

PM CARES Fund: A Public Trust or a Private Trust?

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The idea of creating a fund in the national interest at the time of pandemic is a welcome step. But if it was followed by a transparent approach and total disclosure of information, then the move would have been more appreciable. The PM Cares fund is mired in controversy due to lack of transparency. Government has to be accountable to the people who are the donors for the fund.

In news: The trust deed on PM Cares fund is made public on the PMO website.

Placing it in syllabus: Governance

Static dimensions

1. What are Trusts?
2. Governance of Trusts and Charitables in India

Current dimensions

1. In news
2. The problem with PM CARES Fund

Content:

In news:

- According to the deed of trust executed by Prime Minister Narendra Modi on **PM CARES (Citizen Assistance and Relief in Emergency Situations) Fund** neither the central nor state governments, either directly or indirectly, has any control in the functioning of the fund as it is not owned, controlled or substantially financed by any government or its instrumentality.
- The deed of trust spells out the powers, duties and

functions of the board of trustees.

- It says that the **board of trustees which includes the PM and the ministers of defence, home and finance**, was made “merely for administrative convenience” and for “smooth succession of the trusteeship”.
- The **board of trustees are ex-officio members** and once they vacate their office, the position will be automatically filled by the person who succeeds them.
- The trustees will be able to **invest the surplus funds of the trust** in securities, property, assets and in bank deposits in conformity with the provisions of the applicable laws.
- The trustees may also **alter or transfer the investments from time to time** *“in such manner as they may think proper, in conformity with the provisions of applicable law without being responsible or accountable to any one for any loss or diminution arising therefrom”*.
- Only the **chairperson has the power and authority to modify, add to or alter any of the terms** of the trust deed, including the objectives of the trust.

What are Trusts?

- A trust can be formed either as a private or a public trust.
- Formation of a private trust is governed by the **Indian Trust Act, 1882 (ITRA)**.
- However, the **ITRA does not govern trusts of public charitable nature**.
- There is **no central law** governing public charitable trusts, although most states have “Public Trusts Acts.”
- To form a public charitable trust, it is very important that the **objects of the trust must be charitable in nature** and to engage in activities for general public utility.
- Public Trusts can submit an **application for registration to the deputy/ assistant Charity Commissioner having**

jurisdiction over the region/sub-region in which the trust is sought to be registered.

- Incomes of charitable entities are exempt under the Income Tax Act (ITA).

Governance of Trusts and Charitables in India:

- Charitable organization is an organization which has been established for charitable purpose. In India, charitable entities can be mostly registered under the following legislations:

Societies Registration Act, 1860.

Public Trust Act of various States in India.

Section 8 of the Companies Act, 2013.

Apart from the above legislations the **Income Tax Act, 1961** will be applicable to charitable institutions. And in the case of foreign contributions to these charitable institutions, the **Foreign Contribution (Regulation) Act, 2010** will be applicable.

REPORTING REQUIREMENTS OF CHARITABLE ORGANISATIONS:

Society:

- The Societies Registration Act, 1860 provides that each society has to submit an annual report to the Registrar of Societies in the State in which it is registered.
- An annual list is supposed to be filed with the Registrar containing the names, addresses and occupations of the Governors, Councils, Directors, Committee or other Governing Body entrusted with the management affairs of the Society

Public Trust:

- Annual report and an annual return of income should be

filed with the authorities having jurisdiction over the region where trust is registered.

Company:

- The companies are registered under the Companies Act, 2013 has to conduct meetings of the Board and the Shareholders as prescribed under the Companies Act, 2013.
- It will need to file forms with the jurisdictional Registrar of Companies to intimate changes pertaining to change in the directorship, change in office address, reporting of audited accounts and other important resolutions are to be filed.

The problem with PM CARES Fund:

On March 28, Prime Minister Narendra Modi announced the creation of a brand new PM Cares fund when the Prime minister National Relief fund (PMNRF) was already there. The **Supreme Court dismissed the petition seeking transfer of fund or merger of PM Cares Fund with the PMNRF**, thus formally upholding the separate identity of the PM Cares Fund.

1. Companies donating to the PM Cares Fund are allowed to **earmark their contribution under the Corporate Social Responsibility (CSR)**. This facility of getting uncapped corporate donations is not available to the PMNRF or the Chief Minister's Relief Fund in states.
2. PM Cares Fund **originally was not subject to audit** whereas PMNRF expenditures are audited by an independent auditor. Later, due to public criticism, the PMO got an auditor for the PM Cares Fund.
3. The prime minister heads both the funds. In the PM Cares Fund, the prime minister can nominate three eminent persons to the Board of Trustees and the ministers of defence, home affairs, and finance are ex-officio trustees of the fund. In the case of the PMNRF, it was

originally managed by a committee that had besides the prime minister and his deputy, the finance minister, the Congress president, a representative of the Tata Trustees, and an industry representative. The committee approved all expenditures of the PMNRF. This organisational set changed in 1985 and now a joint secretary in the PMO, on an honorary basis, administers the PMNRF.

4. The **Public Accounts Committee**, a parliamentary panel, which scrutinises key reports by the comptroller and auditor-general (CAG), is unable to arrive at an agreement on examining the Fund as its funding is not sanctioned by Parliament.
5. The **RTI applications** filed asking for details of the PM CARES Fund did not receive reply as the information sought could not be given because PM Cares fund is dubbed as not a public authority.

According to provisions of **Section 2(h) of the RTI Act**, a “public authority” is defined as any authority or body or institution of self-government established or constituted-

- (a) By or under the Constitution;
- (b) By any other law made by Parliament;
- (c) By any other law made by State Legislature;
- (d) By notification issued or order made by the appropriate Government.

According to the RTI Act, only such information which is held by or under the control of any public authority can be accessed by the general public through RTI.

Mould your thought:

1. How are charitable trusts governed in India? Why is the PM Cares fund controversial?

Approach to the answer:

- Define a trust
- Explain how trusts are governed
- Brief about PM Cares fund
- Write its controversies
- Conclusion