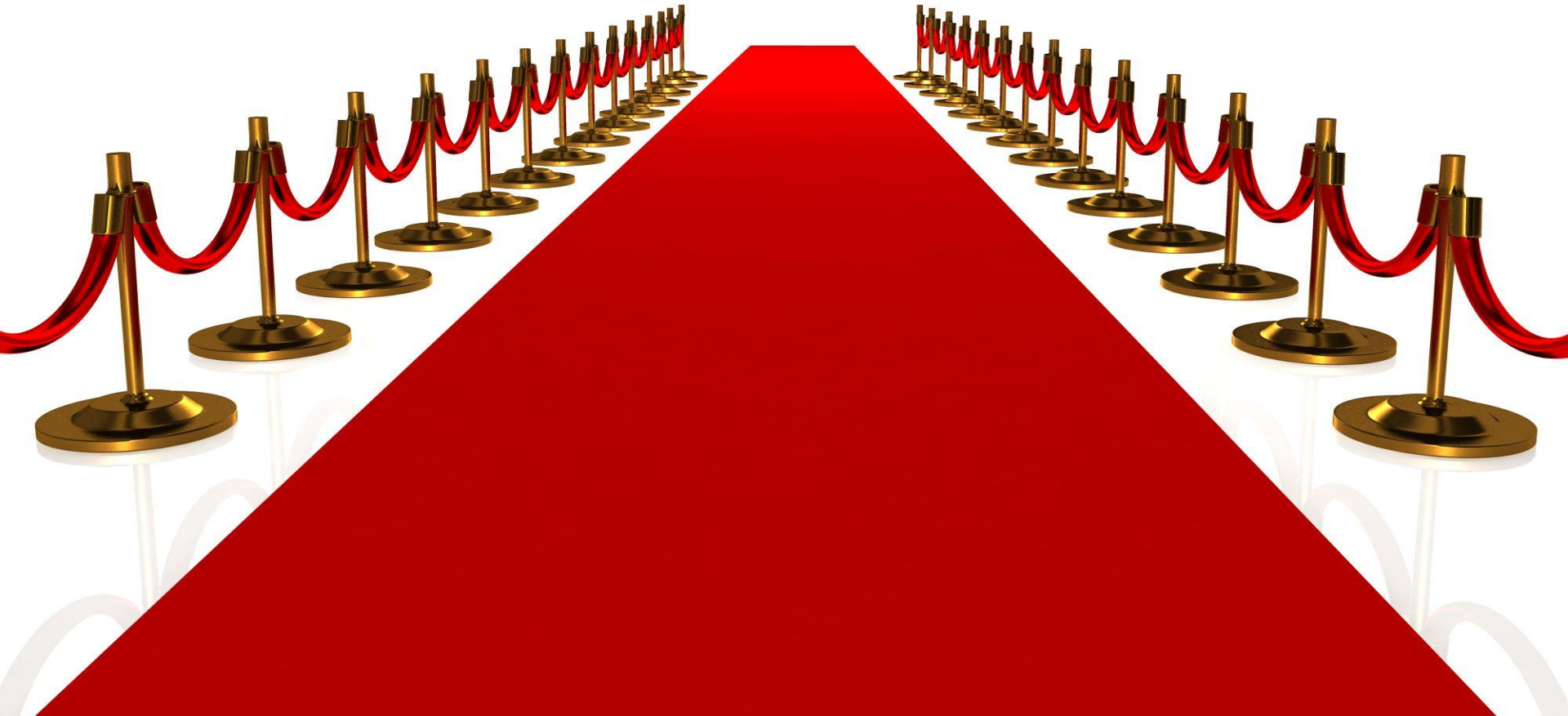


# Welcome

## C.A's and Tax practitioners



**Presentation on**

**Important Provisions under**  
**The Maharashtra Public Trusts Act,**  
**1950**

**By Adv. Dr. Sagar Thavare**





## Position in Maharashtra of Public Trusts

- Multiple laws for public trusts.
- Increasing number of public trusts.
- Lack of regular checks by Competent Authorities.
- Lack of transparency in the functioning of the trust.
- Lack of guidance.

## Scope For Work

- 9 regions, 36 districts and 8.5 Lakhs of trusts in Maharashtra. In Pune more than 1.25 Lakhs
- No law commission report yet.
- Even recent amendments falling short.
- No co-ordination between IT department and Charity Commissioners office

## Fundamentals about trust laws as applicable in Maharashtra



- The Societies Registration Act, 1860 – Central Act
- The Maharashtra Public Trusts Act, 1950
- Directory of trusts
  - A – Temple
  - B - Muslim
  - C – Parsi
  - D – Christian
  - E – Trust deed
  - F – society + trust
- Basic documents forming trusts
- Trust deed
- Constitution = memorandum of association + rules and regulations
- Scheme framed by charity commissioner

## Important definitions

**2(2A)** Beneficiary means any person entitled to any benefit as per the objects of the Trust explained in the Trust Deed, scheme, constitution.

**2(4)** Court means High Court Bombay

**2(7)** instrument of Trust : by which Trust is created; constitution [MOA & rules under the Societies Registration Act, 1860]

## MAJOR AMENDMENTS OF 2017

### **i. Definition of beneficiary introduced for the first time**

Any person entitled to any of the benefits as per the objects of the trust

### **ii. Remedies to beneficiaries against the trustees**

- Removal, suspension of trustees
- Lodging inspector inquiry, initiating statutory audit,
- Seek injunction against trustees, can challenge change report

### **iii. What care can be taken to prevent from litigations?**

- Keep trust duly updated
- maintain proceeding books, attendance and get signatures in time.
- Duly file all mandatory compliances in statutory time.

## 2(10) person having interest –

- Temple – person entitled or in habit of attending worship or service / partakes in distribution of gift
- Math – disciple or person of religious persuasion
- Waqf – now a different Act – Waqf Act 1995
- S.R.A – member
- Any other public trust – any trustee or beneficiary



Only a ‘person having interest’ can approach Charity Commissioner and file cases  
e.g. Tenants, employees, ex-students cannot approach

**Public Trust** is defined in **S.2(13)** of the Maharashtra Public Trusts Act, 1950,

**Ingredients of Public Trust as follows:**

- A trust can be constructive or express trust,
- Established for public religious or charitable or both purposes,
- Religious denomination includes a Math, Temple, Dharmada, Wakf or any religious or charitable endowment and
- A Society registered / formed under Societies Registration Act, 1860.



CHARITY COMMISSIONER  
MAHARASHTRA STATE,  
MUMBAI

JOINT CHARITY  
COMMISSIONER  
MAHARASHTRA  
STATE, MUMBAI

JOINT CHARITY  
COMMISSIONER  
GREATER MUMBAI  
REGION

JOINT CHARITY  
COMMISSIONER  
PUNE

JOINT CHARITY  
COMMISSIONER  
NASHIK

JOINT CHARITY  
COMMISSIONER  
KOLHAPUR

JOINT CHARITY  
COMMISSIONER  
AURANGABAD

JOINT CHARITY  
COMMISSIONER  
LATUR

JOINT CHARITY  
COMMISSIONER  
AMRAVATI

JOINT CHARITY  
COMMISSIONER  
NAGPUR

THANE

RAIGAD

AHMEDNAGAR

SATARA

JALGAON

DHULE

NANDURBAR

SANGLI

RATNAGIRI

SINDHUDURG

NANDED

JALNA

PARBHANI

HINGOLI

BEED

SOLAPUR

OSMANABAD

AKOLA

BULDHANA

YAOTMAL

WASHIM

CHANDRAPUR

BHANDARA

VARDHA

GADCHIROLI

GONDIA

## **S.9. CHARITABLE PURPOSES** includes —

- (1) relief of poverty or distress.
- (2) education.
- (3) medical relief.
- (3A) provisions or facilities for recreation or other leisure time occupation for social welfare and public benefit,
- (4) the advancement of any other object of general public utility
- (b) Excluding - religious teaching or worship.

\* Religious purposes are not defined

## Application for registration – S.18

1. online by trustee + offline
2. within 90 days of formation of Trust
3. Jurisdiction - where the office of Trust is situated
4. Name, Address, Trustee details, Aadhar, PAN

## Inquiry for registration S.19

1. Whether Trust exists
2. Property, income, other administrative provisions
3. Mode of succession – election, cooption, nomination, appointment, etc.
4. Jurisdiction – area of operation etc.

## Finding – S.20

By Asst Charity Commissioner – necessary order is passed

Certificate of registration is issued



## S.29 Registration of a Trust by will

- If public trust is created by a will, the executor of such will
  - make an application for the registration of such trust
  - within 1 month of probate of the will is granted OR
  - within 6 months from the testator's death
- [whichever is earlier]

Whenever any change occurs in the entries made in schedule I

It has to be reported within 90 days from occurrence of change

By way of change report to Deputy or Asst. Charity Commissioner

By whom – by a trustee

### Types of changes – change in

- Trustees
- Posts – designations
- Address of the Trust
- Property – immovable – addition / deletion
- Mode of succession
- Amendment in the Trust Deed

**Limitation** 90 days  
If not then Delay condonation  
Cost upto ₹10,000/-



**Judicial inquiry** as per S.74 & R.7 All powers of Civil Court for summoning, calling documents, inspection and evidence are applicable. As per S.76 CPC is applicable

**S.22(2)** Provisional acceptance of change report in case of change in names and addresses of trustees or mode of succession – within 15 days

Then inviting objections by public notice

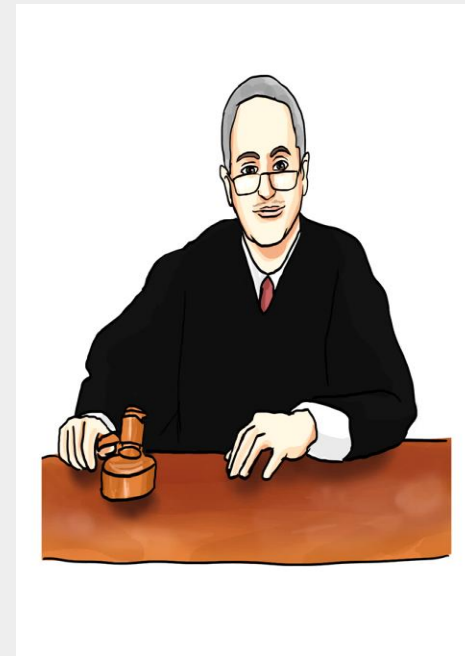
Detailed inquiry and then order

**Change comes into effect from the date of resolution**

Chembur Trombay v. D.K. Marathe, 2002(3) Bom.C.R 161

Ganesh Thaware Vs. Central Hindu Military Edu. Soc. 2007(6)

Mh.L.J. 589; Vijay K. Mehta v. Charu K. Mehta, 2008(5) Mh.L.J. 853.



## Amendments

### Recent major amendments

- The Maharashtra Public Trusts Act, 1950 amendment Act 2016 dated 31/03/2016
- The Maharashtra Public Trusts Act, 1950 amendment bill dated 27/07/2017.
- The Maharashtra Public Trusts Act, 1950 2nd amendment 2017 dated 01/09/2017.
- Maharashtra Ordinance 10/10/2017
- **Mah. Act No. XXXIV of 2024 31/07/2024**

## Amendments Important amendments

### Amendment of 2016

#### De-registration of trusts

- First time in the history of public trusts
- Deputy Charity Commissioner or Assistant Charity Commissioners power

#### Grounds:

- When trust purpose is completely fulfilled
- When purpose becomes unlawful
- When fulfillment of purpose becomes impossible by destruction of trust property
- When trust is revoked (if at all revocable)
- When trustees are found to be not achieving the objects of the trust

#### Provisions : when trustees default in

- reporting the change,
- submission of audit report or
- making any other compliance prescribed under Act



# राज्यातील एक लाख संस्थांची नोंदणी रद्द

म. टा. प्रतिनिधी, पुणे

संस्था स्थापन झाल्यानंतर पाच किंवा त्यापेक्षा अधिक वर्षांपासून कोणतेही बदल अर्ज (चेज रिपोर्ट) सादर न करणाऱ्या राज्यातील एक लाख ५४८ धर्मादाय संस्था निष्क्रिय ठरविण्यात आल्या आहेत. संस्था निष्क्रिय ठरल्याने त्यांची नोंदणी रद्द करण्याची कारवाई करण्यात आली आहे. राज्यातील एकूण धर्मादाय संस्थांपैकी आणखी एक लाख १५ हजार संस्थांना नोटिसा जारी करण्यात आल्या आहेत.

निष्क्रिय संस्था रद्द करण्याच्या उद्देशाने धर्मादाय आयुक्तालयाने ऑक्टोबरपासून आतापर्यंत एक लाख ५४८ संस्थांची नोंदणी रद्द केली आहे. आता आणखी एक लाख १५ हजार संस्थांना नोटिसा दिल्या असून त्यांच्यातील कागदपत्रांची करणाऱ्या संस्था रद्द करण्याची जाईल. तसेच, एका दिवसांत दहा हजार संस्थांना नोंदणी प्रमाणपत्र देण्यात आले आहे.



पूर्तता न प्रक्रिया सुरु केली

- शिवकुमार डिगे, धर्मादाय आयुक्त

## नियम काय आहे ?

धर्मादाय आयुक्तालयाकडे नोंद झालेल्या संस्थेला दर वर्षी संस्थेचा चेजरिपोर्ट, ताळेबंद अहवाल; तसेच अन्य कागदपत्रांची पूर्तता करणे बंधनकारक आहे. अनेक संस्थांनी पालन केले नसल्याचे आढळून आले आहे. त्यामुळे या संस्थांना टाळे ठोक्याचे, असा निर्णय आयुक्तालयाने घेतला.



## राज्यात सर्वाधिक संस्था

अनेक संस्थांकडून कोणत्याही स्वरूपाचे सामाजिक, धार्मिक स्वरूपाचे काम होत नाही. राज्यात जवळपास साडेसात लाख धर्मादाय संस्था आहेत. देशात धर्मादाय संस्थांची सर्वाधिक संख्या महाराष्ट्रात आहे. महाराष्ट्रात मोठ्या प्रमाणात धार्मिक, सामाजिक, शैक्षणिक संस्था कार्यरत आहेत.

१३,७३१  
पुणे

११,८२३  
नाशिक

९,७७८  
लातूर

४,४१९  
कोल्हापूर

१३,४०८  
अमरावती

विभाग नोंदणी रद्द  
केलेल्या संस्था

१७,१४२  
नागपूर

एकूण  
१,००,५४८

१३,३८४  
औरंगाबाद

६,१६३  
ठाणे

१६  
अलिबाग

८,८४२  
मुंबई

राज्यातील  
संस्थांची संख्या  
७,५०,०००

नव्याने पुन्हा  
नोटिसा  
१ लाख १५ हजार

नोंदणी रद्द  
केलेल्या संस्था  
१ लाख ५४८

- The trust is permanently deregistered
- Trust registration number cannot be used - else its a contempt
- All other registrations like 12 A, 80G will be suspended or cancelled
- Audits, accounts and change reports cannot be submitted
- Though society continues, all its submissions of audits, accounts, budgets, change reports, etc. will not be accepted by charity commissioner
- Donations cannot be taken, ongoing activities will be stalled.
- Multiplicity of litigations may arise
- Trust property will be attached and sold in auction, sale proceed will be deposited in **PUBLIC TRUST ADMINISTRATION FUND**
- Provision of appeal, within 60 days to Joint charity commissioner

**S.31A** – Trustees to submit budget – before end of Feb every year

**S.32** – Maintenance of accounts – in the formats

**S.33** – Balancing and auditing of accounts

Access to accounts, books, vouchers, records etc.

Duty of a trustee to make available such record for auditing and file audit reports with  
Charity Commissioner

**S.33 Important power to direct special audit**

**S.34** Auditors duty to prepare balance sheet & report irregularities to report to the  
Charity Commissioner

- Irregular and illegal or improper expenditure
- Failure or omission to recover moneys or property
- Whether any loss was caused in consequence of Breach of Trust, misapplication, misconduct on the part of trustees

**S.38** – Explanation on the report of auditor – from the trustees

### **S.35 Investment of public trust money**

- Mandatory to invest in scheduled Bank, postal savings, coop bank approved by State Govt.
- Charity Commissioner may permit to invest in any other manner – for which an application is to be filed – to be decided within 3 months

### **S.36 Alienation of immovable property of the Trust**

Notwithstanding anything contained in the instrument of trust:

- (a) no sale, exchange or gift of any immovable property,
- (b) no lease beyond 10 years in the case of agricultural land or beyond 3 years in the case of non-agri. land or a building, belonging to a public trust, shall be valid without the previous sanction of C.C.

**Revocation of S.36 order: S.36A:** If sanction was obtained by fraud or mis-representation

**S.36 A 3:** Prior permission before availing loan = Time limit for granting permission to loan is 15 days

**S.36A (3A) :** Ex-post facto loan permission – compelling circumstances

**S.37 & 41B** – Power of inspection and supervision – inspector inquiry

**41A** – Administrative directions – only positive directions

**41AA** – Scheme framed by the Hon’ble High Court for Hospitals

Beds reserved for Indigent patients [₹1.8 Lakhs] & weaker section [₹3.6 Lakhs]

Scheme was approved as per the orders dated 17.08.2006 and 15.04.2009 in

W.P. (PIL) No. 3132/2004 by Hon. High Court.

**41C:** Prior permission temporary collection of donations - 15 days

penalty – 3 months imprisonment + fine 1 ½ times of amount collected.

e.g. Ganesh Mandal, Navratri etc.

## **S. 41D: Suspension, removal and dismissal of trustees.**

- a. persistent default in the submission of accounts
- b. willfully disobeys any lawful orders
- c. continuously neglects his duty or commits any mal-feasance or misfeasance, or breach of trust
- d. misappropriates or deals improperly with the properties of the trust
- e. accepts any position inconsistent with his position as a trustee
- f. if convicted of an offence involving moral turpitude

## **S. 41 E : Temporary injunction**

- (a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or
- (b) that the trustee or such person threatens, or intends to remove or dispose of that property,

### **S. 41F: Attachment of property in certain cases.**

- On application by 2 persons or suo motu
- If there is any breach of any orders passed by charity commissioners
- Then personal property of such person will be attached for upto 1 year
- He may also be detained in jail for 6 months
- If disobedience continues, personal property will be sold
- Appeal against order lies to the High Court

### **S. 47 : Power to appoint, suspend, remove trustees**

- Disclaims or dies or refuses to act or is unfit or convicted
- Absent from India for more than 6 months without permission
- Number of trustees falls below minimum number
- Joint Charity Commissioner will appoint the Trustees.

**S. 50, 51** – prior permission of Deputy C. C. before filing civil suit

## **S. 50A: Framing of scheme or amalgamation of 2 or more trusts**

- On application of 2 PHI or suo-motu
- Overriding effect on Trust Deed
- Modification of scheme

## **S.70: Appeal**

- Over S.20, 22, 50A, etc.
- Only parties can apply or with special permission
- Limitation 60 days

## **S.70A: Revision**

- Suo-motu or on application
- No limitation however within reasonable period
- Additional evidence
- Remand, reverse, annul, modify



**73 A** – power to join a person party to the proceeding

Only person having interest can be joined.

**S.79** – decision of property as a public trust property by Deputy or A.C.C.

**S.80** – Bar of jurisdiction of civil court – therefore special Act.

### **Other Misc. provisions**

**S. 57 – PTA fund:** Fees, costs, court fees, contribution, any sum recovered etc.

<b>Section</b>	<b>Penalty under S.66</b>	<b>Fine</b>
18	Failure to apply for registration of trust	Rs.10,000/-
18 (7)	Change report of movable properties not filed	Rs.10,000/-
22, B, C.	Failure to file change report	Rs.10,000/-
32	Failure to keep regular accounts	Rs.10,000/-
35	Failure or omission to invest money in public securities	Rs.10,000/-
36	Alienation without prior permission	Simple imprisonment + fine Rs.25,000/-
-	Any contravention of order or direction	Rs.10,000/-
41C	Collection of donations without permission	Simple imprisonment + fine upto 1 ½ amount of collection

*Thank you*

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