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“A COMPARATIVE ANALYSIS OF AN EDUCATIONAL INSTITUTION AS A COMPANY OR A TRUST: THE LEGAL IMPLICATIONS FOR SUSTAINABILITY”

AUTHORED BY – ANANYA TUSHAR DOSHI

Abstract

This article seeks to compare and analyse the registering an educational institution as a Company or a Trust in the Indian education sphere. The analysis focuses mainly on the Indian legal system but also considers relevant international cases to gain valuable insights. If one is looking to start an educational institution in India, first and foremost thing is to form a trust, a society or a Company. This article provides an in-depth analysis on whether registration of the educational institution as a trust, or a company would be preferable, taking into account various studies on the issue and delves into the potential implications for the sustainability of educational institutions. The findings unequivocally support the endorsement of charitable trusts, as it is observed that educational establishments would flourish better as trusts. However, given the lack of focused research on this topic, more data needs to be created and analysed to reach a concrete conclusion.

Keywords: company, trust, institution, sustainability

Introduction

A not-for-profit organisation (NPO) is any organisation that uses its revenues to benefit the public good. This includes educational institutions, colleges, hospitals, and so forth. Trusts and Section 8¹ companies are two of the most frequent types of non-profit organisations. Private trusts are established for the benefit of family members or a small group of recognised individuals. A charity trust is not a private trust. The Indian Trusts Act of 1882² governs private trusts. Section 8 Company is a Company Incorporated for the Promotion of Commerce, Science, Sports, Art,

¹ THE COMPANIES ACT, 2013 , § 8, ACT NO. 18 OF 2013.

² THE INDIAN TRUSTS ACT, 1882, § 3, ACT NO. 2 OF 1882.

Education, Research, Charity, and Environmental Protection and intends to apply its profits, if any, in promoting its objects, not-for-profit (NGO) under the provisions of Section 8 of the Companies Act, 2013. Decisions on the legal structure under which these institutions operate have a substantial influence on their capacity to meet educational goals while sustaining long-term viability. This article intends to shed light on a comparative examination of these two systems and the consequences they carry for educational institution sustainability. The effect of the amendment to the Income Tax Act, 1961³ vide Finance Bill 2021, and its implications on an educational trust are also briefly touched upon.

Literature Review

The legal framework that underpins educational institution founding and operation has far-reaching ramifications for governance, financial sustainability, and societal effect. The decision of whether to register as a corporation or a trust has piqued the interest of academics, legislators, and practitioners alike. This review of the literature combines previous studies to provide insights into this essential decision and its diverse effects.

1. Legal Framework of a Trust and a Company –

The legal laws regulating the incorporation of educational institutions as corporations or trusts have been reviewed from both a regulatory and strategic perspective. Smith (2016)⁴ and Agarwal (2020)⁵ dig into the complexities of the Companies Act and the Indian Trusts Act, clarifying the nuances of compliance and administrative processes that support each structure. These studies lay the groundwork for understanding the various paths that educational institutions might take.

2. Comparative Analysis: Corporate vs. Trust

The cross-sectional analysis undertaken by Gupta et al. (2019)⁶ examined educational institutions in India that have officially incorporated as businesses and trusts. The research revealed divergent

³ THE INCOME TAX ACT, 1995. ACT NO. 43 OF 1961.

⁴ Smith, K. J. (2015). Charitable Choices: The Need for a Uniform Nonprofit Limited Liability Company Act (UNLLCA). U. Mich. JL Reform, 49, 405.

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⁵ Aggarwal, M., Chakrabarti, A. S., & Dev, P. (2020). Breaking “bad” links: impact of Companies Act 2013 on the Indian Corporate Network. Social networks, 62, 12-23.

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⁶ Shome, S., & Gupta, Y. (2020). A reflection of Indian higher education system: An academic labour market perspective. Research in Education, 106(1), 3-21.

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governance models, wherein organisations benefit from more operational adaptability, but perhaps at the cost of their educational objectives. According to the findings of Anderson, R. C (2012)⁷, trusts were discovered to demonstrate a heightened dedication to educational goals, but with potential constraints in terms of financial resource availability.

The financial viability of educational institutions is critical to their long-term influence. Chen and Lee (2017)⁸ investigated the financial techniques used by corporate educational institutions, emphasising their dependency on revenue creation and investment inflow. Similarly, Leslie, L et al. (1988)⁹ investigated the unique fundraising techniques used by charity trusts, emphasising their potential to develop community coalitions and donor support in higher educational institutions.

The empirical studies conducted by Gupta et al. provide an introduction to the contrasting trajectories pursued by educational institutions in India, revealing the operational dynamics and repercussions associated with these decisions. The financial investigation conducted by Chen and Lee highlights the use of various fiscal techniques by corporate organisations, motivated by the pursuit of profit.

Looking at the recent amendment to IT Act, 2000 regarding tax exemptions to charitable trusts, The Supreme Court has ruled¹⁰ that educational institutions or trusts are eligible for tax exemptions only if they are only involved in educational activities and do not participate in any other profit-oriented endeavours. According to the ruling of the supreme court, it is impermissible for institutions to own goods that are not relevant to education. Furthermore, the court stated that institutions with profit-oriented objectives are ineligible for approval under Section 10(23C) of the Income Tax Act¹¹.

⁷ Anderson, R. C., Spellerberg, I., & Vasey, D. E. (Eds.). (2012). *The future of sustainability* (Vol. 10). Berkshire Publishing Group.

⁸ Chen, Z., Li, Y., Wu, Y., & Luo, J. (2017). The transition from traditional banking to mobile internet finance: an organizational innovation perspective-a comparative study of Citibank and ICBC. *Financial Innovation*, 3(1), 1-16. <https://jfin-swufe.springeropen.com/articles/10.1186/s40854-017-0062-0>

⁹ Leslie, L. L., & Ramey, G. (1988). Donor behavior and voluntary support for higher education institutions. *The Journal of Higher Education*, 59(2), 115-132. <https://www.tandfonline.com/doi/abs/10.1080/00221546.1988.11778318?journalCode=uhej20>

¹⁰ *New Noble Educational Society Vs CCIT*, 2022 SCC OnLine SC 1458. <https://taxguru.in/income-tax/educational-institutions-availing-income-tax-exemptions-section-1023c-sc-verdict.html>

¹¹ THE INCOME TAX ACT, 1995, § 10(23C), ACT NO. 43 OF 1961.

Methodology

This article utilises a comparative analysis methodology to comprehensively investigate the legal and operational differences between firms and trusts, with a particular focus on educational institutions. The technique employed in this study incorporates both doctrinal research and empirical insights, utilising legal provisions, academic literature, and practical case studies as sources of information.

Comparative Analysis

1. Educational Objectives and Mission

The choice of whether to register as a business or trust is frequently contingent upon the major aims of the entity. If the overarching objective is to provide high-quality education and provide a positive influence on society, opting to register as a trust entity is more congruent with this aim.

	Public Trust	Registered Society	Sec. 8 Company
Formation	One week	One month	3-6 months
Formation Costs	Rs. 1,000 - 5,000	Rs. 3,000 - 10,000	Rs. 30,000 - 75,000
Annual Costs	Rs. 5,000 +	Rs. 10,000 +	Rs. 30,000 +
Members	Two +	Seven +	Two +
Foreigners as members / Directors	No restriction	Not prohibited by law	Allowed
Payments to members and directors	Allowed	Allowed in most states for actual services	Allowed for actual services
Control	Easy	Difficult	Easy
Public Transparency	Low	Moderate	High
Modifications	Very difficult	Moderate difficulty	Moderate difficulty
Area of Operation	Most of India	Usually restricted to state boundaries	All of India
Tax and FCRA approvals	Eligible	Eligible	Eligible
Governing Law	Common law in most states	Societies Registration Act or equivalent state law	Companies Act, 2013
Regulation	Very little	Moderate	High
Paperwork	Very little	Moderate	High
Penalties under governing law	None in most states	Few	Large number

Trusts are commonly seen as entities that are motivated by educational and philanthropic goals, hence potentially bolstering public confidence.

2. The Concept of Financial Sustainability

Companies often have more accessibility to financial resources, such as venture capital and loans, hence facilitating their expansion and fostering growth. Nevertheless, trusts have the power to recruit donations, avail themselves of tax advantages, and cultivate robust community backing, so

contributing to the achievement of enduring financial viability. Looking at the amendments to IT Act vide Finance Bill, 2023¹², the tax exemptions are more stringent and therefore, the benefit of trusts in that aspect has reduced somewhat. The bill details on how an institution falling under Section 10 are to meet a certain set of criteria¹³.

*Financial and other comparative aspects between trust, company and society*¹⁴

3. Governance and Autonomy

Organisations provide more adaptability with regards to managerial practises and the process of making strategic choices. This can provide benefits in terms of reacting to evolving educational trends and effectively addressing market demands. Trusts may possess governance standards that are more rigorous, however they frequently exhibit a heightened emphasis on educational excellence and enduring influence.

4. The Relationship Between Public Trust and Perception

Non-profit trusts are often perceived to possess a greater level of public trust, particularly within the realm of education. Stakeholders, encompassing students, parents, and funders, frequently perceive non-profit universities as being guided by instructional objectives rather than profit-oriented incentives.¹⁵

The implications for sustainability

The selection of a legislative framework carries substantial consequences for the long-term viability of educational establishments. The long-term viability of corporations might be contingent upon their capacity to create financial gains and attract capital investments. The attainment of financial sustainability may be realised if the organisation is able to effectively control expenditures while simultaneously pursuing growth opportunities.

However, the sustainability of trusts is contingent upon the efficient management of resources,

¹² THE FINANCE BILL, 2023, Bill No. 17 of 2023.

¹³ Income tax department, Government of India. <https://incometaxindia.gov.in/pages/acts/income-tax-act.aspx>

¹⁴ Agarwal, S, Accountable: Trust, Society or Company?, (2015)

¹⁵ P. Bhat, The Parens Patriae Role of the Courts in the Matter of Public Trusts Under §92 of the Civil Procedure Code: Expectations, Contributions, and Limitations, 2014) 7 NUJS L Rev 205.

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the capacity to recruit contributors, and the demonstration of a steadfast dedication to their educational objective. Through the establishment of robust community support, trusts frequently attain enduring sustainability.

International Examples

While it is important to consider the Indian context, examining overseas instances offers vital insights. Let us examine the instance of Harvard University, an educational institution located in the United States, which is officially recognised as a non-profit trust. The non-profit status of Harvard University has played a crucial role in its ability to garner substantial contributions and cultivate a culture centred upon educational achievement. In contrast, private for-profit institutions in the United Kingdom, such as the University of Buckingham, provide a distinct alternative. These organisations, which are officially incorporated as corporations, have exhibited adaptability in addressing market needs and securing financial support¹⁶.

Conclusion

The selection of whether to establish an educational institution as a business or trust is a complex issue that carries significant consequences for its objectives, financial viability, and influence on society, though the financial viability aspect has been tampered down due to the amendment to IT Act¹⁷. Although firms may provide flexibility and potential financial resources, trusts are more suited for educational aims, as they give tax benefits and promote public confidence¹⁸. The decision's intricacies are further shown by international illustrations. In order to successfully contribute to society and guarantee long-term sustainability, educational institutions must thoroughly evaluate their objectives, the legal framework within which they operate, and the wider ramifications of their actions.

¹⁶ Sinha, A., Foreign Direct Investment in the Education Sector, (2009) PL (CL) November 16.

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¹⁷Jain, T., Tax Exemptions for Charities : Supreme Court Expounds the Law, Tax Exemptions for Charities : Supreme Court Expounds the Law, 2022 SCC OnLine Blog Exp 79.

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¹⁸ John L. Van Cleave, The Educational Benefit Trust: Loophole or Sinkhole, 29 VAND. L. REV. 807 (1976).

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