Lesson 14: Indian Trust Act, 1882

1. Definition of Trust (Section 3)

Trust is defined in Section 3 of the Indian Trust Act, 1882 as “an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner.”

2. Persons who can create Trust (Section 7)

According to Section 7 of Indian Trusts Act, 1882, a trust may be created by the following persons:

- Every person competent to Contract under Section 11 of Indian Contract Act, 1872.
- By or on behalf of minor with the permission of a principal civil court of original jurisdiction.
- Hindu Undivided Family.
- Association of person (AOP)
- Trust by a Woman.
- Company.

3. Tax exemption under Section 10 of the Income Tax Act, 1961

Total tax exemption is available for certain types of trusts which include those which are formed for any of the activities related to sports, education, scientific research, professions, or promotion of khadi and village based industries, hospitals etc. and are notified as charitable or religious institutions.

4. Tax exemption under Section 11 of Income Tax Act, 1961

Any income, profits or gains obtained by a trust from a property held by the trust established wholly for the purposes of religious or charitable nature shall not be included in the total income of the trust and it is not taxable. However, as per section 13, there are certain situations where the tax exemptions under Section 11 are not applicable. Such instances include where:

- income earned from the property held under the trust of private religious nature and does not endure benefit for the public, or
- the entire income of a charitable trust which is established for a particular religion, community or caste, income of those charitable trust whose funds do not get invested in the modes specified under Section 11(5).

5. Tax exemption under Section 12 of the Income Tax Act, 1961

The incomes that are excluded from the computation of Taxable Income of Trust or Society are as follows:

- Income which is derived from the property that is held under the authority of trust with the purposes which are wholly charitable or religious in nature.
- Income which is kept aside to the extent that does not exceed 25% of the total income received in lieu of the property.
- In cases of charitable trusts, specifically those formed before 1st of April, 1961, income which is acquired from the property which is held partially for religious or charitable purposes within India. In continuation of the above case, the income which is set apart to a certain extent and which does not exceed twenty five percent of the total income.
- Income made by way of voluntary contributions towards the corpus of the trust.
- Charitable Trusts created for the benefit of any of the socially and economically backward castes such as Scheduled Castes, Scheduled Tribes or Women or Children.

6. Tax exemption for a Private Trust

- The taxability of the Trust depends upon the type of the trust.
- In the case of a non-discretionary trust, all income is taxable in the hands of the beneficiaries. But if the beneficiaries are minors, the income is to be clubbed with that of the parent with the higher income.
- In the case of a discretionary trust, in which the shares of the beneficiaries are unknown and indeterminate, it is taxed in the hands of trust at the maximum marginal rate.
- Tax planning requires that the trustee should not have any income in the nature of profits and gains from business in the trust otherwise the entire income of the trust would become liable to maximum marginal rate of tax.

7. Inclusions In Trust Deed

A trust-deed incorporates the following:

- the name(s) of the author(s)/settlor(s) of the trust;
- the name(s) of the trustee(s);
- the name(s) of the beneficiaries or whether it shall be the public at large, if any;
- the name by which the trust shall be known;
- the place where its principal and or other offices shall be situate;
- the object and purpose of the trust;
- the procedure for appointment, removal or replacement of a trustee, their rights, duties and powers, etc;
- the rights and duties of the beneficiaries;
- the mode and method of determination of the trust;
- the property that shall devolve upon the trustee(s) under the trust for the benefit of the beneficiaries;
- an intention to divest the trust property upon the trustee(s).

8. Formation of Trust

Step 1: Creation of a Trust Deed.

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Step 2: Obtain the signatures of Settlor, Trustees and Witnesses s at the appropriate places. Their photographs and Identity proof is also to be furnished. Deed must be witnessed by at least two witnesses. Settlor must sign all the pages of the Trust Deed.

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Step 3: Print the Trust Deed on stamp paper of appropriate value, depending on the stamp duty applicable in the State of execution.

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Step 4: Register the Original deed in a Sub-Registrar office paying registration charges. A photocopy of the Deed is also required to be submitted. The photocopy of the Deed should also contain the signature of settlor on all the pages.

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Step 5: At the time of registration, the settlor and witnesses must be personally present with their identity proof in original.

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Step 6: Sub- Registrar retains the photocopy and returns the original copy of the Trust Deed.

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Step 7: Trust can apply for a permanent account number for the trust and open a bank account for it as it is a separate entity.

9. Difference between Public Trust and Private Trust

Public Trust: In a Public Trust, the interest is vested in an uncertain and fluctuating body. They are the general public or class thereof. **Private Trust:** On the other hand, in a Private Trust, beneficiaries are definite and ascertained individuals.
Public Trust: Public trusts have larger and wider domain. **Private Trust:** Whereas, private trusts have limited and narrow domain.
Public Trust: If the beneficiaries make up a large or substantial body of public, then the trust in question is public. **Private Trust:** On the other hand, if the beneficiaries are a narrow and specific group such as the employees of a company then the trust is private.

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