of the buildings belonging to the trust which are rented out yieldn no income;  
Explanation: - The estimated gross annual rent shall means the rateable value of the buildings or, where such rateable value is not fixed by a local authority the gross annual rent as estimatedby the Deputy or Assistant Charity Commissioner.
  - (vii) Interest on Depreciation Fund, if any, for replacement of buildings;
  - (viii) Interest on sinking fund, if any, for repayment of loans;
  - (ix) Out of income or receipts from lands used for agricultural purposes-
    - (a) Land revenue and local fund cess, if payable by the trust;
    - (b) Rent payable to the superior landlord, if lands, are held on the lease by the trust;

- (c) The cost of production (which shall not include the capital cost of irrigation and other works or the cost of maintenance of or repairs to such works, in excess of a limit fixed by the Deputy or Assistant Charity Commissioner with reference to past expenditure on such maintenance or repairs)- if lands are cultivated by the trust.

Explanation: - Receipts from lands used for agricultural purposes when such receipts are in kind, shall be valued at their market value at the time of receipt;

- (x) Out of income or receipts from lands (including buildings) used for non-agricultural purposes-
- (a) Assessment cases and other Government dues and municipal and other taxes, payable by the trust;
  - (b) Ground rent payable to the superior landlord;
  - (c) Insurance premia, if any, in respect of building;
  - (d) Allowance for annual repairs  $8 \frac{1}{3}$  percent of the gross rent of buildings;
  - (e) Allowance for cost of collection at 4 percent of the gross rent of buildings let out;
- (xi) Out of income or receipts from securities, stocks, shares and debentures allowance or one percent for cost of collection.
- (xii) Amount of donation given to: -
- (a) The prime minister's National Relief Fund;
  - (b) The Gujarat Chief Minister's Relief Fund.

(4) If a public trust conducts a business or trade, for the purpose of assessing the contribution, the net annual profits of such business or trade shall be treated as the gross annual income of the business or trade.

(5) Every auditor auditing the accounts of a public trust under sub-section (2) of section 33, shall annex to the copy of the balance sheet and income and expenditure from account required to be forwarded to the Deputy or Assistant Charity Commissioner sub- more under sub-section (1) of section 34 a statement of the income of the trust liable to with contribution in the form of Schedule IX-C hereto.

(6) The Government may, having regard to the nature of the objects of any class of public trusts or the smallness of the income thereof by notification in the Official Gazette, remit or reduce the rates at which the contribution is to be made by such class of trusts to the Public Trusts Administration Fund.

(7) Where the annual contribution payable by a public trust calculated in accordance with the foregoing sub-rules exceeds two hundred rupees it may be paid by two equal instalments the first of which shall be payable within one month and the Of second within four months of the receipt of notice prescribed under sub-rule (1) of rule 33.

(8) Transitory Provision: The contribution for part of the year commencing with the date of the application of the Bombay Public Trust Act, 1950, and ending with the 31<sup>st</sup> March next following (or such other date as may have been fixed in this behalf by the Charity Commissioner as aforesaid) shall be in such proportion as the period bears to twelve months.<sup>2</sup>

**Critical Observation: -**

- (1) Chapter-VIII of the Gujarat Public Trust Act-1950 is public trust act administration fund and section-57 defines the public trust administration fund but while enacting the act what was the need for public trust administration fund and how it will be utilize and for what purpose is collected is no were define.
- (2) Public Trust Administration Fund is different from tax collected by the government. Asper [State of Maharashtra & Ors. vs. The Salvation Army, Western India, 1975 AIR 846, 1975 SCR (3) 475]<sup>3</sup> it is a fees and government should justify the proportion collected.
- (3) As per Section-58(2) government can exempt public trust or class of public trusts from whole or any part of the contribution payable under that sub section.
- (4) As per para-1 of Rule-32 every public trust other than a trust exclusively for the purpose advancement and propagation secular education or exclusively for the purpose of medical relief or me veterinary treatment of animals shall pay annually to the public trust administration fund at the rate of 2% of gross annual income. This provision is in clear cut violation of constitutional provisions of equality. Out of all kind of voluntary and charitable work only three types of services are exempted. The Bombay Public Trust (Gujarat) Rules, 1961 defines the guideline for exemption and contribution.
- (5) In educational services also those working in advancement and propagation of secular education are exempted. If any trust is not into secular education or into a particular religious education are not exempted.

<sup>2</sup> Amit Nanda and Bharat Mehta, *The Gujarat Public Trust Act -1950* (SBD Publication,Ahmedabad, 2021), (Last Visited on March, 2022).

<sup>3</sup> <https://indiankanoon.org/doc/1013779/> , (Last Visited on April, 2022).

- (6) In current scenario secular education and medical relief are the two area which are converted into privatization and all schools running under the head of public charitable trust are charging heavy education fees but the richest school of the state need not to pay a single rupee toward the public trust administration fund. Same for the medical services all big hospitals functioning under the trust are exempted.
- (7) Temples and all religious organizations must contribute 2% of their gross annual income.
- (8) Grant received from government or local authorities are exempted but there is no clarification for the foreign grants, CSR grants and individual foreign donor contributing for the cause.
- (9) All charitable trust is registered for charitable activity and the aims and objective of the trust are verified before the registration to ensure a charitable purpose of the objectives of the trust. Then why the organization doing charity should contribute to the public trust administration fund.
- (10) In education there are granted and self-finance educational institutes found under various trusts. There is no clarification for granted, non-granted educational organizations.
- (11) Ratilal Panachand Gandhi Vs. The State of Bombay and ... on 18 March, 1954. Court observes the competency of the Legislature to enact these provisions depends upon the contribution being a fee. If it is a tax, then undoubtedly the Legislature would not be competent to the enact these provisions. <sup>4</sup>
- (12) As per PIL 40/2007 before Hon. Bombay High Court from date 25/09/2009 there is a stay on collecting public trust administration fund in the state of Maharashtra.

### **Conclusion:**

- (1) Government should come up with the guideline which ensures the equality among the voluntary organizations.
- (2) Government should amend rule-32 as per the current situation of the state and government should review the ground level reality of exempted area that is secular education, medical relief, and animal veterinary services.
- (3) The current CSR grants should be included and define as exempted grants.

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<sup>4</sup><https://indiankanoon.org/doc/1307370/#:~:text=The%20petitioners%2C%20challenged%20the%20validity.of%20affairs%20in%20matters%20of> , (Last Visited on April, 2022).



- (4) All foreign grants from individual doners, agencies and countries should be specially mentioned in exempted category to avoid discrimination between Indian grants and foreign grants.
- (5) Government should revise provision of The Bombay Public Trust Act (Gujarat) Rules, 1961 rule 32 after having referendum of all voluntary organization in the State of Gujarat.