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Focus 49

Corporate Governance for Churches

Toward a Legal Reform in the Church of South India Trust Association

Joseph G. Muthuraj

Globethics.net

Corporate Governance

For Churches

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DEDICATION

To my Parents, and to the one hundred families that were led to Christian faith and added to the Church through the ministry of their House-Church.

FOREWORD I

For millenia, religious organizations have been led by religious leaders who, in turn, have managed their respective organization's assets. Old management traditions are still practised today in Buddhist and Hindu temples, in Jewish synagogues and in Muslim Mosques. Assets are often in the hands of the religious leaders and with little transparency. Some Christian Churches and church-related organisations are similar, even though colonization and church reforms brought new standards.

Today, good governance according to modern standards is compulsory for all institutions which want to be recognized by the state, receive donations and want to do business to sustain their institution. Since the financial disaster in 2007, strong financial regulations have been internationally established and in trade, development cooperation, education, health services, internet services and the cyber world.

Religious organizations including churches and church-related organisations, such as schools, hospitals, universities, farms etc., have to respect and implement these standards. 'Hindu Temple Management'[1] is taught to temple managers. 'Islamic Finance'[2] is a sophisticated finance industry with a criteria that has to be followed by all Muslim institutions in their investment and finance activities—failure to comply can result in the loss of licensing like some religious, also Christian universities and colleges – including in India. In 2010, the Vatican Bank was threat-

[1] Nilesh Madhusudan Shukla, *Hindu Temple Management*, Global Vision Publishing, New Delhi, 2013.

[2] Numerous publications. See e.g. www.islamicfinance.com and many others.

ened to be closed by the EU in wake of the then new EU banking regulations, but eventually the Vatican had to accept the new international standards. Christian Pension Funds have to stick to state regulations in a very precise way, as all pension funds, in order to keep the right to manage a pension fund by a church. Microfinance schemes are also becoming more and more regulated.

Many churches and church-related (often diaconal and educational) institutions established their legal structures in good faith. Many churches, in the early 1960s, when becoming independent from the mission churches, created their legal entity, but then often did not adapt them to new realities for decades. When mismanagement was discovered in the All Africa Conference of Churches AACC in Nairobi in the early 2000, I was involved in helping them identitfy root causes and solutions to improve management. We discovered that the constitution of AACC had not changed since its ratification and standard procedures, such as expenses rules, separation of power in leadership etc., did not exist or were not sufficiently monitored and implemented. (Futher examples of institutional mismanagement can be found in my book *Corruption-Free Churches Are Possible*[3].)

Many churches and Christian agencies accept the challenge to adapt and improve their legal structures and management systems. This of course has to be in connection with theological and ecclesiological reflections. There is also an obvious financial need and benefit behind it: religious organisations that do not develop structures of transparency and good governance risk losing donors and credibility (in relation to governments), and – very important nowadays – will struggle to attract investments for church development needs (except some short term

[3] Christoph Stückelberger, *Corruption-free Churches are Possible. Experiences, Values and Solutions*, Globethics.net Publications, Focus Series no. 2, Geneva 2010. Free download – shortened also in French and in Tamil! – here: www.globethics.net/publications

fraudulent investors who may be interested in non-transparent deals). An encouraging programme is the African Church Assets Programme ACAP, implemented by the Globethics.net Foundation and All Africa Council of Churches, and supported by Bread for the World in Germany since four years. It offers trainings, publications and solutions to improve management of assets and improving governance in churches. The handbook of church assets management[4] includes a lot of practical tools for good governance of assets. The Christian Conference of Asia is interested to explore a similar programme for Asian Churches.

I mention all these international and even multi-faith trends and examples in order to show the high relevance of the current book and also to embed Indian churches in the larger picture of global trends, needs and solutions.

This book, *Corporate Governance of Churches,* is an in-depth analysis of the legal structure of the Church of South India. It shows the historical roots of the existing structure of the Church of South India Trust Association CSITA. The historical reason to create this trust was visionary in ecclesiological and institutional terms. It was the profound conviction of the Indian church leaders and the mission societies that a united and uniting church of South India would much better witness the unity of Christ than the denominational diversity. The second conviction was equally as important: we cannot be united in Christ as one church if we do not share our manifold assets, therefore we put – almost like the first Christian parishes – all assets in one pot and manage it carefully according to the needs of the members and dioceses. But exactly this vision of unity led then - as unintended effect - to centralization and the danger of abuse of centralized power. The author Professor Joseph G.

[4] Christoph Stückelberger/ William Otiende Ogara/ Bright Mawudor (Eds.), African Church Assets Handbook. Good Stewardship for Sustainable Impact, Globethics.net Publications, Praxis Series no. 10, Geneva 2018. Free download www.globethics.net/publications.

Muthuraj describes – in his way - this historical development and contemporary abuse in great detail in his book *Speaking Truth to Power*[5]. In my foreword to this book I have descibed this book as "an academic historical analysis", "an ecclesiological concept", "a critical prophetic voice" and "a call for accountability of church leaders." [6]

This current book can be seen as a second volume to the above mentioned: It goes beyond critique of leaders and structures, but analyses in detail the legal, complex structure and history of CSITA and - most importantly – now proposes solutions to lift the corporate veil of CSITA and find a transparent, appropriate structure of modern governance - which at the same time expresses the biblical calling for good stewardship (e.g. Luke 12:42-48). According to the author, these solutions have to take into account the new national and international environment of laws, regulations and standards. These solutions have to see the church (as well as other religious organisations) not as isolated islands, but part of society and responding to the society, and also to remain faithful to theological and ecclesiological foundations of the church as body of Christ. The relation between churches and their specialized ministries, such as hospitals, universities, pension funds and trusts, is in cases complex, controversial and open to manipulation and power games. The reason is mainly about who can decide about assets and capital. Church-related organisations (CROs) often have more assets and money than the churches themselves which then leads to the tendency of some church leaders try to control or influence these CROs. The core requirement for good governance is responsible leadership. It is the need for servant, modest, accountable leadership.

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[5] Joseph G. Muthuraj, Speaking Truth to Power. *A Critique of the Church of South India Episcopacy (Governance) of the 21st Century*, Globethics.net Publications, Focus Series no 31, Geneva 2015. Free download at www.globethics.net/publications.

[6] Pages 13-16.

I thank the author Joseph G. Muthuraj for the meticulous work that has gone into this book and his proposals, which are an expression of his love to the Church and to Christ. I hope that it will be broadly discussed in order to find a structural reform, as an example of this wonderful Indian church called Church of South India that can be again an example to the world as it was as the first united church in the 20th century.

I dedicate this foreword to Professor Gnana Robinson who passed away earlier this year. As a theological leader and a church leader he was life-long engaged for a credible, transparent church with good governance. I do not need to agree with each sentence of Gnana Robinson nor of the author Professor Muthuraj, but I warmly recommend both to engage with this book and contribute to solutions – not for the sake of reputation but for God's Glory only - *Soli Deo Gloria*.

Geneva, February 2019

Christoph Stückelberger,
Founder and President of Globethics.net
Professor of Ethics in Nigeria, Russia and China

FOREWORD II

I have gone through the book "Corporate Governance and Non-profit Companies" written by Sri Joseph Gnanaseelan Muthuraj. In the preface the author stated "It is like entering into an area guarded by barbed wire fences and a safe return is not assured in this risky adventures". True. It will be like a first delivery to a woman. Lot of pain, fear, mental agony, anxiety and prayer will loom large before delivery. I think, the author would have felt the same feeling when he was preparing the book. As everybody aware that the woman after delivery, after seeing the child will forget all her suffering and would be the happiest person in the world. Mr. Joseph Gnanaseelan Muthuraj after completing the book would have felt the same way. All the mental agony he would have faced, now will turn into happiness.

This book has seven chapters, the first chapter deals with the problems and issues with CSITA.

In the second chapter the author stresses that reality of the church as a Corporate body ought to be taken seriously by Theological educators and they should follow the footsteps of E. Said, M. Barg, Karl Marx and others. The author extracted the speech delivered by "Martin Luther King" on April 4, 1967 at a meeting of clergy and laity. Indeed it is necessary to extract it hereunder:

> "Some of us who have already begun to break the silence of the night have found that the calling to speak is often a vacation of agony, but we must speak. We must speak with all the

> humility that is appropriate to our limited vision, but we must speak."

YES, one has to openly speak what is appropriate to our little mind. We cannot watch silently about the happening in and around us.

The Third chapter deals with "The History and Challenges of the CSITA: Its Formation and Performance over 70 years". With lot of mental agony the author finally concludes in this chapter that —

> "Even after 70 years, the CSITA is not functioning like a company with limited liability justas it was registered on 26 September 1947 but like an agent or Trust or special Trust and at worst it is called a "bare Trust" to the CSI. The history of the CSITA has clearly revealed this reality to us. This crucial problem has to be solved to re-orient the CSITA and place it on astrong footing."

In the fourth chapter the author deals with the power and influence of the CSI over CSITA. It also analysis the procedure and method of the functioning of CSITA. In this chapter the author concludes —

> "Two things are paramount to the understanding of the nature and character of the CSITA as a company. First, it is formed to promote certain specific objects such as commerce, art, science, charity, religion, or any other useful object, and secondly, the CSITA applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members. These two aspects of the non-profit company should be firmly fixed in the minds of the Association's members and leaders."

The fifth chapter speaks of the norms and standards of Corporate Governance for the Non-profit Church of South India Trust Association. Finally in that chapter he concludes —

> "The CSITA has to update its original documents as the MoA and the AoA are outdated and inconsistent with the spirit and letter of corporation."

The sixth chapter discuss about the Memorandum and Articles of Association of the CSITA. It points out major flow in MoA. The author points out that —

> "Education is necessary to make the MoA intelligible to the all sections of the stakeholders of the company, and the administrators cannot have it locked in their office. The culture of secrecy should be broken and a culture of accountability and transparency practiced. The culture of questioning and critical reasoning is also a desirable element here.

The final Epilogue chapter summarises the discussion and findings by underlining the need for changes and other important remedial measures necessary for revamping the CSITA.

Thus the author has expressed his anguish about the functioning of CSITA in his own way. The author has taken much pain in writing about CSITA in his own way. I appreciate his earnest steps taken by him. Though I foreword about the book, I honestly say that the expression stated in this book do not subscripe my view in certain area.

I wish the author a successful life.

Judge K. Venkataraman

Chennai, India

PREFACE

This book is a maiden attempt to explore a territory fully guarded by episcopal power and control. It is like entering into an area guarded by barbed wire fences, and a safe return is not assured in this risky adventure. I am opening up a subject which is also fully protected by the persuasion methods of religious indoctrination. 'Give offerings to the church and then depart in peace', tells the religion of the church. This is the gravest distortion of New Testament ecclesiology.

The sheep are taught by the shepherds to believe that each consecration is equivalent to the anointing of David by Prophet Elijah. In practice, winning an episcopal chair is not much different from the attempt made by Simon in Samaria who tried to buy the religious office with good sums of money. The passivity and sedateness planted in people's minds make them say that religion is a private affair, and so the leaders will render personal accounts to God at the time of judgment if they were to commit wrong-doing. If it were the plan of God that all misdeeds committed in the name of the church will be settled only at the time of final judgement, there would have been no incarnation and no need for celebrating the Light that enlightens every human being coming into the world. We would not have to read and study the verse, 'On many past occasions and in many different ways, God spoke to our fathers through the prophets. But in these last days, He has spoken to us by His Son.' There would have been no sending of the disciples to proclaim the will of God and to continue the mission of Christ until the end of the age. The ideology of awaiting the final judgement for all wrongs

to be exposed blunts the sharpness of Christian critical consciousness and upsets the prophetic vision towards fulfilling the task of God for the edification of his Church in every generation.

I do not want to see my appointment for Christian ministry to be used as a peg to serve someone's ambitions for the attainment of a position of power. I do not wish to place my Christian vocation always on a mat of obedience and surrender to the authorities that perpetuates a corrupt system in order to keep my career ladder alive. I spurn every opportunity that may come my way for not speaking and acting the truth. 'Preaching the good news' (*kerygma*) and 'serving the tables' (*diakonia*) are the two essential characteristics of Christian ministry. We are now looking at the diaconal ministry which is presented to us in the form and content of a corporate system on which all the properties and finances of the church are invested for safe custody and proper management. That corporate system is represented by the Church of South India Trust Association (CSITA), a non-profit company, which is the grand object of our study. Let us not think of 'corporate' in strict business terms or give it the pejorative sense of multi-national companies exploiting the poor and the earth's resources. We are talking about incorporation for non-profit (a corporation organized for some purpose other than making a profit, and usually afforded special tax treatment) management tied to duties and responsibilities embodied in corporate law which deals with the formation and operations of corporations.

For a theologian to be taking up this study is another shock and surprise! A theologian must be equipped to serve God in multiple ways as theological inquiry should be able to hold diverse ministries in its purview and keep them within the radar of church governance. Every theological activity must focus on change, transformation and re-building. Reformation arises out of the experience, personality, culture, and vision

of the theologians. Luther wrote, 'Not understanding, reading, or speculation, but living—nay, dying and being damned—make a theologian.'[7]

The experience of my strict academic training at the University of Durham, UK and my working under the illustrious and world-renowned scholars and writers such as Prof. James D.G. Dunn and Prof. C.K. Barrett have equipped me with courage to take up research tasks in any field I set my mind to focus on. My doctoral thesis on the Acts of the Apostles has given me the necessary impetus and motivation to step into this research. In addition, further support and assistance come from the professors at Dr. Ambedkar Law University, Chennai where I am enrolled as a student of Corporate Law (2017-19) working towards a degree of Master of Corporate Law (MCL) through distance education.

I have spread the map wider in this book which appears in two parts so that we can understand some of the routes to the highways and byways within the Company laws and their application for the benefit of the church. On the whole, the book published in two parts is of a provisional nature containing my own thoughts and observations on legal sources with which the CSITA should comply. It opens up ways for others to continue exploring and digging out more and to write more on the relevant issues of the incorporated nature of the CSITA.

The purpose of the book is also to remember and celebrate the historic Indian Conference (attended by 31 Indians and two Americans) that took place in Tranquebar, a little town in South India where the Protestant mission in India began in 1706. The conference was held on 1 & 2 May 1919 at the new Jerusalem Church of the Lutherans (built in 1718) and it was chaired by the First Indian Anglican bishop V. S. Azariah (1874-1945). The outcome of the meeting was the production of what was known as 'Tranquebar Manifesto', a first ecumenical document of the twentieth century with a plan for the episcopal and non-

[7] Quoted by T. George, *Theology of the Reformers,* Nashville: Boardman & Holman Publishing Group, 2013, p. 61.

episcopal churches to unite. This became the blueprint for the union of the Anglicans, Presbyterians, Congregationalists and Methodists in the form of the Church of South India inaugurated on 27 September 1947. On the importance of the document, G. Sherwood Eddy (1871-1963) who helped to draft the Manifesto said, 'America, England and other lands are praying, talking, discussing and desiring such union. India alone can act.'[8]

This book is a tribute to one of the most significant events in the history of world Christianity. Unity did not work as perfectly as it might have, and after one hundred years we realise painfully that unity alone is not enough. At Tranquebar, the participants saw the importance of the prayer of Jesus 'That they may all be one', and now after one hundred years, we want the churches to seek the fulfilment of the prayer of Jesus '[…] that they may also be sanctified in Truth'. The Christian community of the twenty-first century ought to place always Truth ahead of Unity. Truth matters more than achieving organisational unity of various constituent churches. What did happen to the diverse church heritages we brought with us into the CSI? Only the stock of each tree is remaining!

Joseph Gnanaseelan Muthuraj
Bangalore, India, 2 January 2019

[8] Quoted by B. Sundkler, *The Church of South India: The Movement Towards Union, 1900*-1947, Connecticut: The Seabury Press, 1954, p. 107.

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It is often said that having an idea and turning it into a book is as hard as it sounds. The experience is both internally and externally challenging. I especially want to thank the individuals who helped me to do the research and write this book. I am eternally grateful to Prof. Dr. Dr. Christoph Stückelberger, the Founder and President of Globethics.net, Geneva, Switzerland who bestowed me with a grant to write this book. Also I thank him for writing a foreword. I wish to extend my thanks and gratitude to Dr. Ignace Haaz, Globethics Publication Manager, Ms. Joy Cadangen, Senior Associate Finance and Mr Jean-Pierre Pocthier, Finance Officer who in their own ways contributed to the production of my work. Complete thanks to my wife Beulah and to my son Arul Darshan for their care and constant encouragement. I wish also to thank immensely the Honourable Justice Shri. S. K. Venkataraman, a retired Judge of the Madras High Court and the Administrator of the Tamil Evangelical Lutheran Church (TELC). I am indebted to the Rev. William Allberry of England for his patient reading of the manuscript to check the English language with great skill and expertise. Yet, the imperfections are mine. Last but not the least, my thanks are due to the ISPCK, New Delhi for putting this book in print with quality and thorough professionalism. Finally, I want to thank everyone who ever said anything positive to me or taught me something through their criticism.

1

INTRODUCTION

A New Direction for Indian Ecclesiology

For the last fifteen years, my thoughts have been hovering over the history and the development of Protestant Episcopacy in India. The studies which conveyed those thoughts stressed the value of episcopal governance and the attendant problems faced within the Church of South India. It took some years to realise that the episcopal governance also has another vital side to it which has not been greatly exposed to any study and research. This component in episcopal governance is associated with the corporate sector to which the CSI belongs through the incorporation of the Church of South India Trust Association on 26 September 1947. The question of corporate governance in the CSITA is closely bound with the nature and function of episcopacy in the Church of South India and vice versa.

At the level of each diocese which is a unit of the CSITA, almost every bishop holds a power of Attorney, a method of delegation of powers by the Managing Committee of the CSITA, for buying, holding, mortgaging and selling the immovable assets of his/her diocese. The CSI Constitution does not touch on this aspect and there are no clear principles laid out on the role and functions of the power of attorneys apart from reference to it in clause 17(g) in the Articles of Association of the CSITA. The Attorney system was developed by the *Guidelines for the Church of South India Trust Association* (1988) created by the CSI Executive committee, whose authority in relation to Indian corporate regu-

latory mechanism is highly questionable. We wonder whether the Attorney aspect of episcopacy has ever been taken up for study and analysis. It is the mundane side of the episcopal office which offers undue worldly privileges for the bishops rather than the ministry of preaching and the administration of sacraments. It is the bishops' vocation of holding the Powers of Attorney which presents them with opportunities to commit their corporate sins of indulging in financial mismanagement and the illegal sale of lands. Some bishops have made better use of such opportunities to enrich themselves than others. There are few, however, who have never succumbed to the unholy and pompous life!

According to the unregistered *CSI Constitution* (2003), 'the bishop of the diocese shall have a general oversight of the financial administration of the diocese but shall not exercise any direct control over the finances' (p. 37). But the bishop of the diocese can become the President of the Finance Committee and the Property Committee. The fact that a bishop will not have direct control over the finances is rather academic as nothing can stop him/her having indirect control through one of his loyal servants or ardent followers appointed as Treasurer by the bishop or the diocesan Council of which the bishop is the Chairman. Is it not tantamount to having direct control, at times completely water-tight, as the bishop invariably has oversight over all financial transactions? The bishop also sits above the Treasurer because he is the Chairman of the Finance Committee and also of the Property Committee. Is not the bishop placed in a position of control? On paper, the control and oversight are not emphasised strongly, but in practice the bishop occupies the central position in all financial dealings including the day-to-day income and expenses occurring in the diocese. The financial management is directly linked to duties and formalities outlined in corporate statutes which the CSITA must abide by. Do bishops disregard corporate rules in handling the church's finances? Do assets become prey to the greed and ill-designs of those in power in the CSI so that the sale of assets is used

as a purse to spend on elections to help them sit in and retain the highest positions in the church?

It is no surprise that the CSI's members exhibit a serious lack of knowledge over the nature and functions of the corporate body, the CSITA. They are taught from birth to come to church for worship, pay regular subscriptions and offerings and not become too inquisitive about the management issues of the church. They are accustomed to seeing the ecclesiastical face of the CSITA which is the Church of South India, and their minds are tuned to seeing the unquestionable and infallible religious authorities ruling over the movable and immovable properties of the church. It is in this context that the study of the governance of the corporate entity CSITA gains importance.

There is such a thing called good corporate management which challenges the character of the CSI episcopacy. The efficiency of episcopacy is judged by a bishop's application of corporate wisdom and the manifestation of his/her integrity in financial and property matters. It is not enough to be well-versed in pastoral overseeing, bureaucratic administration and showing the uncanny ability of winning elections by forcing election victories. A bishop should establish his/her commitment to Christ by exhibiting good corporate intelligence and behaviour. The worshippers should also make efforts to contribute constructively to this field of action for the sake of grooming the corporate life of the church. Following strictly the principles and policies of incorporation will protect our movable and immovable assets.

With this aim, this book is an attempt to revive and re-orient the CSITA as we observe that it is a moribund company, decaying and crumbling. It is sinking fast and it does not allow either the Government or the Courts or its stakeholders or beneficiaries to save it from breathing its last. The CSITA is gradually proving itself a corporate failure, and hence its corporate veil has to be pierced to see what is really happening behind. Our attempt is to make the Trust Association rooted in

values of good corporate governance enshrined primarily in the Indian Companies Act 2013, in its constitutions (the Memorandum and Articles of Association of the CSITA) and in other international Corporate Governance Codes. They all have relevance for achieving better corporate thought and action.

The book is written with some confidence and also with some trepidation. Corporate Science is an unexplored area in ecclesiological theology, and a dive is taken in an inter-disciplinary fashion to link the two. K.J. Hopt's words are apt here: 'While it is true that there is a considerable amount of research on nonprofit organizations and foundations in Europe, it is typically disciplinary, […] However, looking beyond those disciplinary boundaries – and, even more, engaging in interdisciplinary debate – is still rare. In particular, the governance discussion as to nonprofit organizations has just begun in Germany and a number of European member states as well, while it is much more advanced in the US. In a way this is surprising since in the for-profit sector, an intensive, international and interdisciplinary corporate governance discussion had already evolved some time ago. Today comparative corporate governance has become a research field of its own, and it has evolved and is being developed globally.'[9]

The problem of good governance of non-profit organizations and of holding their management accountable is acute, both because of the growing rule of non-profit organizations and because of obvious abuses and misgivings. Most scholarship on corporate governance in the last two decades has focused on enhancing good relationships between the shareholders and the Board of Directors. Neglected in this corpus of literature is the role of employees, donors/contributors and ordinary members (who can be called stakeholders) in non-profit associations,

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[9] *Comparative Corporate Governance of Non-Profit Organizations,* ed. by K.J. Hopt and T. Hippel, Cambridge University Press, 2010, p. xxxvii.

and above all the Memorandum and Articles of Association which are the source documents for learning and the foundation for good corporate governance.

There are real as well as perceived problems in corporate governance. These are waters too deep to be fathomed even in this book with two parts. It is better that each person makes strenuous efforts to grapple with the CSITA crisis without attempting to solve it by a magical wand such as talking about an ideal spirituality or supplying moral lessons to the bishops and to lay persons in power. While every effort has been made to ensure the accuracy of this publication, it is not intended to provide legal advice as the corporate problems and perspectives of individuals will differ from persons and circumstances. The courts of law are our final destination to learn the right application of the provisions of corporate laws.

A non-profit organisation can be registered in India either as a Society, under the Registrar of Societies, or as a Trust by making a Trust deed, or as a Section 8 Company under the Companies Act, 2013. Our focus is mainly on the non-profits that are registered under Sec. 8 or registered under the corresponding section in the previous Acts. The CSITA comes under the latter. The CSITA has a corporate personality having a legal status, whereas the Church of South India is not a legalised body as its constitution is independent of Government regulatory bodies.

If a non-profit organization does not properly follow the required legal formalities or does not treat the non-profit as 'a separate corporate entity' from the other associations and groups (such as the CSI), the court may order a process which is known as 'piercing the corporate veil'. It can also occur if the management committee does not keep appropriate records or minutes, hold required meetings regularly, or follow the correct voting procedures for the committee's resolutions or actions but manipulates assets and siphons off corporate funds by domi-

nant members. Non-profits like the CSITA must ensure that they are properly following the requirements of their incorporation. Our study will look into major indicators for piercing the corporate veil in the CSITA so that what is happening behind the veil becomes visible for correction and reproof by the Government regulatory bodies.

The Indian Companies Act 2013 is binding and enforceable by law; it has legal consequences on the nature and function of the CSITA. No single person is truly competent to evaluate properly the overall past and present state of the CSITA in the light of Corporate Law. It requires a vast amount of legal knowledge about the Indian Companies Acts and the corpus of case laws as it has evolved from British days to the time of independent India. Expert knowledge in accounting and auditing will be essential for a project such as this along with a hands-on experience of working with Government bureaucracy from the officials of the Ministry of Corporate Affairs in New Delhi down to the office of the Registrar of Companies in Chennai. But that fact should not allow us to back off from the real challenge. We need to start from somewhere. If I wimp out because the task is so hard and laborious, I will be guilty of doing a disservice to the corporate church. Someone has to attempt to take the bull by horns without being afraid of criticism, particularly from those who might have the necessary qualifications but who never cared to take up the gauntlet for the sake of the church to lead it in paths of corporate governance.

The book is a not a fact-finding initiative, documenting cases of financial irregularities and mismanagement of the assets of the church. References are made only to cases for which there are strong documentary evidence. The study is not based on any narrow agenda of targeting individuals but it seeks to lead readers to a broader vision of helping the church understand and execute its corporate duties in a manner faithful to the norms and standards of incorporation. This chapter emphasizes the need for new directions in Ecclesiology. We search for an Ecclesiol-

ogy which will have a place for a study and analysis of the corporate dimensions of the church. The study on corporate governance is a much-valued subject particularly in a context of the lack of professionalism in corporate matters prevailing in the Church of South India today. The treatment of case laws has been kept to a very minimum since it is the first attempt to grapple with fundamental issues on the subject.

The second chapter presents in a cursory manner the problems and issues with the CSITA, and further chapters analyse the issues in detail. It is stressed that the reality of the church as a corporate body ought to be taken seriously by theological educators. They must develop Christ's critical consciousness which breaks the shell of silence enabling them to speak the truth rather than equipping people to perform religious rituals and render duties to preserve and protect establishments. The theologians ought to show resilience not to be servants to a system which breeds corruption and ungodliness. There are some preliminary observations made as to the grounds for 'piercing the corporate veil'. The third chapter traces the history and formation of the CSITA and sketches on the basis of historical records how the CSI has been using the CSITA as a mere instrument to hold the properties of the church by suppressing its separate corporate entity, primarily bound to corporate laws. Chapter four examines the power and influence of the CSI over the CSITA and discusses the corporate features of the CSITA which are different from a Trust Company and a Corporation Sole. Chapter five outlines various definitions of corporate governance and attempts to construct a Corporate Governance Code for the CSITA from various national and international Codes. The sixth chapter examines the Memorandum and Articles of Association section by section by evaluating them from the perspectives of the norms and standards of incorporation. They make up the necessary ingredients of good corporate governance. The final Epilogue chapter summarises the discussion and findings by underlining the need for changes and important remedial actions for the CSITA.

2

THEOLOGY COMBINED WITH CORPORATE LAW APPROACHES THE CRISES OF CSITA

The Difference and Similarities between Profit and Non-profit Companies

Non-profits are generally tax-exempt companies, unlike trading companies. They have a completely different financial framework from for-profit businesses, which results in different accounting procedures and preparation of balance-sheets. Non-profits seek to serve the society as a whole; they have a service motive rather than earning profit for the owners. The Profits maintain a cap ital contributed by the owners, whereas the Non-profits are run by funds from donations, subscriptions, government grants and so on.

Nevertheless, the non-profits are more akin to for-profit companies. Both are incorporated bodies and they ought to follow common principles, and they share common characteristics of incorporation as they operate under one Act. Like business corporations, many non-profit organizations have assets and finances to manage, high levels of administration and decision-making by boards, extensive management and different levels of staff which help in the efficient working of the organization.

The non-profit companies have a unique place in the Indian Companies Act 2013. They are companies formed for promoting commerce,

art, science, religion, charity or any other useful object. The profits accrued or any other income obtained is used in promotion of their objectives and they are prohibited from making payment of any dividend to their members. They may be registered as companies with limited liability, without the addition of words "limited" or "private limited" in their names. A Section 8 non-profit is a corporation, whereas a Society registered under the Societies Registration Act is not a corporation in the strict sense but a quasi-corporation. Being a section 8 company makes it more closely regulated and monitored than trusts and societies. It lives through the incorporation cycle of birth (registration) and death (winding up).

The new Act of 2013 has stringent provisions for non-compliance. Six of the provisions of sec. 8 are penal provisions for the non-profits. If a company makes default in complying with any of the requirements set out in section 8, the company will have to pay a fine of not less than ten lakh rupees extendable up to one crore rupees. Further, every Director and every officer of the company who is in default shall be punishable with imprisonment for up to 3 years or a fine of not less than twenty-five thousand rupees extendable to twenty-five lakh rupees, or both.

A Company limited by guarantee, as the CSITA is, is a specific form used for a non-profit organisation. It does not have shares and shareholders; it has donors and stakeholders. The corporate governance of the non-profits deserves to be studied under a stake-holder approach.

The Non-Profit Sector in the Corporate World

We offer some statistical details to indicate the growth of the Corporate Sector in India. As on 31st May, 2018, the number of companies registered under the Companies Act was 17,70,654. Of these, 5,41,354 companies were closed, 6,077 companies were under liquidation, 37,656 companies were in the process of being struck off from the register, 106 companies were in the process of being re-activated and 1,352 compa-

nies had obtained "dormant" status according to Section 455 of the Companies Act, 2013. There are 11,84,109 active companies. One has to place the 4,878 the non-profits as they are called, within the 69,987 non-Government public companies in this vast context of the corporate sector. The companies limited by guarantee like the CSITA are 7,501 in number.[10] According to an article in Economic and Political Weekly, 70% of the 4.3 lakh non-governmental organisations working in the country are of a religious nature. The number of non-profits in India registered under sec. 8 as on 31 March 2015 was 6,273 which probably included the 2,749 companies registered under sec. 25 of the 1956 Act. The list includes the Church of South India Trust Association.[11]

A non-profit organisation is generally understood thus: It is "dedicated to furthering a particular social cause or advocating for a shared point of view. In economic terms, it is an organization that uses its surplus of the revenues to further achieve its ultimate objective, rather than distributing its income to the organization's shareholders, leaders, or members. Nonprofits are tax exempt or charitable, meaning they do not pay income tax on the money that they receive for their organization. They can operate in religious, scientific, research, or educational settings. The key aspects of nonprofits are accountability, trustworthiness, honesty, and openness to every person who has invested time, money, and faith into the organization. Nonprofit organizations are accountable to the donors, funders, volunteers, program recipients, and the public community. Public confidence is a factor in the amount of money that a nonprofit organization is able to raise."[12]

A Non-profit Organisation in Company Registration

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[10] *Monthly Information Bulletin*, Ministry of Corporate Affairs, vol. 8, June 2018, p. 3; *Annual Report*, Ministry of Corporate Affairs, 2017-18, p. 19.

[11] http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Section25_Companies.pdf.

[12] https://en.wikipedia.org/wiki/Nonprofit_organization.

S. Gandhi remarked, "Today, India has a dominant NPO sector and NPOs are of increasing importance as partners in the process of development and as employers."[13] The NPOs in India are multiple and variant. The Non-Profit sector is too vast to be brought under one umbrella. S. Sen considers the following as belonging to the Non-profit sector: voluntary associations; voluntary organizations; voluntary agencies; philanthropic organizations; welfare organizations; action groups; non-party political groups; non-party political formations; social action groups; people's groups; women's organizations; non-party, nongovernmental organizations; subaltern organizations; nongovernmental organizations; government-organized NGOs; church organizations; Christian groups; religious groups; and community-based organizations (CBOs).[14]

The term NPO is thus very broad and encompasses many different types of organization. Further, NPOs range from large international charities to community-based self-help groups. Certain research institutes and professional associations also operate as NPOs. They are not established for the benefit of or do not provide any benefit to any particular caste or religious community; people desire to carry on charitable activities or activities for the benefit of public at large, especially for social and economically weaker people including women and/or children. The World Bank defines NPOs as "private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development."[15]

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[13] S. Gandhi, "Gaps in GAAPS: Issues in non-profit accounting and reporting in India" 2005.

[14] "Defining Non-profit Sector in India", http://ccss.jhu.edu/wpcontent/uploads/downloads/2011/09/India_CNP_WP12_1993.pdf, p. 15.

[15] "Non-Governmental Organizations and Civil Society Engagement in World Bank Supported Projects: Lessons from OED Evaluations",

The NPO sector in Maharashtra is a significant sector where 35% of the NPOs are engaged in religious activities, like the CSITA. Sen lists the following different types of NPOs: "Legally, five types of NPOs have a nonprofit status in India. These are: a society registered under the Societies Registration Act of 1860; a trust registered under the Indian Trusts Act of 1882; a cooperative under the Cooperatives Societies Act of 1904; a trade union under the Trade Union Act of 1926; and a company under Section 25 of the Companies Act of 1956."[16] This book does not address the needs and the challenges of all these diverse units of the Non-profit sector; our focus is mainly on the bodies corporates which are registered under the Indian Companies Act, with particular reference to the CSITA with its head office in 5, Whites Road, Chennai.

A Review of Charities Administration in India

In the year 2004, the Sampradaan Indian Centre for Philanthropy in New Delhi undertook a project to study and examine charity administration in India and wrote *A Review of Charities Administration in India.* A sample survey of 500 voluntary organizations was done using questionnaires, and the organisations included varied Trusts, Societies and Companies registered under section 25 of the Companies Act 1956 from all across India. The *Review* highlighted the legal and infrastructural conditions within which the non-profit organisations were functioning in India and suggested ways and means to enhance support for philanthropy and to help regulate charity enterprise. The *Review* reported, "No attempt is made therefore to educate the public about the NPO sector, or the NPO sector about legal compliance and good governance. At the

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http://lnweb90.worldbank.org/OED/OEDDocLib.nsf/DocUNIDViewForJavaSearch/851D373F39609C0B85256C230057A3E3/$file/LP18.pdf.

[16] Gandhi, "Gaps in GAAPS: Issues in non-profit accounting and reporting in India", p. 17.

most they ensure that the funds are used for charitable purposes. There is nothing to promote good internal governance of the organization. The legal incorporation laws do, to some extent, incorporate provisions for better internal administration, but again compliance and compliance monitoring is either weak or a cau se for harassment."[17] Its comment, "There is nothing to promote the good internal governance of the organisation" is to be taken very seriously so that the Government helps to make the infrastructural facilities to build the corporate character stronger in the non-profit companies. Out of the 500 non-profit organisations surveyed through interviews, questionnaire, etc., only one is a Christian non-profit Association. It means that the corporate sector of which the Christian non-profit/charity organisations are registered under the Indian Companies Act did not receive any attention. We think that this lacuna is not simply an oversight. This is the neglected and unexplored area which we wish to cover in our study by using the CSITA, a Christian company, as a test case.

CSITA Is a Taboo Subject! Let us Break the Taboo!!

History has shown that a typical non-profit has extremely high fraud risk. The bishops of the Church of South India hold in contempt any members of the public showing interest in the matters of the Trust Association in which are invested the properties and finances of the church. From the beginning of this century, the functioning of the Church of South India Trust Association has remained a mystery, and all its decisions relating to movable and immovable assets are kept confidential among the members of the management committee. There is no website for the CSITA where the wider stakeholders can find useful information from the past and present. The public does not get to know whether and

[17] *A Review of Charities Administration in India*, New Delhi: The Planning Commission, Govt. of India, 2004, p. 106.

when the General Body and the Committee of Management meet, what decisions are made and who the current directors are. The current membership of 19 persons and the appointment of 10 directors are quite disproportionate to the totality of the subscribers/donors who amount to four million stakeholders. Even if one person were to represent each diocesan unit, the number of directors would come to 25. We need to add the independent directors to it. At the AGM, the strength of the members would have to be around 100 in number, on par with the number of members in the Executive Committee of the CSI. Alternatively, the CSI Executive Committee could be permitted to play a dual role, meeting separately to discuss and decide matters on the CSI and the CSITA provided the Executive Committee consists of lawyers, chartered accountants and IAS/IRS cadre administrators.

How Big Is the CSITA?

The Church of South India Trust Association's Corporate Identification Number (CIN) is U93090TN1947NPL000346, and the Registration Number is 000346. Its Registration date is 26 September 1947. It is a public non-profit company Limited by Guarantee. The office of the company is in 5, Whites Road, Royapettah, Chennai 600014, where is also located the Secretariat of the Church of South India. Through the CSITA, "the Church (i.e. the CSI) continues to serve the public at large in rural, sub-urban and urban areas irrespective of caste, creed and religion and they are summarized as follows:- The Medical needs of the masses are being attended to by Hospitals and Health Centres numbering about 50. The number of educational institutions within the CSITA – 94 Colleges, 578 Secondary Schools, 1,467 Elementary & Nursery Schools, 47 Technical Institutions, 24 Para Medical Institutions, Others 44 – continue to cater for the educational needs. The Boarding Homes, Hostels and Day Care Centres cater to the needs of Children who are orphaned, poor, deserted and differently abled. The provision of drink-

ing water facilities and other amenities are extended to the under privileged communities. Professional Training Schools both formal and non-formal continue to provide skills to men and women. Assistance in Community Development, environmental concern and self-employment schemes are also being carried out."[18] We combine these statistics, compiled at a time when the CSI had 21 dioceses, their members were reckoned 3.8 million in number and 14,000 congregations (stakeholder groups including, for historical reasons, one diocese in northern Sri Lanka). It now has 24 dioceses, and employed ministers are estimated at 1,421 and the chief-ministers (the bishops) at 24.

The Fixed Assets of the CSITA according to the Financial Statement 2015-16 are worth ₹17,208,857,452 (250 million USD) the total indebtedness ₹139,26,39,210 (20 million USD) and the net worth is ₹24,385,622,281 (347 million USD). These numbers appear on paper which looks impressive, but the question is how all these are performing and how the 10 members of the Board of Directors are managing them in financial and property matters in accordance with the Indian Companies Act. Complaints from local stakeholders are aplenty over the mismanagement of those institutions submerged in alleged corrupt practices and fraudulent activities.

A Cyber Church or Cypher Church?

According to the NCCI Report published 14 July 2015, the National Council of Churches in India organized a Young Theologians' Conclave in partnership with support from The Church of Finland and with help from promoters and partners from the Church of Ireland and the Church of England in the Ecumenical Christian Centre, UTC, Bangalore from June 26-27, 2014. The theme of the Programme was Ecclesiology (doctrine of the Church) in the Cyber Age. The aim of the Programme suc-

[18] *Financial Statement of CSITA 2015-16*, p. 11.

ceeded in gathering young theologians who are techno-savvy and cyber-oriented to come together to devise plans and ideas to respond to the changing definition of Church in the Cyber Age. The threats posed by the Cyber Age were brought to the fore, and action plans were devised to ensure that the Church will become a relevant Church in the context of the growing challenges of the changing times. Presentations were made to throw light on the Cyber Age, Cyber space and the Cyber Church.

Young theologians were called a 'conclave', which means that they discussed matters of ecclesiology secretly in a lockable room with the support of Western church money. 'Conclave' suggests that the meeting was a private one focussing on problems of the Cyber age rather than making challenges in public on internal issues affecting the Indian Church. Theological discussions cannot be done in board rooms. Theological reflections in India allow the Western church sponsors to problematize the issues for India. It seems that NCCI is looking for issues "out there" rather than for addressing issues within its member churches. There are tendencies to avoid problems closer to us, things happening under our feet and in front of our eyes.

All these represent a betrayal of Christian calling and an apathy and indifference to Jesus' mission to purge and re-order the Jewish religious establishment of his time. So much depends on the character and the quality of theological educators to dissect and analyse issues and find solutions to the problems of corruption, fraud and mismanagement in the churches.

There are two trends common among theologians of the church today. Career-oriented theological educators may still look to settling in the West for secured living. We still expect books on poverty and untouchability to come either from Harvard or the WCC, and they are highly valued as source books over the books produced in India. The other side of the problem is theologians presenting themselves ready to

serve the interests of the ambitious church leaders in authority. Many are still acting as compromising opportunists seeking positions when we ought to be throwing challenges to the church leadership, stressing as Jesus did the cleansing and re-equipping of the priesthood. The churches are proving themselves to be "ciphers" representing their total failure to uphold ethical values in property matters and financial management. Criminal First Information Reports (FIRs) have been filed against a good number of church VVIPs in police stations on account of a wide range of crimes punishable under the Indian Penal Code. At least one top-most leader is facing some 43 court cases against his name including a sexual molestation case. We ought to reflect openly and publicly with the support of Indian money on "Ecclesiology in the context of Cypher Morality", examining the threats and dangers posed not by Cyber Age but by the corrupt, inefficient and fraudulent leadership ruling over the churches in India today.

The Intermingling of Doing Theology with Corporate Law

After retirement from my active theological career which spread over four decades, I am now asking to myself the fundamental question "Who is a theologian? What does he/she do?" The questions are "Who is a Theological educator?" and "What is his/her responsibility?" Theological education in India and for India is not a free and an independent enterprise. It is caught up within the clutches of the corrupt and authoritative system of the church. We live in an age where ecclesiastical council/committee modules are said to be managing theological education rather than by charisma and creativity of the Spirit. The theological committees comprise persons, both ordained and lay, who are members of the church at the organizational level. There are many in the church who are ready to run theological education, deciding on matters relating to money, buildings, appointments and termination of faculty members'

employment. The input that comes from this state of affairs is the wind of church politics sweeping across the theological colleges, promoting a culture of coteries and sycophancy.

It is often not recognized that the theological pursuit is not about "running" a machine but "leading" those who love the pursuit of truth and wisdom. Current church leaders are least qualified and in most cases ill-equipped to be Presidents or Chairmen of apex committees of theological colleges. The low-ranked and under-qualified church members who impart their ignorance and insufficient knowledge with the sole aim of exercising firm control over theological colleges so that no prophetic voice from there will trouble their pursuit of luxury and power. It is difficult to be a critical, research-oriented and empirically grounded theological educator in India today. Such persons will have to fight a battle of isolation and loneliness. Church politics and theological scholarship cannot go together. A theological scholar cannot master both. Those who occupy leadership positions in theological colleges such as the Principals and Directors are swamped under the political wave from the churches and finally commit themselves to act as "yes-men/women" being careful not to embarrass the powers and authorities of the church.

A seminar on the episcopacy contemplated and planned by the Serampore establishment in India was not able to take place as its committee felt that such an endeavour would offend the church. The apex body of colleges affiliated to Serampore choose bishops whose handling of properties and finances is found far below the level of true integrity and sincerity, for the award of honorary doctoral degrees. Corrupt bishops and bishops who have dubious records of ministry and career are after the DD to be secured first from the leading conglomerate of theological colleges called the Senate of Serampore College. Theologians have no voice in the mainstream of the power installations of the church. It is not a very pleasant scenario. All these have a negative influence over the goal-setting of a theologian's life and drive him/her to be an

opportunist and power-seeking individual. The result is that a theological career spanning two or three decades in one's life time becomes a long and pointless grind. Speaking the truth is no longer a priority, but striving for recognition and seeking livelihood from the corrupt system prevailing in the church. What is the alternative? Here are the illustrious models.

E. Said: Speaking Truth to Power

E. Said, the great intellectual and secular critic of this era, helps us to define theological vocation in one of his lectures entitled "Speaking Truth to Power". He touches on an important characteristic of the theological thinker and scholar who can be termed as an "intellectual". In his words, "Nothing in my view is more reprehensible than those habits of mind in the intellectual that induce avoidance, that characteristic turning away from a difficult and principled position which you know to be the right one, but which you decide not to take."[19] He further comments on the mind-set of the intellectual who might surrender his/her principled life for achieving mundane, careerist and materialist gains. He observes, "You do not want to appear too political; you are afraid of seeming controversial; you need the approval of a boss or an authority figure; you want to keep a reputation for being balanced, objective, moderate; your hope is to be asked back, to consult, to be on a board or prestigious committee, and so to remain within the responsible mainstream […] For an intellectual these habits of mind are corrupting *par excellence*."[20]

What is the role of the intellectual/writer/theologian in society? It is not as if "'the higher one goes in the education system today, the more one is limited to a relatively narrow area of knowledge". Said calls for amateurism which is "a desire to be moved not by profit or reward but

[19] Said, *Representations of the Intellectual*, p. 100.
[20] Ibid., pp. 100-101.

by love for and unquenchable interest in the larger picture … in refusing to be tied down to a specialty, in caring for ideas and values despite the restrictions of a profession […] Specialization also kills your sense of excitement and discovery, both of which are irreducibly present in the intellectual's make-up. In the final analysis, giving up to specialization is […] laziness, so you end up doing what others tell you, because this is your specialty after all."[21] Theological intellectualism is not to be shackled by narrow disciplinary confines, but it engages in an explosive boundary-crossing endeavour that seeks always for a broader picture with a view to creating a revolutionary theology.

Karl Marx: Bring Changes to the System

In Karl Marx's thesis on Feuerbach published in 1845, Marx presented 11 criticisms on the philosophy of materialism and idealism propounded by Feuerbach. He asserted that Philosophy should be "revolutionary" and that it should be a practice-critical activity. Marx further stated, 'All social life is essentially practical." And his 11th thesis on Feuerbach is significant, challenging all those who are engaged in theological activity. It reads, "Philosophers have hitherto only interpreted the world in various ways; the point is to change it." The modern situation has it totally the opposite. "Today's intellectual is a closeted […] professor, with a secure income, and no interest in dealing with the world outside the classroom. Such individuals write an esoteric and barbaric prose that is meant mainly for academic advancement and not for social change."[22] Theological educators affiliate "to parties that demand loyalty to political line and do research to subtly compromise judgement and restrain critical voice". Theological educators have social-political roles to play, and one should be equipped with critical and at times opposi-

[21] Ibid., p. 57.
[22] Ibid., p. 53.

tional consciousness for the good of the Church founded by God in Christ and energised by the Holy Spirit.

Marcus Borg: Christian Religion to Teach Critical Consciousness

Christian religion has to be re-conceptualized. Religion is often associated with submission and obedience. It is the opium of the people to prevent them from reason and resolute action. It desensitizes the people from issues of church and society. It gives them relief from oppression so that they do not revolt against the oppressor. Inner peace and inner joy are the watchwords of modern spirituality. For many people, Jesus died for our sins, which tells all that we should know about Jesus. The primary purpose of Jesus was to die for sinners. Marcus Borg put it in brilliant terms as he writes, "This emphasis upon Jesus as substitutionary sacrifice leads to a vision of Christian life as centered in sin, guilt and forgiveness … Thus our central need is forgiveness; only so can we be right with God. This vision is widespread."[23]

Religious authorities interpret religion as passive acts of seeking the individual's forgiveness from past sin and guilt, praying for justice, etc. Borg showed Jesus in human form "that is persuasive, compelling, inviting and challenging".[24] Those who have a negative view of history often characterize Christians as "anti-intellectual, literalistic, self-righteous, judgmental and bigoted".[25] We turn to Said again. In his book, *The World, the Text and the Critic*, Said devotes a tiny space for 'Religious Criticism' when in his works he generally moves outside of the perspective of religion. "Religion," he argues, "[…] furnishes us with systems

[23] M. Borg, *Jesus: Uncovering the Life, Teachings, and Relevance of a Religious Revolutionary*, San Francisco: Harper Collins, 1989, p. 8.
[24] Borg, *Jesus*, p. 26.
[25] Ibid., p. 299.

of authority … either to compel subservience or to gain adherence."[26] According to Said, we seek religion for "group solidarity and a sense of communal belonging". Religion is seen as the opposite of healthy criticism and social change. For Said, religion emphasizes "the private and hermetic over the public and social".[27] The dictum proffered by religion is not "Rise up and walk" but "Sit down and submit". Religion perpetrates uncritical religiosity and is "not for critical activity or consciousness". To give a critical dimension to religion so that Christians can develop critical and oppositional consciousness is the mandate we should give to ourselves.

S. Radhakrishnan: 'Rebel Against Religion for the Sake of Truth'

Sarvepalli Radhakrishnan, a former President of India, an Indian philosopher and the father of Comparative Religions in India, wrote about the human spirit that rebels against religion for the sake of truth. Men and women who possess such spirit were often exposed to suffering for their efforts to expand the realm of God's working from a limited space to a universal stage. He wrote, "In the meantime the world belongs to the suffering rebels, the unarmed challengers of the mighty, the meek masters who put truth above policy, humanity above country, love above force. Let us put heart into those rebels who fight for a finer art, a purer life, a cleaner race, unmaking imposture, overthrowing inequalities replacing the false by the true; […] we are summoned not to a lighthearted saunter or even to a journey where we can always walk with clasped hands of understanding and friendship, but to a battle where we have to fight the forces of stupidity and selfishness. Let us become soldiers of the march, soldiers of truth, soldiers fighting with love as our

[26] Said, *The World, the Text and the Critic,* p. 290.
[27] Ibid., p. 292.

weapon, overturning the universe, until the will of God is established on earth."[28] The essence of religion is revolutionizing the society and liberating it from forces of hatred to love and from authoritarianism to service. The way to fulfil it is by choosing to speak the truth.

Mahatma Gandhi: A Dissenter and a Disobedient Indian

Ramin Jeganbegloo, an Iranian living in Canada who suffered detention in his own country for maintaining contact with Europe, wrote a book entitled *The Disobedient Indian: Towards a Gandhian Philosophy of Dissent* (2018). He views Gandhian philosophy of non-violence as a revolution of displaying dissent against manipulation, the opposite of education, and authoritarianism, the opposite of freedom. Gandhi revolted against the conformist and complacent state of mind which gave a critical structure to human thinking and action in the mould of the Socratic art of questioning. It created a mind-set of disobedience in Gandhi which resulted in a movement that relied on moral conscience and experiment with the truth. Gandhi said that a movement of dissent should pass through five stages: 'first comes indifference; second, ridicule; third, abuse; fourth, repression and fifth, respect'.[29] The sentence that followed is important to note. 'And he (Gandhi) adds, if a movement does not survive fourth stage, it has no real chance of securing respect.'[30] Mediocracy instead of courage and outspokenness has taken the positions of power in institutions, observed Jaganbegloo. What we need today, he advocated, Gandhi's 'disturbing capacity to unsettle our fixed habits' and 'to protest against the thoughtlessness of society' be-

[28] *East and West in Religion,* London: George Allen & Unwin Ltd, 1958, p. 125.
[29] *The Disobedient Indian: Towards a Gandhian Philosophy of Dissent,* New Delhi: Speaking Tiger, 2018, p. 120.
[30] *Disobedient Indian,* p. 120.

cause people do not want to face the disapproval of what they believe it to be correct and true.

Martin Luther King: "A Time to Break Silence"

Here is a clarion call coming from the speech entitled "Beyond Vietnam: A Time to Break Silence", delivered by Rev. Dr. Martin Luther King, Jr., on April 4, 1967, at a meeting of clergy and laity. It should ring in the ears of those who are prepared to wear sackcloth and sit in ashes on account of corruption and fraud in the Church of South India. The words of Martin Luther King Jr. call us to break the betrayal of our own silences and to speak from the burnings of our own heart. He spoke, "The truth of these words is beyond doubt but the mission to which they call us is a most difficult one. Even when pressed by the demands of inner truth, men (sic) do not easily assume the task of opposing … Nor does the human spirit move without great difficulty against all the apathy of conformist thought within one's own bosom and in the surrounding world."

King concluded, "Some of us who have already begun to break the silence of the night have found that the calling to speak is often a vocation of agony, but we must speak. We must speak with all the humility that is appropriate to our limited vision, but we must speak."

We must find ways to remove systemic corruption and not try to get rid of one pack of actors running the corrupt network and replace them with another pack of corruption-mongers. Some have strong feelings about the lay members in the church taking over the administration of the church and its institutions, and the ordained occupying themselves with the spiritual task. We should avoid absolutisms of both kinds, be it episcopal or lay. Corruption is rooted in the practice of our religion, in our ecclesiastical structure and in our individual/community life. We all bear seductive quality which yields to the bishops and non-bishops to exploit. The sense of morality has waned, and the spirit of resistance to

the corruption and injustice is rare to be found in the churches. We react only when we are personally affected. Others go for personal safety, not even making comments on those who hold power. We should not allow those "silent and silencing men" to claim to be pioneers of change.

The Church Assets Belong to a Corporate Body under the Name CSITA

The church I have chosen for study and analysis is the Church of South India, the leading Protestant church and the second largest church in India with more than 4 million members and its Trust body called the Church of South India Trust Association holding properties worth an estimated amount of over one lakh crore rupees (16 billion USD). The values escalate year after year. On 26 September 1947, CSITA was formed into a company, incorporated under section 26 of the Company Act 1913. The Meaning of 'Companies Act' is an Act of Parliament which regulates the workings of companies, stating the legal limits within which companies may do their business or charity. It has come a long way as a company for the past 70 years and it seems to be in a crisis beset with internal and external problems.

The CSITA which was registered as a non-profit company "limited by guarantee" under sec. 26 of the Indian Companies Act 1913 continued under sec. 25 of the 1956 Act, and now it is under the purview of sec. 8 of the 2013 Act. No doubt it is one of the oldest non-profit companies in India from colonial days. British and American influences may, therefore, be expected to be found in the basic structure and organisational philosophy of the company. The major title of this book is *Corporate Governance for Non-profit Companies* with the sub-title *A Proposal for Piercing the Corporate Veil of the Church of South India Trust Association*, which clearly indicates that the book is concerned with a non-profit company which has religion and charity as its objects among other things but whose operation is brought under the scanner of

the Serious Fraud Investigation Office (SFIO) casting a shadow of doubt and suspicion on various aspects of CSITA's governance.

The CSITA (CIN number: U93090TN1947NPL000346) was duly incorporated on 26 September 1947 as a "Company Limited by Guarantee", i.e. a "Limited Company without Shares", and it is a non-Government, public, unlisted, religious, charitable, and non-profit company with no shareholders, debentures or other characteristics of a trading or listed company. Non-profit corporations have no share capital are run by a board of directors, who appoint officers to manage the daily operations. The directors are the authority, because a non-profit corporation does not have shareholders. The CSITA is a tax-exempt company.

The Church of South India Trust Association is a public and a non-governmental organisation in the Indian civil society. It is licensed by the Indian Government so that it functions under the corporate laws of the country. Can the church therefore not allow the CSITA be cross-examined and investigated by the national Government particularly through its regulating machineries? Can we see our nationalism as a two-way agent working for the promotion and well-being of both the nation and the Church by accepting the nation to be a critic testing the affairs of the church? Can the church allow the nation to ask few questions to her and to keep a watching-eye on her activities especially over the financial dealings and the property managements when the CSI Trust Association is, after all, licensed by the Government?

The Corporate Governance Undergirded by a New Vision of God Who Abhors Bribery and Corruption

As a theological task, we need to cultivate a spirituality with Anti-Corruption aspirations built-in, in which there is a new vision of God. We need to discover God who abhors bribery, oppression and corruption among the community that worships Him. Anti-corruption aspirations are not mere Christian sentimentalism; they have strong biblical roots.

Anti-corruption is an important subject for those who love the church and God's Word rather than for those who idolise Company Law. Anti-corruption is reflected in the very character of God, and also there is a call for the radical reform of our moral behaviour. When I open my Bible to listen to what it says on bribery and corruption, I am totally amazed at the sternness, clarity and robustness with which various forms of corruption were defined, opposed and fought against within the community of faith in Yahweh.

There is no need of any commentator or scholar to do the exposition of the following texts written by the most Supreme Council of the Lord Most High.

Here is the notion of God that jumps out of the biblical text to meet us. The central concept is that God is a just God who cannot be bribed. Deut. 10: 17 says, "For the Lord your God is God of gods and Lord of lords, the great, the mighty, and the awesome God, who is not partial and takes no bribe." "Now then, let the fear of the LORD be upon you; be very careful what you do, for the LORD our God will have no part in unrighteousness or partiality or the taking of a bribe" (2 Chronicles 19:7).

Here is a leader unspotted by corruption and exploitation. The prophet Samuel was a leader from the days of his youth until his hair turned grey; he said to his people: "Here I stand. Testify against me in the presence of the Lord and his anointed. Whose ox have I taken? Whose donkey have I taken? Whom have I cheated? Whom have I oppressed? From whose hand have I accepted a bribe to make me shut my eyes? If I have done any of these things, I will make it right" (I Samuel 12: 3). He was ready to repent of his sins of cheating, fraud and accepting bribes in his old age. The people replied, "You have not taken anything from anyone's hand."

Scheming and extortion are condemned. It was the daily prayer of King David, "Do not take away my soul along with sinners … in whose

hands are wicked schemes, whose right hands are full of bribes" (Ps. 26: 9-10). "Extortion turns a wise person into a fool, and a bribe corrupts the heart" (Eccl. 7: 7).

How about choosing leaders? What are the criteria to be adopted? In Exodus 18: 21, it says, "Select from all the people some capable, honest men who fear God and hate bribes. Appoint them as leaders over groups of one thousand, one hundred, fifty, and ten." Prophets condemned bribery and exploitation. The prophet Isaiah says: "Your rulers are rebels, partners with thieves; they all love bribes and chase after gifts. They do not defend the cause of the fatherless; the widow's case does not come before them" (Isaiah 1: 23). Again, Isaiah says, "Woe to those … who acquit the guilty for a bribe, but deny justice to the innocent" (Isaiah 5: 23). What about the leaders in the Community and their council? Listen to the words of Ezekiel, Amos and Micah: "In you are people who use power to shed blood and who accept bribes to shed blood" (Ez. 22: 6-12); Micah thunders, "Hear this, you leaders of Jacob, you rulers of Israel, who despise justice and distort all that is right; […] her leaders judge for a bribe, her priests teach for a price, and her prophets tell fortunes for money. Yet they look for the Lord's support and say, 'Is not the Lord among us? No disaster will come upon us' " (Micah 3: 11). Amos cries out, "For I know your manifold transgressions and your mighty sins: they afflict the just, they take a bribe" (Amos 5: 12).

Here comes the divine command from the Deuteronomist, the lawmaker: "Do not pervert justice or show partiality. Do not accept a bribe, for a bribe blinds the eyes of the wise and twists the words of the innocent. Follow justice and justice alone" (Deut. 16: 19). The sons of upright Samuel did not follow his ways. "They turned aside after dishonest gain and accepted bribes and perverted justice" (I Samuel 8: 3).

Who can stand before the consuming fire of God? It is this man/woman according to Isaiah 33: 15-16: "He who walks righteously and speaks with sincerity, he who rejects unjust gain. And shakes his

hands so that they hold no bribe." The leaders who loot the Church property should read this verse: "And Ahaz took the silver and gold found in the temple of the Lord and in the treasuries of the royal palace and sent it as a bribery to the king of Assyria" (2 Kings 16: 8). "For the company of the godless will be barren, and fire will consume the tents of those who love bribes" (Job 15: 34). The book of Proverbs has these three beautiful verses: "A wicked man receives a bribe from the bosom to pervert the ways of justice" (17:23); "The king gives stability to the land by justice, but a man who takes bribes overthrows it"' (29:4); and "He who profits illicitly troubles his own house, but he who hates bribes will live" (15:27).

"'You shall not take a bribe, for a bribe blinds the clear-sighted and subverts the cause of the just" (Ex. 23: 8). "Cursed is anyone who accepts a bribe to kill an innocent person. Then all the people shall say, 'Amen!' " (Deut. 27: 25).

Of course, our Lord Jesus was betrayed for a bribe of thirty pieces of silver. It was considered "blood money" (Matt. 27: 3-9). The religious authorities even today are ready to bribe anyone who can come forward to carry out their schemes, particularly those who are superficially disciples and those who wish to hold the purse.

A "disciplinary and conceptual pollination" is occurring between the theological task of the Church and charity-related governance issues in a context of non-profit business ethics of the modern era. It should be noted that the values of a profit-making and share-holding company is vastly different from a charitable non-profit religious organisation. An NPO is not a share-holders' company with a sole aim to maximise the profits for the shareholders, and hence a shareholder-centric structure and function cannot be envisaged. It is more fitting to consider all those connected to the CSITA company as stakeholders distinguished by different levels. The General Body members and the directors can be placed on the first level. The employees of the CSITA are put on the

second level. The donor, contributors and those who pay monthly subscription are on the third level. On the fourth level are the beneficiaries. We need a corporate governance that unites them all on the foundation of the divine in whom there is no recognition and acceptance of corruption and fraud.

CSITA Is an Active Company!

CSITA is certified as an "active" company in the Master Data of the Ministry of Corporate Affairs. It simply means that it is operating and is regular in filling its Balance sheets, Profit & Loss Statements, Annual Returns and other statutory documents. But the CSITA submitted the financial statement for the financial year 2015-2016 only in May 2018. The status of the directors serving on the committee of management have to be checked according to whether they are there by following the strict selection procedures as per the Companies Act 2013. The duration of each one's tenure as director has to be probed as there are directors serving on the Board since 2009 without being part of rotation policy. There are no independent directors, and the CSITA requires two of them. There is no woman director. There is no category of executive and non-executive, nominee directors. The FS 2015-16 declares that none of the 15 directors are disqualified as on March 31, 2016 from being appointed as a director in terms of Section 164 (2) of the Companies Act. That is not the issue. Whether the CSITA, as of today, does consist of validly constituted committee members, i.e. directors, is the million-dollar question. The National Company Law Tribunal has recently declared (CA 64/2017) that there is none who enjoys the *locus standi* of representing the CSITA, and the directors and office-bearers are superseded by an Administrator to be appointed by the NCLT. Yet the company exists and it is not under liquidation or facing the prospect of being wound up. It is hoped that the Administrator appointed by the court will bring reforms to the life and management of the company.

No Regular Annual General Body Meetings

The meeting of the General Body is mandatory every year according to the Companies Act 2013. The date of the meeting of the last Annual General Body is marked as 28/09/2016 and the Balance Sheet last submitted to RoC was 31.03.2016 for the financial year 2015-2016 as per the information available in the official website of the Ministry of Corporate Affairs, Government of India. However, the documents in the service section of the MCA website indicate that the Balance Sheet for the financial year of 2015-2016 was filed in XBRL (eXtensible Business Reporting Language) only on the 5th of May 2018. Serious questions, in this context, are also raised about the validity of the duration of the directors of the Board, and whether it is in accordance with the procedures for the selection and appointment of Directors as outlined in the Indian Companies Act 2013. The Annual General Body of the CSITA has not met since 28 September 2016, which this is a violation of the Companies Act.

Some Financial Information on the CSITA

On the financial side, CSITA's Authorized Capital is₹ 0; Paid-up Capital is also ₹ 0. These are the marks of a non-profit organisation. But, the total Revenues amount in crores to ₹21,004,671,902 (300 million USD): Total Assets to ₹1,061,472,412 (15 million USD); Fixed Assets to ₹17,208,857,452 the total indebtedness ₹139,26,39,210 and the Net Worth is ₹24,385,622,281.[31] Once again, the figures have to be verified and checked by the RoC and the Serious Fraud Investigation Office (SFIO) as to whether they are exaggerated amounts to give an impression that the company is a "going concern" (the assumption that the company will be able to continue operating for a period of time that is sufficient to carry out its commitments, obligations, objectives, and so

[31] Financial Statement 2015-16, p.7.

on) or whether the figures are understated compared to the real values and earnings.

The Board Report of 2013-14 submitted to RoC states that none of the CSITA employees are drawing salaries above Rs. 500,000 (Rupees Five Lakhs —7,000 USD) per month or Rs. 60,00,000 (Rupees Sixty Lakhs) per annum. This would be a huge amount, considering that it is a non-profit company which gives no remuneration to the directors. This practice, it is stated, is in accordance with CA 1956 sec. 217(2A). But column (a) has this: "The Board's report shall also include a statement showing the name of every employee of the company who if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than [such sum as may be prescribed]." The Act 1956 prescribes the lowest as the 36,000 Rupees per year to be paid to the company employees whereas the CSITA has fixed the maximum as Rs. 5 lakhs and 60 lakhs as if there are two categories of salary-getters who receive vastly different amounts. It is not known which category of workers draw 60 lakhs as salary per year. Does the report refer to bishops, the high-ranked officials in the church? If so, the bishops get 12 times more than the other category of employees. No one has heard of an organisation which works for charity which is capable of throwing away such huge salaries for the top-level employees.

Corporate Social Responsibility (CSR)

According to the new Act 2013, every company having a net worth of rupees five hundred crore or more (78 million USD), or a turnover of rupees one thousand crore or more (156 million USD) or a net profit of rupees five crore (718,000 USD) or more during any financial year is expected to spend, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsi-

bility Policy as specified in Schedule VII [Sec. 135(1)&(5)]. The activities of the CSR are listed in Schedule VII which include: eradicating hunger, poverty, malnutrition, promoting health care, making contribution to the *Swachh Bharat* campaign set up by the Central Government, promoting education, gender equality, ensuring environmental sustainability, protecting national heritage, art and culture, setting up public libraries, contributing to the benefits of armed force veterans, training to promote rural sports, and contributing to the Prime Minister's National Relief Fund or any other fund set up for socio-economic development and relief and welfare of the Scheduled Castes, the scheduled Tribes, other backward classes, minorities and women. The non-profit companies may be doing some of these already as part of their objects. But still they are required to support the above activities by chalking out a CSR policy and setting up a committee to implement it. However, the CSITA has not made any provision for CSR activities in its Financial Statements of 2015 or 2016, and they say that none of the provisions of Corporate Social Responsibility are applicable to the company. This is a case of non-compliance. It was commented on by C. Rajkumar in *The Hindu* of 16 July 2018,[32] saying that among the 5,097 companies that filed the FS for 2015-16 only 3,118 companies had made contributions towards CSR activities. The CSITA was not one of them.

Allegations of Corruptions and Maladministration

There are allegations of corruption and maladministration against bishops, the heads of the diocesan units of the CSITA, made by the people. Several bishops have had First Investigation Reports (FIR) filed against them by the police on various charges including criminal ones. There are also several court cases running against them. Many are related to property dealings and financial fraud related issues. A couple of

[32] "A Helping Hand for Indian Universities", p. 8.

former bishops were convicted by the Economic Offence Court, Egmore, Chennai recently. In the last five years, two bishops were suspended and finally their services were terminated on account of corruption and insubordination. The former bishop of Vellore diocese was removed from the post of being a correspondent to schools and colleges by the Education Secretary of the State on account of bribery. Two of the former Moderators (a Moderator is first among the 24 bishops and therefore the head of the church) are retired this year after about fifteen and twenty years respectively from the tenures of controversial and perverse episcopal ministry but they are not out of danger from the alleged illegal actions. Now that the Serious Fraud Investigation Office has launched an investigation against the CSITA and its fraudulent affairs, those Moderators who were also chairmen of the CSITA during their tenures will be treated as the main offenders. The statues and rules of the Companies Acts and the obligation to know them and obey them do not have a place among the church leaders who are tainted by corruption, forgery and fraud.

CSITA Money to Feed the Instinct for Luxurious Life-styles of Bishops

Within a year of his appointment as a bishop in the CSI whose salary and expenses for the church are under the administration of the CSITA, a bishop has reportedly bought a car for Rs. 35 lakhs, and spent about 20 lakhs towards the wedding expenses of his son. He also spent Rs. 5 lakhs to celebrate his birthday and another Rs. 9 lakhs for the thanksgiving meeting celebrating his appointment as the bishop. He has allegedly spent 1.5 lakhs to celebrate his wife's birthday. He has an unsettled advance of Rs. 21 lakhs drawn from the diocesan accounts of the CSITA. Again, crores of money (hundreds of thousands USD) are spent on overseas trips for the bishops and their families. All these monies are drawn from the CSITA accounts without any prior permission or ap-

proval from the Committee of Management of the CSITA. This type of personal expenses gets the nod from the ex-officio members of the CSITA, i.e. the office-bearers of the Church of South India. This type of example will multiply if there is a probe on the ways each bishop is spending the company money for their own personal or family expenses.

Critical Voices Are Silenced

It is strictly prohibited by the Church leadership to raise questions about the CSITA's activities and the lack of them among CSI congregations and CSITA institutions. 99 .9% of the stakeholders who show interest and concern over the assets and finances of the company including its employees, donors and subscribers do not know that there are documents such as the Memorandum of the Association (MoA) and the Articles of Association (AoA) for the CSITA. The activities of the company are under probe and its records are being scrutinised and commented upon by various Government regulatory bodies such as the Registrar of Companies (RoC), Serious Fraud Investigation Office (SFIO), Income Tax Department (ITD) and Enforcement Directorate (ED). Still a stony silence is maintained by the so-called authorities of the CSITA over its current condition. The official magazine of the Church of South India, *CSI Life*, does not carry any report or news about these Government actions and probes and on other problems surrounding the CSITA. The people of the CSITA are kept in the dark, and as long as they remain there, the corrupt system which shows disrespect for law and statues will flourish.

The CSITA Is under the Scanner of the Serious Fraud Investigation Office

The so-called leaders of the CSITA seem to be least bothered about the Government measures taken against the company, and they seem to

think that they can buy justice at the court or find ways around the justice system when they are in a tight corner by offering excessive hospitality to persons connected to the judiciary. The CSITA has stalled the SFIO investigation on its affairs preventing it to get to the core issues, though only temporarily for a period of two years, and there is now a renewed attempt to stall it again in the High Court of Chennai when the SFIO resumed its investigation from 7 May 2018. The office-bearers of the CSI Synod use the donors' money for the court expenses quite liberally and there is no stakeholder who can match them in material possessions to be able to spend them on the court battles to oppose them. No one can afford to challenge them. This gives them an edge over others and it discourages others from putting up any resistance. Money power gives the leaders a strong boost and protection to walk in their own erring ways, and finally the system of bribery, fraud and illegal sale of properties remains unexposed. In the name of Bible and theology, the CSI is accustomed to deflect attention of the church and its members to matters that are barely connected to them. The pet subject of the present CSI Moderator is (commendably) the problem of carbon emission that pollutes the planet! He should also be concerned about what pollutes the Church of South India today.

Experts from Various Fields Are Needed to Find a Remedy for the CSITA

This book is an attempt to have a crack at this taboo subject which is hiding safely mystified and uncoded under the wings of the episcopal leadership. The precarious situation in which the CSITA finds itself has to be exposed and examined so that the culprits who are responsible for the fraudulent activities can be identified, prosecuted and punished. The Central Government will have to consider appointing an administrative committee to clean up by bringing things to proper order by introducing measures like the revision of the MoA and AoA in order to make its

governance rooted in the statues of the Company law. Who will do it? Who will bell the cat? A theologian of the church and a subscriber to the CSITA has to take bold steps to enter into this dark and dangerous terrain of the ecclesial life and administration. He cannot be right in everything he says and, as a matter of fact, no single individual, be it a theologian, a Chartered Accountant, an Advocate etc., has the right answers to all the problems and issues of the CSITA. The Government authorities and the courts of law and the combination of the two will probably have the final answers judging on the cases of compliance and non-compliance of the CSITA with the provisions of the corporate laws of this country. It is they who can pass judgement on the internal and external activities of the CSITA. All experts have to play their part in assessing the situation and leading the CSITA towards a solution.

The Indifferent Attitude of the CSI to the State

We should first observe that this Church of South India, by its written Constitution (2003), will not have a relationship with the nation of its birth as the Constitution reads, "The Church of South India claims the right to be free in all spiritual matters from the direction or interposition of any civil Government".[33] What does "spiritual matters" mean? The church uses this as if it is a law similar to Sharia law in which the government cannot directly interfere. It continues, "It (CSI) is an autonomous Church, and free from any control, legal or otherwise, of any Church or Society external to itself".[34] The life and administration of the church cannot be independent of Indian law. In theory, the church has a court system of its own, operated and controlled by the episcopal authorities, moderators and bishops. It works at times, but only in favour of those in power. There is also an arbitration system. The Constitution

[33] *CSI Constitution* (2003), p. 19.
[34] *Ibid.*, p. 19.

reads, "The Award of the Arbitrators shall be binding on all the parties to the dispute. If the Award of the Arbitrators is not accepted by any party to the dispute, such party shall be deemed to have rendered himself/herself/themselves ineligible to participate in the government of the Church at all levels."

The Church does not acknowledge let alone encourage its members to resort to courts of law. On many occasions, the practice of going to court is spurned and condemned by church authorities. "No religion is allowed to curb anyone's fundamental rights," the court said in its judgement while taking note of the Shariat case. The court further ruled that *qadis* (Islamic judges) were required to follow the law of the land. The CSI ought to remember these legal and Constitutional mandates so that it does not seek to operate above legal mandates and requirements.

A Christian mind turns to resist such a role by the nation by stirring up its minority inferiority or superiority complex, and the very idea of the nation then loses its virulent force in the structuring and re-ordering of the church's management of its resources. While human civilization is being increasingly corporatized, the nation and national culture have become principal agents within this process which the church establishments have to accept and work with. The colonial missionary rule of the church has to be rendered obsolete. We rebuild the CSI on indigenous corporate foundations, not capitalistic or profit-making but on a non-profit organisation to serve the interests of commerce, art, education, social welfare, poverty alleviation and ecological considerations and any such other object.

The bureaucratic hierarchy, negation of any dialogue or reformation, and overall backwardness in thinking and disposition have given rise to an ecclesiastical culture which is autocratic and anti-law. The CSI Synod hierarchy embodies intolerance and attacks those individuals and the law machinery who are believed to pose some kind of threat to their authority. Is the constitutional form of episcopal government under which the

CSI was formed and has lived appearing to be a failure to the extent that it is now facing a crisis to maintain its hold on the church? The Constitution of the CSI is so defaced with illegal new amendments pushed down the throat of every diocese that the situation created by those unconstitutional enactments is making the church unable to move towards restoration from a wayward and distorted episcopacy. The present CSI Constitution is not available for the members and is kept as a secret document so that nobody can gain knowledge about the current administration in the church.

Constitutional Morality

When we seek to defend the constitutional rights and privileges as a minority community, we should also be equally mindful of fulfilling our constitutional duties. Dr. B. R. Ambedkar makes reference to "Constitutional Morality" in a few places in his speeches and writings, but in one reference he quotes at great length the classicist, George Grote. By constitutional morality Grote meant, Ambedkar quoted, "a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own". "To be governed by a constitutional morality is, on this view, to be governed by the substantive moral entailment any constitution carries."[35] This Ambedkarian philosophy is recognised by a modern writer who asserted, "But constitutional morality, warned Dr. Ambedkar, has to be culti-

[35] P. B. Bhanu, "What is Constitutional Morality?", http://www.india-seminar.com/2010/615/615_pratap_bhanu_mehta.htm.

vated. Our people have yet to learn it, for democracy is only a top-dressing on an Indian soil which is essentially undemocratic. His (Ambedkar's) words proved prescient."[36]

We must learn to value and respect the moral principles embodied in our Indian Constitution and its derivative Acts promulgated by the Indian Parliament, to value and respect the rights of person and property. There is a tendency among most non-profit companies to disregard constitutional morality. The neglect of the observance of constitutional morality is not true nationalism. Gate-keeping and monitoring systems are very much required in corporate governance because important decisions within corporate settings ultimately come down to a few white-collar individuals. The Church of South India Trust Association is probably stepping into a situation of irreversible calamity. The corporate ship in which the CSI is a passenger is in danger, and we cannot look for a cosmetic sticking plaster to give it a seemingly secured appearance. The system seems to be fatally broken and the damages will soon become too visible if the CSI office-bearers and the directors do not mend their ways to be in harmony with law. Ignorance of corporate law cannot be an excuse against prosecution, and cheating and defrauding cannot be acceptable behaviour in corporate governance. We need to make corporate responsibility far more integral to what the church is established to do.

The Scope and the Purpose of the Book

With this great design, this book is preliminary in scope in achieving this goal, and it does not deal with A-Z matters in connection with Company law and the management of the CSITA. We might discover that there is no well-sketched road-map for licensed companies like the

[36] N. Chandhoke, "Politics over the Constitution", *The Hindu,* Monday, 16 July 2018, p. 8.

CSITA in the Companies Acts and Rules. We might also see that the CSITA does not require exemptions and privileges when it is in the dire situation of taking stringent measures to safeguard its assets and to regulate its financial management.

It is stressed that the remedy for CSI/CSITA is two-pronged, a two-way process. First, its corporate self-identity is set aside to assess what is going on behind the corporate veil. Second, in a constructive manner a broad-based activity ought to be pursued by working from diverse perspectives. It is urgent to take swift actions against the illegal procurement and disposal of land from the CSITA. There are short-term and long-term plans to re-organise and re-order the CSITA and set it in line with company regulations. It is a sorry state that the CSITA finds itself in the midst of activities of corruption and fraud committed by those in power. It will be a victory for evil, should we choose to remain as spectators and worse still stand blinded by a withdrawal syndrome bred by pacifist religious teachings. Mere preaching from the church pulpits about "'Christian holiness and Stewardship" does not work when it comes to managing the finance and properties of the church in the most ethical way. The corporate morality and the biblical ethics reflected in the character of God are to be combined to form a base for maintaining the CSITA's corporate personality.

There need to be some more introductory remarks about the proposal the book seeks to make, namely "Piercing the Corporate Veil as a Remedy for the Church of South India Trust Association".

For an Effective and Efficient Administration: Pre-requisites to the Doctrine of Piercing the Corporate Veil

It is basically argued in the proposal that the right remedy for the restoration of the CSITA from its crisis and reinstating it in the path of the corporate journey is by way of an open-heart surgery which in legal

terminology is called "piercing the corporate veil". A stakeholder is unable to obtain another remedy by way of statute and would suffer a great a massive injustice or loss. The CSITA is a company registered under the Companies Act 1913. The licence issued by the Government of Madras certifying the incorporation of the CSITA has a paragraph, "Now, therefore, His Excellency the Governor of Madras in pursuance of the powers vested in him and in consideration of the provisions and subject to the conditions contained in the Memorandum and Articles of Association, and subject also to the regulations made under the 26th section aforesaid as in force for the time being by this licence directs the Church of South India Trust Association to be registered with LIMITED LIABILITY, without the addition of the word 'Limited' to its name."

The CSITA Is Not One of the Committees of the CSI and It Is a Company Independent of Its Members

The meaning and significance of this will be studied in the following chapters. What is a company? In sec. 2(20) of the CA 2013, it says, " 'company' means a company incorporated under this Act or under any previous company law". Avtar Singh defines company thus: "In common law a company is a 'legal person' or 'legal entity' separate from and capable of surviving beyond the lives of its members."[37] The CSITA has "perpetual succession", i.e. the company, the legal person, exists even after the entire group of members depart from this world. The company has a common seal as a proof of its identity.

A. Ramaiya explains that any corporate entity which has legal existence distinct from its beneficiaries or members is to be regarded as a "body corporate". The expressions "body corporate", "corporate body", "corporation", etc., have identical meaning.[38] Any corporate body registered under the Companies Act is called a "company", and CSITA is a

[37] *Company Law,* Lucknow: Eastern Book Company, 2015, p. 2.
[38] A. Ramaiah, *Guide to the Companies Act,* vol. I, p. 57.

"company" in this sense. An incorporated company is a "body corporate" which means that there is a distinction between it and the members. No one can say that so-and-so is the owner of the company, but the ownership belongs to the institution, the company. "By incorporation under the Act the company is vested with a corporate personality which is distinct from the members who compose it."[39] This very concept lies at the root of the Company Law. The CSITA is a company, an institution different from its members. The company is not an agent to fulfil the interests of the members. The work of the non-profit nature now belongs to the company, not to an individual or a group of individuals. It is a distinct "legal persona" quite independent of its members. This means that the CSITA is quite different from the CSI in terms of its rights and liabilities prescribed by the Companies Act 2013.

The CSITA Is Not in Partnership with the CSI, and It Is an Incorporated Company

A company is different from a partnership, which is governed by the Partnership Act 1890. A partnership is based on the law of agency as the partners act as agents of each other. This is the impression one gets from reading the Memorandum of Association of the CSITA, which says that the CSITA is an "agent whether alone or jointly with any person or persons for the Church of South India". Company law is primarily designed for commercial companies, but non-profit organisations such as the CSITA also can take up a corporate form by making themselves subject to company regulations. In Britain, however, the non-profits have an additional regulation in the form of charities legislation in addition to company regulation. The double regulations for charities are now brought under a single form of incorporation called Charitable Incorporated Organisation (CIO). When a charity is registered as a company it

[39] Avtar Singh, *Company Law*, p. 5.

must be registered with both Companies House and the Charity Commission. When the charity registers to become a CIO it should be done under the Charity Commission. It is a good system that the non-profits have an additional form of incorporation in the form of a charity registration in India. Until that system is worked out, the non-profits are incorporated under the Companies Act. Incorporation gives the non-profits adequate protection whereas unregistered companies have inadequate protection. The CSITA is behaving as if it is an unregistered organisation in terms of adopting the provisions of the Companies Act. The directors are selective in applying the Act to them just like an unregistered company.

A Company Has Separate Legal Entity; Salomon v. A. Salomon & Co. Ltd. (1897)

To understand the characteristics of incorporation we ought to read the case of Salomon v. A. Salomon and Co. Ltd. (1897) which has formed the basis of company law globally. The doctrine of "separate legal personality" laid down in Salomon's case has received increased recognition and is often cited in courts today worldwide.

Mr. Salomon was a businessman who incorporated his private business as a company. According to the UK Companies Act 1862, he required the presence of at least seven shareholders, and so he made his family members business partners, issuing one share to each. He held the majority of shares in his name and the other six family members had one share each. He was the dominant shareholder and he controlled its affairs. The shoe business faced strike action. and the business collapsed and was wound up with liabilities calculated in excess of its assets by £7,733. The company's liquidator claimed that the company's business was still Salomon's, in that the company was merely a sham. The creditors had to be satisfied from the assets of Salomon. At first instance, Vaughan Williams J. agreed with the liquidator. He held that Salomon's

sole purpose in forming the company was to use it as an agent and trustee to run his business for him.

According to the Companies Act 1862, just a share was enough for one to be named as a member. It was therefore not in order to label shareholders as dummies or mere puppets since the company had been duly constituted by law and thus had a separate legal entity. The subscribers were also not liable for any of the company's liabilities

Salomon was made personally liable for the company's debt. Hence, the issue was that due to the separate legal identity of a co mpany, a shareholder/controller could not be held liable for the company's debt, over and above the share/capital contribution made to the company. After the company's incorporation, Salomon conducted the business as an agent of A. Salomon & Co. Ltd., controlling it to the maximum level who should, therefore, be responsible for the debt incurred. The creditors demanded so. They obtained a verdict in their favour in the lower courts, but the House of Lords overturned the decision by saying that the company had a separate identity from its members and so it was the company which should bear the debt and not Salomon as a person. In the words of Lord Macnaghten, "The company is at law a different person altogether from the subscribers […], and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not at law the agent of the subscribers, or trustee for them. Nor are the subscribers, as members liable, in any shape or form except to the extent and in the manner provided by the Act." Two doctrines emerged from this case. 1) Separate corporate personality and 2) companies with Limited Liability. The corporate personality and limited liability became the twin pillars upon which modern company law rests. The CSITA is a company with "limited liability" and has an entirely separate identity from the CSI and its authorities.

The Meaning of CSITA as a Limited Liability Company

Limited Liability means that the company is a separate person from the members that own it, and therefore its members are as such not liable for its debts. "Since then, legislatures and courts have followed the separate entity principle. Salomon's case has become a landmark company case law in the UK and is often cited in most cases within the area of company law. The principle established in Salomon v. A. Salomon & Co. Ltd. has stood the test of time, given that this doctrine has formed the basis of company law […] As noted in Salomon's case, a company is at law a legal entity separate from its members and can neither be an agent nor a trustee of the subscribers."[40]

Property

Another consequence of incorporation is that "it enables the property of the association to be more clearly distinguished from that of its members".[41] This is very important for the CSITA as its Articles makes the members of the committee of Management "absolute owners" (17a). This is contrary to the spirit and letter of incorporation. Gower asserts, "On incorporation, the corporate property belongs to the company and members have no direct propriety rights to it.'[42] (p. 33). Since the company holds the property rights, it is the company which can sue or be sued. All legal proceedings must be commenced and conducted in the name by which a company is registered and not in the names of members.

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[40] https://writepass.com/journal/2016/11/the-doctrine-of-separate-legal-entity-a-case-of-salomon-vs-salomon-co-ltd/.

[41] Gower, *Principles of Modern Company Law,* p. 33.

[42] Gower, *Principles,* p. 33.

Limited Liability Doctrine Is Not a Cover for Corruption and Fraud

The company is liable for loss and debt, and not the members. Is this fair? Can the law treat the members who run the company as not responsible for its bad business which ultimately leads to liquidation? Does limited liability offer a shield to the officers and directors? Gower notes, "However, the principle applies only so long as the company is a going concern. Members who become involved in the management of the company's business, for example, as directors, will find that separate legal personality does not necessarily protect them from personal liability.'[43] However, although the principle of separation between the company and its members is central to company law, there are a number of situations when the company and its members can be identified together and treated as the same, since the members are the will and the mind of the company. These are the exceptions to the rule in Salomon's Case, when the corporate veil is lifted and the reality of the situation is examined.[44]

Limited Liability means that the members and directors will not be personally liable for the debts, harms or liabilities of their company. If the company goes bankrupt and is approaching winding-up status, the stakeholders running the company are not personally responsible for any loss or debts. That does not mean that the stakeholders concerned can abuse their power and control to cause damages to company's assets and resources. When such a thing happens, the court can set aside the corporate veil of the company and take stock of what is going on behind it. There are grounds for going behind the corporate veil.

Does limited liability protect an individual who uses the company for his own benefits and interests by making other shareholders as dummies? Was not Salomon abusing the privileges of incorporation?

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[43] Gower, *Principles,* p. 30.

[44] *Battle v Irish Art Promotion Centre Ltd* (1968).

What is the way forward? The courts may look through the veil to reach out to the insider members, known as "lifting or piercing of the corporate veil". Here the doctrine of piercing the corporate veil begins to work.

As Kahn Freund questioned outright by asking how can we check the abuses of the company committed under the cloak of incorporation. The truth is clear that Salomon abused the company status, running it as his own private business. Freund remarked that the clash between "law" and "truth and substance" occurs not only to the detriment of the company's creditors. "However, with the passage of time, the courts come to realize that there can be fraudulent and mischievous schemes drawn by the promoters and members of the companies and the principle of Salomon's case cannot be extended to each and every company. It may be in the interest of members in general, or in public interest to identify and punish the persons who misuse the medium of corporate personality." The Salomon principle is broken at times due to various exceptional circumstances identified, such as where a fraud has been committed, both by legislatures and the judiciary, as to when courts can legitimately disregard a company's distinct legal personality and "pierce the corporate veil". The following are the grounds that a court may consider when determining whether or not to do this in the case of any company, most of which are applicable to non-profit sector:

Grounds for the Piercing of the Corporate Veil

- *Commingling:* The members/directors use company assets (whether money, bank accounts, facilities, inventory, employees or resources) as their own.
- *Absence or inaccuracy of corporate records:* If the company is not run according to the corporate rules and regulations, a court will find that corporate formalities were not followed. Further-

more, the failure to keep proper corporate records or bookkeeping may also lead to a presumption of a failure to follow corporate formalities. We must make sure that all important decisions are recorded according to the requirements of company's by-laws (AoA).

- *Separate identity of the company is blurred:* According to Business Dictionary, "A separate legal entity may be set up in the case of a corporation or a limited liability company, to separate the actions of the entity from those of the individual or other company." A corporate entity is not simply a legal shell used to inequitably protect its owners. The attraction of incorporating a company is the advantage of shielding behind the curtain of limited liability which could be abused by some directors. However, veil piercing will not be applied unless injustice, fraud, or serious contravention of company law have resulted.
- *Failure to maintain arm's length relationships with related entities:* For example, exchanging lands and other assets from one entity to another at below fair market value.
- *Non-observance of corporate formalities:* Failure to observe corporate formalities in terms of behaviour and documentation will invite the piercing of the corporate veil. If the CSITA is not managing the company as it is required, it should either change the way the company is managed or have the MoA and AoA rewritten.
- *Manipulation of assets or liabilities to concentrate the assets or liabilities:* There have been charges and allegations of the illegal sale of properties by the Committee of Management of the CSITA and also by those who are not subscribers and outside the membership of the CSITA.

– *Non-functioning corporate officers and/or directors:* The CEO of the CSITA once confessed in 2012 before the Company Law Board, Southern Regional Branch in the matter of compounding of offence under section 621A of the Companies Act, 1956. He admitted in an apologetical tone that the directors of the CSITA are functioning in an honorary capacity and that they involve themselves in other personal engagements.

– *Siphoning of corporate funds by the dominant member(s)*: Siphoning away of corporate assets by the dominant shareholders; the unauthorized diversion of corporate funds or assets to other than corporate uses; siphoning money from the company to pay for personal gains.

  This involves the case of treatment by an individual of the assets of corporation as their own; the use of a corporation as a subterfuge for illegal transactions; writing company cheques for personal expenses. A good example comes from the late Nigerian military dictator General Sani Abacha who was alleged to have stolen US$4.3 billion during his five years in office. Some of that money was funnelled out of Nigeria through Abacha's sons and business associates, who deposited the money in the names of front companies, including those established by Citibank. The Swiss Court ordered him to repay $350 Million to Nigeria.

– *The alter ego theory:* Was the corporation being used as a "façade" for dominant member(s) personal dealings? The use of a corporation as a mere shell, instrumentality, or conduit for a single venture or the business of an individual or another corporation. This case involves the alleged use of a variety of corpo-

> rations and trusts to hide money from the notice of the stakeholders.[45]
>
> The members of a company do not have to contribute their personal assets to the company assets to meet the obligations of the company with a limited liability. That is a temptation to engage in illegal, fraudulent, or reckless acts, and make sure everyone knows they are dealing with a corporation CSITA and not with the CSI.

These grounds are non-exhaustive, and much is left to the discretion and interpretation of the courts on case-to-case basis. In the Aronson v. Price case (1994, Supreme Court of Indiana) the essence of the doctrine of piercing the corporate veil is thus defined: "The corporate form was 'so ignored, controlled or manipulated that it was the mere instrumentality of another' and 'that the misuse of the corporate form would constitute a fraud or promote injustice'." (Aronson v. Price) The corporate veil will only be lifted in the most extreme of circumstances.

Who is directing the mind and the will of the company? The issues arising in the case are examined in the light of this doctrine of 'alter ego' so as to justify lifting the corporate veil. The doctrine of lifting of the corporate veil is employed for the purpose of preventing a fraud by the corporate entity. Is the CSITA an enterprise of the CSI? The doctrine of piercing the corporate veil is certainly applicable where case of fraud and deceit is made out. Is the CSITA the CSI? Are CSI's knowledge and actions the same as those of the CSITA? Is the CSI an alter ego of the CSITA? We will not be reaching definite conclusions in this book.

The "alter ego theory" is often used when it appears that the corporation is being used as a facade for the dominant owner's personal dealings. This theory, also called the instrumentality theory, is implicated

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[45] "Piercing the Corporate Veil", https://en.wikipedia.org/wiki/Piercing_the_corporate_veil

where one entity acts through another without maintaining proper separation.

"In cases where it is established that an individual(s) and/or other entities have used a corporate form for a wrongful purpose; to perpetuate a fraud; circumvent a statute; or some other misdeeds, the Courts may decide to ignore the corporate personality and hold the directors, shareholders and/or officers (alter egos) responsible for the obligations of the corporate entity."[46] When there is such unity of control that the separate personality of the corporation ceases to exist and such unification of interest results in the promotion of fraud or injustice.

If the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are the "alter ego" of the company. Exhaustive review of judicial proceedings and case law should be done to understand the doctrine of "alter ego" at work. Are there material facts to substantiate alter ego? We should conduct an "alter ego" test on the CSITA. Not only on account of its failure to follow corporate formalities but also because of the company being controlled and run by the various committees of the Church of South India whose Secretariat is also situated at the same address as of the CSITA.

When a person or entity "so dominates and controls another as to make that other simply instrumentality or adjunct to it, the courts will look beyond the legal fiction of distinct corporate existence". Gatecliff v. Great Republic Life Ins. Co., 170 Ariz. 34, 37, 821 P.2d 725, 728 (1991) quoting Walker v. Southwest Mines Dev. Co., 52 Ariz. 403, 414-415, 81 P.2d 90, 95 (1938). "The alter ego status is said to exist when there is such unity of interest and ownership that the separate personalities of the corporation and owners cease to exist." Dietel v. Day, 492 P.2d at 455, citing Employer's Liability Assurance Corp., Ltd. v. Barr,

[46] Sudhir Gopi vs Indira Gandhi National Open ... on 16 May, 2017 at the Delhi High Court.

82 Ariz. 320, 313 P.2d 393 (1957). Courts look to numerous factors to determine whether the individuality or separateness of the entity has ceased to exist. Piercing the corporate veil requires the plaintiff to satisfy a three-part test. The individual shareholders must have exercised control over the corporation to such a degree that the company no longer can be said to have a separate will or existence of its own as a legal entity (that is, the corporation has become an "alter ego" of the shareholder or shareholders controlling it);

"The company is considered as an entity distinct from its members as an artificial person, hence enjoying and responsible for all the rights and duties arising as a consequence of law. Thus, the company is neither an agent nor a trustee of its members and hence they are not liable for the acts of each other, in any shape or form except those as provided by the statue governing the corporate. That means, the company after incorporation is not liable for any act or omission of the members or shareholders and vice versa. This protection or shell between the company and its members/shareholders is known as the 'corporate Veil' in legal context."[47]

The company is independent of its members and it is a separate body and must be differentiated from it. Every company is a legal person. "The wrongdoers cannot be allowed to shroud themselves behind the covers of corporate veil and continue exploiting it for their interests."[48]

To prevent the abuses of the corporate structure, piercing the corporate veil is a right remedy. Courts will not easily disregard the corporate form established by the principle of the Salomon v. Solomon case in lifting the corporate veil because this would defeat one of the primary

[47] http://corporatelawreporter.com/2017/07/12/reverse-piercing-of-corporate-veil-an-unemployed-phenomenon-in-india/.

[48] http://corporatelawreporter.com/2017/07/12/reverse-piercing-of-corporate-veil-an-unemployed-phenomenon-in-india/.

purposes of incorporation. Gower observes that in the UK the corporate veil is lifted very rarely, but is quite readily set aside in the United States. Only when there is a grave abuse of corporate form in some individual cases will the courts lift the corporate veil. The courts go case by case depending on the facts and circumstances of each case. There are uncertainties and difficulties associated with piercing the corporate veil. Yet, there are strong grounds for proposing the lifting of corporate veil in the case of the CSITA as it has evaded corporate obligations and corporate democracy on regular basis.

Conclusion

To conclude, the CSITA, the church's keeper of property and finance, is a limited liability company and it has a legal personality of its own separate from the members; its decisions are made by directors and managers who should use the powers conferred on them by the company board of directors in accordance with the memorandum and articles of association. All these operations are subject to the Indian Companies Act 2013 and its Rules. When this system is abused for personal greed and gain, then the corporate veil will be lifted for reasons established by the court. These are the premises within which a stakeholder wishes to conduct the study of the CSITA, a non-profit association. The questions a theologian wants to ask are: How do we understand Christian stewardship in corporate terms in the functioning of the CSITA? And: Can Christian integrity be expressed in and through the company structure? The basic question is: How do we bring about the new vision of God manifested in corporate behaviour? How can that vision be reflected in the corporate thought and action of the church? Let us begin with the history and performance of the CSITA from its beginning.

3

THE HISTORY AND CHALLENGES OF THE CSITA: ITS FORMATION AND PERFORMANCE OVER 70 YEARS

Introduction: The Birth of Charity

We read in the New Testament of the Bible that when the earliest Christian community came into existence around 50 AD, about 20 years after the death and resurrection of Jesus, the entire community created a system which demanded that each one of the members, those who had less and those who had plenty, ought to pool their resources and properties into a common stock. From the common resource, to each was given according to his/her need. No one claimed that any of their possessions were their own, but they pooled them and then shared everything they had. Living in this system, there were no needy persons among them. Those who owned land or houses sold them, brought the money from the entire sales and put it at the leaders' feet, and it was distributed to everyone according to needs. The early leaders of the community administered the distribution. Modern religious charity organisations grew out of this early Christian practice which is akin to the life within a corporate entity. The money and goods did not belong to individuals though they transferred them from their ownership and they were kept as a common stock helping others in need without expecting anything in return (Acts 4: 32-37) Here is the birth of a charitable concept!

After some years, a complaint was brought forward by the widows of a particular cultural group of Greek-speaking Jews against the He-

brew speaking Jews that their widows were being neglected in the distribution of food and clothing. The Charity Association took a step to remedy this. The church leaders appointed seven men of good standing in the community, men full of wisdom and Spirit. The procedure was that the members of the community chose those men, and the leaders appointed them. The seven men had a fiduciary duty of "serving the tables", i.e. supporting the community with money and food. The office of "service" (diakonia) became systematised as the charity objective was carried out on a daily basis (Acts 6: 1-7). The people selected those seven Charity workers and the leaders appointed them as servants of a Board. This system practised 2,000 years ago is akin in many respects to the good corporate governance we are aiming to establish in an organisation that has charity as one of its objectives.

The scenario now shifts to the twenty-first century. We are invited to look specifically at the Church of South India Trust Association (1947), brought under the corporate statues and principles to ensure good governance. Regulatory requirements are essential to bring about good governance in non-profit associations. We link corporate governance and stewardship as illustrated above. It means putting the institutional interest ahead of self-interest, feeling the duty towards the company and merging the individual administrator's ego with the objects of the Association. We begin our study in this chapter by asking the following questions: How did the CSITA come into existence? How is it performing its corporate duties? Is there a crisis of management, and if so what is it, and how did it land itself in a crisis today? What could be the remedy to save the CSITA? We propose that piercing the corporate veil is the only remedy available for it to reorganize, regroup and re-validate itself so that crores/millions of dollars' worth of properties are safeguarded.

In order to achieve our objectives, we ought to take a close look at the CSITA's history and its development over the years, and highlight its struggles and failures to stress the importance of corporate govern-

ance. This will be done by examining the official records, reports and minutes that are already published by the CSI Synod and the Government sources that were made public. Unfortunately, we do not have access to the documents and correspondence between the Government and the CSITA. The CSITA is sinking in a crisis as the Ministry of Corporate Affairs, Serious Fraud Investigation Office, the Income Tax department and the Enforcement Directorate do not have better things to say about the way the CSITA conducts itself. What is the CSITA? When and how was it formed and developed, and how does one chalk out a road-map for good corporate governance for the CSITA?

The South India United Church Trust Association (SIUCTA)

We need to begin with the early periods of the formation of Church of South India Trust Association (CSITA). The uniting churches (the South India United Church, the Methodist Church, and the Anglican church of India, Burma and Ceylon) in the early twentieth century had already set the ball in motion for the united Church of South India to follow from 1947. The South India United Church and the Methodist Church took good care of their properties as they functioned under a corporate framework. The South India United Church Trust Association (1923) was the mother of CSITA. The CSI is walking in the foot-steps of the SIUC in fashioning its own Trust Association. The mother's journey was also a significant one and it paved the way for the child to follow it.

The first reference to a Trust Association is found in the *Minutes of the Sixth General Assembly* of the SIUC held in October, 1917 though the church came into existence in 1908.[49] In the previous year, a committee was set up to discuss the question of the appointment of Trustees, and a brief oral report was presented at the *Seventh Assembly*. It reads,

[49] *Minutes of the Sixth Assembly,* 1917, p. 18.

"Mr. K. T. Paul made a statement, ending with the recommendation that the Executive be authorized to take the necessary steps to enable the S. I. U. C. to hold property. This recommendation was not accepted by the Assembly, which resolved that the same committee should be appointed, and asked to bring more definite proposals to the next General Assembly."[50] *The Minutes of the Seventh Assembly* held at Calicut in 1919 states that "the Executive Committee received and adopted the recommendations from the sub-committee on property".[51] Here is an excerpt from the report of the Committee on Property: "At present the only provision of law under which the church can hold property is the Indian Companies Act. There are mission educational institutions incorporated under this Act but we feel that it does not afford adequate safeguards for a growing church organization, claiming the right to enter into organic union with other bodies and to interpret and alter its doctrines and organization from time to time. It would, therefore, be necessary to move the Government for special legislation, suitable to the needs of the Church organizations [...] We would therefore recommend that your committee be continued in order to keep in communication with the National Missionary Council's Committee, and report progress from time to time to this Assembly."[52] What is to be appreciated about this Trust Association was that it was looking forward not only to the times of union with other churches but also its decision to move the Government for special legislation suitable to the needs of church organizations without registering under the Indian Companies Act.

Meanwhile, H.A. Popley was appointed as the Convener of the Subcommittee on Property, and he presented his recommendations in the *Eighth General Assembly of SIUC* held in September 1921 at Nagercoil.

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[50] *Minutes of the Seventh Assembly,* Mysore: The Wesleyan Mission Press, 1919, p. 18.
[51] p. 17.
[52] p. 48.

The recommendations brought by him were carefully considered and were adopted by the Assembly. Here are the excerpts from his lengthy report: "It is admitted that Incorporation of some body for the purpose of holding property is necessary [...] There are two Acts under which Incorporation can take place. a) The Charitable Endowment Act. b) The Indian Companies Act. Under the former it is necessary to place the whole property under Government to be controlled by a special officer called a Treasurer. Everything comes under his control and the Government is not responsible for any loss. It seems desirable therefore to incorporate under the Indian Companies Act, under section 26, which makes it possible to incorporate Associations formed for promoting any useful object and not paying dividend to its members [...] The best course therefore seems to be to incorporate the Executive Committee of the General Assembly for the time being (as it had the required number for registration which was less than 50). The name of the incorporated body for the Church as a whole would be, 'The South India United Church Trust Association' [...] It is extremely desirable that we should make it possible for missions, as soon as can be arranged, to hand over the church property to the church [...] It should be mentioned in this connection that even if our church unites with any other church in the future the property will not be affected."[53]

In the *Minutes of the Ninth General Assembly* held on August 1923, under the Executive Committee decisions, it is recorded, "After considerable correspondence and discussion the licence was issued by the Government of Madras on January 23rd, 1923 and on August 20th the South India United Church Trust Association was duly registered for the purpose shown in the Memorandum."[54] On the next page it says, "The

[53] pp. 57-58.
[54] p. 12.

holder of the title to all such Trust property will be the Association itself representing the whole Church."[55]

From then on, efforts were made to ask all the church councils to transfer their properties to this Trust Association.[56] Since then, considerable of progress has been made, and in the *Minutes of the Nineteenth Assembly* (1944), it was found that the properties of the Madurai Council and LMS properties in Karnataka, North Tamil and Telugu Council were transferred to the SIUCTA. The American Arcot Mission and the Church of Scotland mission were contemplating handing over their properties within the Madras Council area. In the next three years' time, the union efforts of bringing together the church properties in 1947 blossomed into the birth of a new united corporate body called the Church of South India Trust Association (CSITA).

The Indian Church Trustees (ICT)

The Indian Church Trustees (ICT) was the holder and the agent of the properties that belonged to the Anglican Church of India, Burma and Ceylon (CIBC) one of the constituent churches of the CSI. When the Indian Church Act 1927 was promulgated, which declared the Anglican churches in India, Burma and Ceylon, an autonomous church severed from its formal association with the Church of England, and the properties of the Anglican Church in India, Burma and Ceylon were brought under the Indian Church Act 1927 and were later incorporated in a charter granted by the British King on 11 June 1929 to the General Council of the CIBC. The canons and rules of the ICT were very much in line with the Charter of 1929.[57]

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[55] p. 13.

[56] *Minutes of the Thirteenth Assembly,* p. 8.

[57] *The Constitution, Canons and Rules of the Church of India, Burma, and Ceylon,* pp. 158-59.

There was one major hurdle in the way of the Indian Church Trustees transferring the properties of the CIBC to the CSITA since the CSI was not yet in full communion or agreement with the Anglican Church.[58] After several years of struggle and uncertainty, however, I. Jesudason, the Moderator of the CSI, in his address in the Nineteenth Synod (1984) mentioned that the management of the properties under the ICT had been handed over to the CSITA.[59] In 1966, it was estimated that CSITA was holding 70 lakhs (10,500 USD) investment and several crores (once crore = 143,000 USD) worth of properties.[60]

By 1966, several missionary societies had transferred their properties to the CSITA, i.e. all the properties originally owned by the Church Missionary Society Trust Association, the Basel Mission, the Methodist Missionary Trust Association, the London Missionary Society (particularly in Coimbatore diocese) and all the immovable properties vested in SIUC. By the year 1968, all the foreign Trusts in the CSI region had transferred most of the properties to CSITA,[61] and by 1969 the remaining properties of the United Society for the Propagation of the Gospel, the American Arcot Mission, the London Missionary Society and the Mysore diocese had been handed over to the CSITA.[62] Even by 1982, however, the title deeds of all these properties had not yet been verified, and not all the title deeds had been put into the name of the CSITA.

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[58] *Church of South India: Minutes of the Working Committee & Minutes of the Executive Committee,* 1971, p. 54.

[59] *Minutes of the Church of South India Nineteenth Synod,* 1984, p. 48.

[60] *Church of South India: Minutes of the Proceedings of the Tenth Synod,* 1966, p. 199.

[61] *CSI: Minutes of the Proceedings of the Twelfth Synod,* 1968, p. 158.

[62] *Minutes of CSI Twelfth Synod,* 1970, p. 160.

The Wesleyan Methodist Church Southern India Trust Association (WMCSITA)

As far as the properties of the Wesleyan Methodist were concerned, they were under the custodianship of the Wesleyan Methodist Church in Southern India Trust Association (WMCSITA), which was formed in 1927. The proposal for WMCSITA was mooted in the *Thirty Second Synod of the Wesleyan Methodist Church in South India* held in Madras, 1925 and a committee was duly appointed to prepare a draft Memorandum and Articles of a Trust Association. It took thirty-one years since the first Synod of the Wesleyan Church in South India had met to initiate the founding of a Trust Association. The draft was approved by the Mission Society in London with some amendments. The object of the Trust in 1926 was that the Trust would be a profit-making body and hence it called itself an "Unlimited company" with 14 shares, each share amounting to ten rupees. But that section was removed, and the non-profit objective in line with section 26 of the Indian Companies Act 1913 was added (therefore it became a Limited Company), and that became the final official document. The thirty-fourth Synod in the year 1927 gave the official seal of approval. The Trust was incorporated in September 1927 under G.O. no. 2862, Law (General) Department.[63]

It was the Methodist Church which made its decision first to transfer both its movable and immovable properties to the Trust Association of the new United Church of the CSI, i.e the CSITA. It should be noted that the Methodists were the first to offer the properties to the united Church and that they were also the first one to accept officially the proposal to enter into organic union with the other Christian groups, the Anglicans, Presbyterians and the Congregationalists (already united together in the SIUC) on 27 September 1947. The Methodist church was the last constituent body to join the union talks but it was the first to decide to enter

[63] *The Wesleyan Methodist Church: Thirty Fourth Report of the South India Provincial Synod,* Mysore: Wesleyan Mission Press, 1928, p. 26.

into union. The resolution of the General Synod of the Methodist church in India, Burma and Ceylon held in February 1946 reads, "The Synod is agreed that all property, both movable and immovable, of the Methodist Church in India and Ceylon should be handed over to the United Church and vested in recognized Trust Associations of the United Church."[64] The decision was implemented without delay, and the minutes of the first CSI Synod held in Madras in 1948 recorded under Trust Association matters that "Properties held by the Methodist Church in Southern India Trust Association have been transferred."[65] It was also reported that owing to the prohibitive cost of registration, it was proved impossible to transfer immovable properties held by the two other Methodist Trust Associations in London.

A Curtailed Interest on Property Matters

There were in all twenty meetings of the Joint Committee on Church Union in South India between the years 1920-1947, and none of those meetings were seriously concerned with property matters, particularly their status after union. In an extract of the Report of the Joint Committee which was held in November-December, 1932 there was brief mention of "the modifications which may be necessary in present trust deeds to enable the Trust Associations to continue their administration of the property which they now hold …"[66] Until then, nothing much had happened towards heightening the seriousness of considering viable alternative plans and arrangements for forming a common Trust Association of the three uniting churches. It was felt that the existing Trust agencies and the missionary societies were managing their properties in a satis-

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[64] A. J. Arangaden, *Church Union in South India: Its Progress and Consummation,* Mangalore: Basel Mission Press, 1947, p.187.

[65] *Church of South India: Minutes of the Proceedings of the First Synod,* 1948, p. 22.

[66] *The Proposed Scheme of Church Union,* 1932 edition, Appendix B, p. 84.

factory manner and that any new scheme to manage them under a new Trustee of the united church might jeopardize the efforts of church union. Hence, it was one of the reasons that the matter relating to property and finance stood at the very end of the various editions of the *Proposed Scheme* of the uniting churches. The final edition (1943) that was approved and held operational at the time of the inauguration of union on 27 September 1947 has the following brief paragraph:

Property and Finance: – The Principle that the present Mission and church organizations should continue to function after union applies with even more force to the control of property and Trust funds. To attempt immediate diocesanisation of these would be to impose an impossible burden on the united church. The Committee have made a preliminary survey of the present Trust Associations and other Societies, and have recommended in one or two cases such minor adjustments as seem to be called for. No great alteration is required by the terms of union in any case, and in most instances the present deeds are so drawn as to permit of their continuance unaltered.[67]

It is clear that the first generation of the united church did not seek to introduce any drastic or elaborate changes to the trusteeships that existed at that time as there were established agencies such as the SIUCTA (South India United Church Trust Association), WMSITA (Wesleyan Methodist Southern India Trust Association), Indian Church Trustee (ICT) and other Trusts owned by missionary societies such as the CMS, USPG, LMS and MMS. The intention was that the division of the dioceses might not be hurried and that the existing trusteeship could be allowed to continue. The Unionists did not want church unity efforts to be burdened and hindered by the pursuit of property matters. After 70 years, this approach has proved to be an unwise stand as there are sever-

[67] *Proposed Scheme of Union,* seventh edition (revised), Madras: CLS, 1943, p. 95 (the same text is found in the fifth revised edition, 1935, p. 91; 1933 edition, p. 79; 1932 edition, p. 78).

al pockets of church properties throughout the Church of South India Regions that are still unregistered under the CSITA, held under the names of different societies and trusts.

Move towards One Single Trust Association

The united church, i.e. the CSI, did not think beyond the trusteeship pattern in the management of funds and properties and it sought to bring together all the mission Trusts into one single Trust incorporated under the Indian Companies Act of 1913. But the corporate pattern of organization did not enter into the mind-set of the CSI Christians. It was thought that any re-organization of those religious Trusts under the Company system might affect the church union which was the primary concern at the time. Hence the Trust concept of the previous associations prevailed and occupied the thinking of the pioneers of the united church. The negotiators of Union were not initiated into the corporate nature of management. There was not a single reference to the CSITA in the 1947 CSI Constitution except the paragraph cited above. It is because the Constitution adopted in 1947 was the draft finalized in 1943 when the CSITA was not yet in existence. We shall later see that the desire to gather all the Trusts into one single Trust was reflected in the Memorandum of the Association of the CSITA. The MoA of the CSITA naturally reads like a Trust document rather than the Constitution of a corporate body. Is the CSITA running as a Trust under the garb of a corporate body? Its incorporation status is overridden by elements of Trust which have to be closely scrutinized, and by this we mean, “piercing the corporate veil”.

Establishing the Church of South India Trust Association (CSITA)

There was a turnaround, and the required step was taken at the last Joint Committee meeting of the Church Union held in June 1947 in Bangalore. The members gave serious attention to property matters and considered setting up a Trust Association of the proposed newly formed church, the Church of South India. The Legal Questions Committee of the Joint Committee was authorized to set up CSITA "to be the custodian of all the property".[68] Not much was said by way of reporting. Here is the excerpt from the Joint Committee report:

Rev. T.R. Foulger reported on the action of the Legal Questions Committee, and explained the proposed Memorandum and Articles of Association of the Church of South India Trust Association, which have been prepared.

The Joint Committee gave general approval to the Memorandum and Articles, which have been approved by the Registrar of Joint Stock Companies. A form of application has now gone forward for the registration of the Association with the usual licence from the Government.

Resolved that the Legal Questions Committee be authorized to register the Memorandum and Articles of Association of the Church of South India Trust Association.

Resolved that the Legal Questions Committee be asked to continue its work and report to the Continuation Committee, its members to be Mr. W.H. Warren (Convener), Dewan Bahadu, D. Ananda Rao, Mr. P. Chenchaiah, Rev. T.R. Foulger, Mr. C.J. Lucas, Mr. L.D. Miller, Rao Sahib R.D. Paul, and the Ven. J. White; with Rev. H. Bird, Mr. E.H.M.

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[68] "The 20th Session of the Joint Committee", *Madras Diocesan Magazine,* August, 1947, p. 173.

Bower, Mr. A. Gunamony and Rev. L.J. Thomas as corresponding members."[69]

A seven-member CSI Trust Association was then formed which they registered as a company by submitting a Memorandum and Articles of Association to the Government office in Madras on 26 September 1947, a day before the formal inauguration of their united Church called the Church of South India. Five of the seven members who did this were members of the Legal Questions Committee, and the other two were members of the Joint Committee that met in Bangalore in June 1947. They were: L.J. Thomas (LMS), L.D. Miller (Anglican), C.J. Lucas (SIUC), A.M. Payler (Methodist), T.R. Foulger (Methodist), P. K. Monsingh (Methodist, and a Headmaster from Trichy) and J. White (the Anglican Archdeacon of Madras diocese) which indicates that the effort of the group was not an independent and arbitrary act. The CSITA was incorporated under the Indian Companies Act 1913 (Acts VII of 1913) and the Company was registered as "Limited" under Certificate of Incorporation no. 112 of 1947-48.

The Certificate of Incorporation; CSITA is an Independent Person in Law

The Asst. Registrar of Joint Stock Companies issued the Certificate of Incorporation which reads: "I hereby certify that 'THE CHURCH OF SOUTH INDIA ASSOCIATION' is this day incorporated under the Indian Companies Act, 1913 (Act VII of 1913) and that the company is limited.

"Given under my hand at MADRAS this twenty sixth day of September one thousand nine hundred and forty seven."

What is to be noted here is that the CSITA is an incorporated body under the Companies Act 1913 and, secondly, the company is limited. It

[69] *A Report of the Joint Committee on Church Union in India,* June, 1947, Nagercoil: The London Mission Press, p. 13.

is between these two poles that the nature of the CSITA should be understood and interpreted.

What does "certificate of incorporation mean"? As per the 1913 Act, "A Certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act." [sec. 24(1)]

The Certificate is the Conclusive Evidence

The phrase "conclusive evidence" should be paid attention to. Once the certificate of evidence is issued no one can question the regularity of the incorporation, and it indicates that the life of the company commenced with full authorization from the date mentioned in the certificate, i.e. 26 September 1947. Sections 34 and 35 of the Companies, Act, 1956 provided for the conclusiveness of the Certificate of Incorporation. But it should be noted that, according to the CA 2013, the National Company of the Law Tribunal (NCLT) can open up the procedure adopted in incorporation which means that the certificate is no longer the conclusive evidence. Sec. 7(7) of the 2013 Act "empowers the tribunal to pass appropriate orders further to an application made to it alleging that a company had got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents of declaration filed or made for incorporating such company or by any fraudulent action."[70] It implies that documents such as the Memorandum and Articles of Association can also be brought under scrutiny by the Tribunal to see that any of their provisions are not in tune with the Companies Act of 2013. Fur-

[70] A. Ramaiya, *Guide to the Companies Act,* vol. I, p. 417.

ther, there are 39 Rules [Companies (Incorporation) Rules, 2014] framed to guide the process and the operation of the incorporation.

The Certificate of Incorporation brings the company into existence as a "separate legal person". As Ramaiya comments, "One of the characteristics of a company is that it is an incorporated body of persons. It is constituted into a distinct and independent person in law and is endowed with special rights and privileges. It is not like a partnership firm or a family – the mere aggregate of its members. *It is in point of law a person distinct from its members."* It is this concept that should be implanted in every CSI leader's mind so that they do not consider the company as a puppet in their hands. The CSITA is distinct entity from the CSI. The CSI is not a legal person but the CSITA is.

The Licence of Incorporation Issued by the Government of Madras

The licence was granted to the CSITA by the Government of Madras and it was signed by the Governor on 25 September 1947. It has this important paragraph for the twenty-first century members of the CSITA to note. It declares, "Whereas it has been proved to the Government of Madras that the Church of South India, a Trust Association which is about to be registered under the Indian Companies Act, 1913, AS AN ASSOCIATION LIMITED BY GUARANTEE is formed for the purpose of promoting objects of the nature contemplated by the 26th section of the Act and that it is the intention of the said Association that the income and property of the Association whenever derived, shall be applied solely towards the promotion of the objects of the Association as set forth in the Memorandum of Association of the said Association and that no portion thereof shall be paid or transferred directly or indirectly by way of dividend or Bonus or otherwise howsoever by way of profit to the persons who at any time are, or have been members of the said Association, or to any of them, or to any person claiming through any of them."

The features of the company are: the CSITA is an Association "Limited by Guarantee"; ii) the purpose of the company is to promote the objects envisaged in the 26th section of the CA 1913; iii) the intention of the said Association shall be that the income and property of the Association whenever derived shall be applied solely towards the promotion of the objects of the Association as set forth in the Memorandum of Association of the said Association; and iv) no portion thereof shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise howsoever by way of profit to the persons who at any time are, or have been members of the said Association, or to any of them, or to any person claiming through any of them.

It continues, "Now, therefore, His Excellency the Governor of Madras in pursuance of the powers vested in him and in consideration of the provisions and subject to the conditions contained in the Memorandum and Articles of Association, and subject also to the regulations made under the 26th section aforesaid as in force for the time being by this licence directs the Church of South India Trust Association to be registered with LIMITED LIABILITY, without the addition of the word 'Limited' to its name."

It is important to note that this is the blueprint for the CSITA to understand its functions and activities. It also describes its nature as a company registered under corporate law of the country. We will be studying all the company characteristics espoused by this license and urge the CSITA to follow closely these descriptions. It is a "limited liability" company which means that the members are not liable for the debts and other losses suffered by the company except the contribution made by the members to the company. "Limited by Guarantee" means that the liability of the members is limited a fixed sum specified in the MoA of the CSITA which is Rs. 15. The other point to note is that "the income and property of the Association whenever derived shall be applied solely towards the promotion of the objects of the Association as

set forth in the Memorandum of Association". The income generated and values of properties registered under the CSITA are mean to be spent on the objectives listed in the MoA. The question we need to ask, "What are those objects for which money should be spent and properties should be utilized. The subsequent chapters will discuss these phrases and draw implications for the CSITA.

Did the CSITA pay any attention to this licence and fashion its out-working in accordance with the declarations enunciated in the licence? First and foremost, the CSITA is a licensed company connected to the nation. Its corporation principles have to be drawn from this text, and the Central Government is the main guide in key matters related to company formality and performance. The CSI cannot claim that its Trust Association is independent of Government interference. The Licence enforces the view that the CSITA is subject to statutory rulings made under section 26 of the Companies Act 1913, whereas the CSI has a totally different plan and working policy for the CSITA. This is the major concern explicitly and systematically expounded in this book.

The Seven-Member Association Turned into a Fifteen-Member Association

What began as a s even-member association became a fifteen-member Association by the resolution at the first synod of CSI, 1948. In the first CSI Synod, it was resolved, "That the Church of South India Trust Association shall be composed of the Moderator, the Secretary and the Treasurer of the Synod together with 12 other members elected by the Synod."[71] There were few more resolutions which are significant to the understanding of the role the Trust Association of CSI. The minutes read:

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[71] *Church of South India: Minutes of the Proceedings of the First Synod,* Madras: Diocesan Press, 1948, p. 21.

(c) That the Synod advises that in future all properties, both movable and immovable, be acquired in the name of the above Association. It notes with approval that steps are being taken, where possible, to transfer properties previously held by other Trustees to the C.S.I. Trust Association.

(d) That in order to carry out its functions under the Memorandum and Articles of Association, the Synod appoints a Synod Property Committee of eight members and authorizes this committee to issue on behalf of Synod any directions that may be necessary under the Memorandum and Articles of Association of the C.S.I. Trust Association …

(iv) That the Synod Property Committee will exercise general Supervision over the property affairs of the Dioceses. [72]

There have been arguments floated from time to time by persons in the Synod and outside that the CSITA is not only an independent association but also an establishment which preceded the CSI, because the CSI was born a day later. Attempts are made to see the CSI placed under the rubrics of the CSITA, whereas the CSI considers the Trust Association is an arm of the Church. The argument is that CSITA is a registered body whereas CSI is not. The logic is that CSITA has a legally authorized existence whereas the Church has not. CSI by constitution strives to be an autonomous body free from "the direction or interposition of any civil Government."[73] However, such questions haunted the functioning of the CSITA and there were difficulties in understanding the role of the Synod of the CSI in relation to CSITA and vice versa. From the inception of the CSI and the CSITA it was the CSI Synod Property Committee which took over the reins of guiding, directing and supervising the work of the CSITA under the MoA of the Association. The incorporation as a company was the cloak under which the CSITA was managed

[72] *Church of South India: Minutes of the Proceedings of the First Synod,* 1948, pp. 21-22.
[73] *CSI Constitution,* 2003, p. 19.

by the Synod Property Committee. This mode of administration was against all ingredients of the nature of the corporate governance.

Can the CSITA be governed by a committee appointed by the CSI Synod? Doesn't it have any specific statutory rules to follow for its functioning? If there are statutory corporate regulations to follow why should they be by-passed? We shall analyze this historical struggle in a thorough and critical manner and then emphasize that the CSITA should be viewed through the prism of the principles and provisions of Indian Corporate law. How to bring the CSITA, a multitude of Trusts and Societies, into a workable corporate structure? This is the major task of Part I and Part II.

The Impact of the Liberal Economy on the Value of Church Finance and Properties

Globalization is exerting a heavy influence on values of the church properties, and global economic forces have a major bearing on cash-flow in the churches. It is hard to estimate the prices of land and building properties of the CSI particularly in the urban and semi-urban cities of south India which might cost fortunes worth over one lakh crores of rupees (15.38 billion USD). The global market has quite dramatically caused a boom in the real estate business, and land even when unused can bring huge profits which open up opportunities for corruption in churches today. In Bangalore, for example, a piece of land sold for Rs. 100 (about 1.3 USD) per sq. ft. two or three decades ago is now sold for Rs. 10,000 (143 USD) per sq. ft. Church leaders keep the sale of church properties as secret deals, and no one knows what was the amount received from the buyer and how much of it went into the church account. The process of the sale also remains a mystery. This is the standard crime committed in the CSITA today, as people have noticed.

There was no great enthusiasm to become a member to join the CSITA particularly in the 1960s, quite contrary to the reality at the pre-

sent time. CSITA meetings had to be postponed at times due to failure to make up the quorum in attendance. The attraction towards the CSITA is far greater in the modern CSI as the values of the properties it holds and the amount of money transactions in the church administration have increased by leaps and bounds which make the lay and the ordained deeply interested in involving themselves in such an enterprise of dealing with the flowing money and the extremely valuable properties. Most of them look for opportune times when they can fill their own pockets in the process. Hence sale, lease and mortgage of church properties have begun to happen in large measure in a clandestine manner in the past two decades. It prompts us to raise questions of corporate governance which works on integrity and a spirit of compliance with the corporate laws in maintaining good financial management and safeguarding the immovable properties vested in the CSITA.

This situation calls for a review of the matters of governance of the CSITA both past and present, asking whether it is directed by the corporate laws of the country which are statutory or by the dictates of the CSI Synod and its office-bearers who represent an unregistered body. This is not to deny any working relationship between the CSI and the CSITA. One must re-draw and redefine the relationship within the purview of the provisions of the Indian Companies Act 2013 and its provisions and rules. The Corporate governance idea has to be firmly established in the mindset of the CSI/CSITA administrators.

What Is CSITA According to the CSI?

According to the CSI, the CSITA is a "Bare Trust". What does this mean, "bare" trust? It is argued, "The distinction between bare and active trusts relates to the duties which are imposed upon the trustee. Where the trustee has only minimal duties, for example he merely holds the trust property for the beneficiary, the trust is said to be a bare

trust."[74] The CSITA holds the properties for the CSI but does not manage them in any serious and systematic way. The CSI Constitution states that "the general management and good Government of the Church and of the property and affairs thereof" is under the powers of the Synod (IX. 14). Sometime during the 1970s the minutes stated that CSITA was considered a "bare Trust" on behalf of CSI. It was firmly rooted in the mind of the CSI that the CSI is the "owner" of the properties and that they do not belong to the CSITA.

An Assessment Made by the Income Tax Officer

An assessment was made by the Income Tax Officer for the years 1970-71 and 1971-72 on the affairs of the CSITA. He finally demanded that the CSI should pay income tax and that there can be no exemption from it. The minutes of the fifteenth Synod, 1976 states in reply, "The Income Officer bases his stand that CSITA are 'owners' of both movable and immovable properties of the CSI in the various dioceses and hence all the transactions in the various dioceses must be accounted for by the CSITA and hence the demands on us. We appealed against the ITO orders, insisting that CSITA are only 'bare trustee' and the beneficiaries (are) the CSI [...]".[75] So the ITO demanded that CSITA should pay income tax. The minutes further state, "On the advice of our lawyer a General appeal explaining our position has been filed with the Commissioner requesting him … to accept the position that the CSITA is only a bare trustee. The CSITA is acting on behalf of the CSI which is the owner". Based on this argument, it was decided to send a petition to Central Board of Direct Taxes for a permanent exemption from Income Tax.

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[74] "The Trust Concept", http://catalogue.pearsoned.co.uk/assets/hip/gb/hip_gb_pearsonhighered/samplechapter/panesar_C02.pdf p. 53

[75] pp. 94-95.

Striking the Right Chord but Without any Tune

In the following year, the bishops, who met on 26th January 1977 to decide on the issue of Income Tax, resolved to recommend to the Executive Committee of the CSI the resolution that the CSITA is not a passive Trust but it has an active role to play in maintaining and managing both the movable and immovable properties of the CSI. It states, "C.S.I.T.A. is only the 'bare' or passive trustee of the C.S.I. but also the active trustee of all movable and immovable properties, funds, … of the dioceses and institutions including all the income and expenditure are also (sic) vested in and expended by C.S.I.T.A. on behalf of C.S.I." It was further decided "to instruct the Dioceses and Institutions to comply with the requirements of C.S.I.T.A. in the matter of keeping accounts, auditing and other matters connected with the administration and supervision of the funds and properties. This will mean that all receipts in the Dioceses and Institutions are in law the receipts and payments of C.S.I.T.A."[76]

This touched the root of the problem as it was taking the CSI in the right direction. But the subsequent decisions deviated from the laws that undergirded the CSITA. The same meeting decided "to request the C.S.I.T.A. to frame necessary rules for the management of funds and submit them to the Synod Working Committee for approval and implementation by the Dioceses … and … to recommend suitable amendments to the Synod Rules for the management of immovable properties for the consideration of the Synod Working Committee and final approval by Synod Executive Committee".[77] The Synod Executive Committee reaffirmed its control over the operations of the CSITA, and the talk of following the Indian Companies Acts never came in the discussion. The same trend is continuing even today which has serious repercussions for the present understanding and interpreting the role of the

[76] "CSI Minutes of the Working Committee", 1977, p. 22.
[77] "CSI Minutes of the Working Committee", 1977, p. 22.

Trust Association today. Here is the birth of the crisis into which the CSITA is slowly sinking!

Can the CSI Synod Be the Governing Body of the CSITA?

We begin with the observation that "the Synod is the highest representative body of the Church of South India", according to the CSI Constitution of 2003.[78] This does not say or mean that it is the highest representative body for the CSITA. Although the CSITA was formed and was incorporated (i.e. constituted as a legal corporation) under the Indian Companies Act 1913 on 26 September 1947, the church's Constitution says that the CSI Synod has "the power to make rules and pass resolutions and take executive action as may be necessary from time to time for the general management and good Government of the Church and of the property and affairs thereof."[79] It can be easily understood when the Constitution says that the general management of the Church comes under the Synod, but it is hard to understand that the management of the property and its affairs are directed and controlled by the Synod. The management of property by law is not the responsibility of the CSI Synod but belongs to the corporate machineries embodied in the Companies Act and Rules, and this is the crux of the problem.

The only paragraph on the CSITA in the 150-page CSI Constitution reads,

In as much as the Church of South India Trust Association has been formed for the purpose of acting as Trustee or Agent of all the properties, movable and immovable, of the Church of South India, the Church of South India Synod shall have the power to elect the members of the Church of South India Trust Association. The Moderator, the Deputy

[78] p. 75
[79] pp. 78-79.

Moderator, the General Secretary and the Treasurer shall be ex-officio members of the Church of South India Trust Association.[80]

It is clear that the CSITA is considered as one of the various sub-committees functioning under the authority and guidance of the Synod of the CSI. It is regarded only as the "bare trustee" relying totally on the decisions and instructions of the Synod of the Church. This attitude was formalised in setting up *Guidelines* by the CSI for the Church of South India Trust Association. These were considered paramount in guiding the affairs of the TA, and the corporate rules and regulations took the back seat or were nowhere to be seen. The member directors of the CSITA were selected/elected by the CSI Synod not by the CSITA General Body, and the Moderator, General Secretary and the Hon. Treasurer became automatically ex-officio members in the CSITA Committee of Management (Board of Directors), so the CSI administration holds the reins of the power and management of the CSITA.

A Document on CSI Guidelines for the CSITA (1988)

The final nail in the coffin came from the document *Guidelines for the Church of South India Trust Association* formulated in the year 1988. It consisted of rules and regulations to be followed by the CSI Synod and the dioceses in managing the assets both movable and immovable. In the 31-page document, only half of a page outlined three of the abridged sections of the Memorandum of the CSITA. The *Guidelines* document was prepared in the year 1988 by the then director of the CSITA, Mr. Frederick William, Administrator, CSITA who wrote the following in the Preface of the document:

The Church of South India Trust Association being a statutory body registered under the Indian Companies Act 1956 is governed by a set of rules known as 'Synod Rules for the Management of Movable and Im-

[80] p. 79.

movable Properties' for the management of the Movable and Immovable Properties lying within the jurisdiction of the 20 dioceses of the CSI. With a view to improving the management of the Finances and Properties by a better understanding of the Rules, an attempt has been made to consolidate in this Manual the various provisions of the Rules and Circulars issued from time to time and the interpretations. This will enable the Dioceses to understand the functioning of CSITA and the requirements that are necessary to be satisfied by the dioceses in the best interests of the property and financial management of the CSITA. It is hoped that this Manual may prove a useful tool to the Dioceses."[81]

This originated from a Resolution passed by the CSI Synod Executive committee in 1977 (EC 77-47) to compile Synod Rules for the property and financial management previous to the production of *Guidelines for the Church of South India Trust Association*. The Committee of Management of the CSITA, forgetting its own legal framework within which it should operate, prepared the draft which was passed by the Executive Committee in October 1978 (EC 78-51). P.I. Chandy, the Hon. Secretary of the CSITA in his Report "Church of South India Trust Association" presented in the Sixteenth CSI Synod Meeting, 1980 states, "As the C.S.T.A. is *a Public, Religious and Charitable Trust under the Trust Act,* legal advice was sort [sic] and some rewording was found necessary."[82] The revised draft was approved by the Synod Working Committee in November 1979 and the further stamp of approval was given in the sixteenth Synod meeting held in 1980. Although Chandy began his report acknowledging that the Association was a C ompany registered under sec. 25 of the Indian Companies Act, 1956 yet he called the CSITA a "Trust" by which he meant *a Public, Religious and Chari-*

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[81] "Preface", *Guidelines for the Church of South India Trust Association,* 1988, p. 3.

[82] *Church of South India: Seventeenth Synod Minutes of the Proceedings, 1980,* p. 10.

table Trust under the Trust Act. How can the members of the managing committee of the CSITA produce an unofficial document when they had the Indian Companies Acts, Rules and Notifications that came from the Ministry of Corporate Affairs, the MoA and the AoA of the CSITA to guide and direct them?

The CSITA was pushed into a totally different pathway, and the Synod treated the CSITA as a charity Trust organisation. The Trust notion that the CSI is a Trustor has had a firm grip on the mind-set of the CSI community. The company incorporation was taken merely as a formality and was made to serve as a name identifier, and the CSITA carries on without such an identity influencing and controlling the internal organisation of the Association. The lesson was neither taught nor learnt that the incorporation of the CSITA required from the beginning to comply with the principles and provisions of the Company Acts and the by-laws of the MoA and the AoA of the company.

The CSITA a Public, Religious and Charitable Trust According to the CSI Synod

The Hon. Secretary characterises the CSITA as a public, religious and charitable Trust. As a Trust, the Secretary reported, it has to comply with several Acts such as a) The Trust Act; b) The Income Tax Act; c) The Foreign Exchange Act; d) The Company's [sic] Act; e) The Land Reforms Acts; and f) The Foreign Contribution Act. It was not realised that this is a contentious issue. The Synod was made to understand that the major guide and direction to manage the CSITA had to come from the Indian Trust Act.

The Secretary urged the Synod and the dioceses to strictly follow Rules 5, 6 and 9 of the *Guidelines* which have to do with the bank overdraft, the use of Endowment funds, and the diversion funds received for particular activities or projects. He reported, "Non-compliance with this Rule is a breach of Trust under the Trust Act immediately endangering

the standing of the Trust as a well-managed Trust."[83] The Secretary kept stressing the Trust mode for the functioning of the CSITA, and his instructions to the dioceses were given so that they should administer the finances from the draft set of Rules framed by the Executive Committee.

The Secretary's main concern was not to break any of the Income Tax rules as the CSITA had obtained income Tax exemption from the year 1961 onwards, and he therefore stressed, "The responsibility which lies with the C.S.T.A. in this connection is very heavy and we have been constantly stressing the need for the dioceses and units to support the Trust by administering their finances in accordance with this Exemption and submitting their accounts to the Trust as required under the Act." In conclusion, he underlined to need to "fulfil its commitment to the Central Board of Taxes which in turn will have very serious repercussions on the Trust."[84] The CSI's ultimate goal is not to transgress any Tax laws so that the rich institutions and churches are protected from paying heavy taxes. This itself is a sufficient cause for the piercing of the corporate veil. Is incorporation used merely for tax-evasion?

The notion of maintaining the Trust Association in accordance with Company laws did not have any place in their planning and undertaking. The Trust concept, inherited from the earlier missionary Trusts, was sparkling in the minds of the CSI and CSITA administrators. They were not baptised into corporate laws and rules which were pushed back far to the background. Their thoughts and actions were immersed in some of the core aspects of the Trust and Trusteeship.

Guidelines were laid out by the CSITA to the dioceses and institutions too: They are: i) not to take out any loans or overdrafts without the permission of the CSITA; ii) all endowment funds should be permanently invested; and iii) to they should discourage the practice of "diversion of funds" when it was earmarked by the donor for a particular activity or

[83] *Guidelines,* p. 10.
[84] *Guidelines,* p. 10.

project. The Report from P.I. Chandy, the Hon. Secretary and Treasurer of the CSITA, presented at the *Seventeenth Synod of CSI* (1980) states that "in these three areas lie the biggest dangers to the Trust and automatically to the Church".[85] The Report further points out that CSITA can be placed under the scrutiny of the Trust Act, the Income Tax Act, the Foreign Exchange Act, the Companies Act, the Land Reforms Act and the Foreign Contribution Act. It was stressed that the dioceses should use the income from the property to fulfill the objectives of the Trust, and they should without fail submit their Income and Expenditure accounts to the CSITA annually so that the Income Tax exemption might not face axing. It was an intense struggle all the time to secure Income Tax exemption for the CSITA either each year or every three years or permanently. Most Treasurers found themselves with a whole load of responsibilities within the ambit of CSITA to conduct it as "a properly administered, managed and supervised Religious and Charitable Trust satisfying the terms as provided."[86] Chandy compared the tax exemption to the "big umbrella" that could bring under it the combined CSI dioceses to enjoy the benefits, and the attainment of such a situation would throw responsibilities to the efficient and professional functioning of the CSITA. It is clear that the perception of the CSI was that CSITA is a Trust to be used for obtaining Tax exemption. "Some corporations have a new strategy: Camouflage! Just as insects look like leaves to avoid being eaten, corporations disguise themselves as Religious Charities to avoid critics. And as predators use camouflage to sneak up on prey, some firms use this to their advantage."[87] Is the CSITA one of them?

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[85] *Minutes of the Proceedings,* Madras: Diocesan Press, 1980, p. 10.

[86] *Sixteenth Synod: Minutes of the Proceedings,* 1978, p. 125.

[87] "AntiCorporate Social Responsibility", http://anticsr.com/social-business-criticism/

What Is a Trust?

"Trust" is a term with many meanings with diverse modes. There is no unitary and precise definition of "Trust" in the Trust literature although there are systematic explorations of the ingredients of a Trust. According to the Indian Trust Act, 1882 "A 'trust' is 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: the person who reposes or declares the confidence is called the 'author of the trust': the person who accepts the confidence is called the 'trustee': the person for whose benefit the confidence is accepted is called the 'beneficiary'." [Ch. I (3)]

The scope of the activities of Trust are defined as follows: "A Trust may be created for any lawful purpose. Generally speaking, it is created for charitable, educational or socially beneficial activities". A public Trust is a Trust created for the advancement of education, promotion of public health, relief of poverty, etc., and in this sense it is regarded as charitable in law. The CSITA was functioning only at this level of self-understanding that it is basically a Trust which has a thin veneer of Company registration. Company laws are rarely mentioned, and there is scarcely a recognition that the statutory provisions of the Companies Act are binding on the CSITA.

P. Singh, an expert in Trust matters, observes, "Different States in India have different Trust Acts in force, which govern trusts in the State; in the absence of the Trusts Act in any particular state or territory the general principles of the Indian Trusts Act 1882 are applied." The Indian Trusts Act 1882 is referred as the "principal" Act by the Indian Trusts (Amendment Act), 2016. He writes, "The main instrument of any public charitable trust is the trust deed, wherein the aims and objects and mode of management (of the Trust) should be enshrined. In every trust deed, the minimum and maximum number of trustees has to be speci-

fied. The trust deed should clearly spell out the aims and objects of the trust, how the trust should be managed, how other trustees may be appointed or removed, etc. The trust deed should be signed by both the settlor/s and trustees in the presence of two witnesses … The application for registration should be made to the official having jurisdiction over the region in which the trust is sought to be registered."[88] The purpose of this lengthy quotation is to ask whether the CSI took the CSITA through this process of Trusteeship and whether there is a Trust Deed agreed upon between the two. The answer is negative on both counts. A trust deed which is the "governing document" should be registered before the Registrar of Societies. This has not been done in the case of CSITA. Then, why does the CSI not only view CSITA as a Trust but also treat it as one?

Does the CSITA Behave like a Corporate Entity?

The CSITA, a section 8 company functioning under the CA 2013, is regarded as a limited company for the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment, or any such other object. Secondly, the CSITA Company needs to apply its profits if any or other income in promoting its objects. The company cannot distribute any dividend to its members [sec. 8(2) CA 2013]. A Trust operates from different premises under different guidelines. A Trustor, trustee, and the content of the trust relation are the main constituents of Trust relations. The basic Trust formula is "A trusts B with respect to X". The CSI relies on the CSITA for pecuniary support to the work of the CSI and for the maintenance of its properties, institutions and workforce as per the MoA. The question we are seeking to answer is whether the MoA has got it right and is

[88] http://www.lawyersclubindia.com/experts/What-is-the-procedure-to-create-a-public-trust-in-tamilnadu--244626.asp

standing on the foundation of sources of law requisite for a corporate personality.

At the diocesan level, it is the Diocesan Councils which shall make Rules for the management of its finances and properties.[89] It further states, "All such rules and any subsequent amendments or alternative hereto shall be subject to the approval of Synod Executive/Working Committee."[90]

The standards and procedures specified in the CA 2013 have not percolated into the system of management of properties and finance over the last seventy-one years. The Trust Association has been a mere spectator when all the business is done by the Synod Executive, Working Committee, Diocesan Councils and Diocesan Property Committees and even by *ad hoc* administrative committees in the name of the CSITA.

The CSITA Is Not a Charitable Association Though It Has "Charity" as One of Its Objects

Donations provided for charitable purposes are covered by the Income Tax Act, 1961, and the Finance Act, 2009 has amended the definition of charitable purposes. As per Section 2(15) of the Income Tax Act, 1961, the term charitable purposes includes "relief of the poor, education, medical relief, and the advancement of any other object of general public utility". The aforesaid definition is not exhaustive and therefore purposes similar to the purposes mentioned in the aforesaid definition will also constitute charitable purpose. According to Section 9(1) of The Bombay Public Trust Act, 1950, "charitable purpose" includes relief from poverty, education, medical relief, and the advancement of any

[89] See "Movable Property" 2 (a) and "Immovable Property" (2) "Guidelines", pp. 7-8.
[90] *Guidelines,* p. 9.

other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship."[91]

The Finance Act, 2008 restricted the definition of "charitable purpose," by mentioning that if the "advancement of any other object of general public utility" involves undertaking any business activity, trade or commerce, or providing any related service for a condition or a fee, it will not be considered a "charitable purpose". In addition to this, Finance (No.2) Act, 2009 added the "preservation of environment (including watersheds, forests, and wildlife) and preservation of monuments or places or objects of artistic or historic interest" under the purview of the term charitable purposes.

The Charitable and Religious Trusts Act was enacted in 1920 to provide effective management and supervision of the Charitable and Religious institutions. The primary object of the Act was to obtain information relating to the charitable and religious institutions created for the benefit of the public.

Is the CSITA a charitable Trust or a Company with "charity" as one of its several objects? The answer is the latter. In Britain, most charitable bodies are required, under sec. 3(2) of the Charities Act 1993, to be registered with the Charity Commission. There is no corresponding Charity legislation in India. In fact, charity organisations do not have a definition of their own. The major concern on the part of the CSI Synod is that the entire CSI will be exempted from the payment of taxes for the income they are generating. The stress on CSITA as a charitable organization is part of a tax evading strategy.

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[91] https://blog.ipleaders.in/laws-applicable-public-charitable-trust-india/, accessed 2 April 2018.

The Granting of Power of Attorney

It has been observed that there is no clear distribution of power between the CSITA and the CSI dioceses. The outcome is that dioceses follow their own accounting methods and procedures for selling properties, and the Power of Attorney or the bishop who is the chairman of the diocese can manipulate the diocesan machineries to deal with the properties directly in whatever way he or his party likes. Bishops have a big advantage over selling properties and spending money according to their plan when they have an administrative committee consisting of their coteries in the place of democratically elected Diocesan Councils. Over the past 71 years, several bishops have formed Trusts of their own while they were in office by grabbing some of the prime properties of the Church worth many crores which will eventually end up as their personal/family properties!

The Persistent Spectator Role of the CSITA Management Committee

In the earlier years, particularly in 1956, the concept of "Bare Trusteeship" was strongly emphasized by the CSI to define the role of CSITA. In the fifth Synod of the CSI held in 1956, certain rules for the management of properties were drawn up by the CSITA. According to them, the meaning of bare trustee was that in cases of sale, rent, lease or mortgage of properties, i) the matter was first considered by the Diocesan Property committee which meant the initiative came from the local diocese where the property was situated; ii) the recommendations were sent to the Synod Executive committee which did not decide in favour of the sale if the diocese was selling it with a view to use the money for some other expenditure; iii) the Diocese sent a brief history of the property, and finally the Synod Executive decided on the sale and the CSITA Managing Committee acted upon it; iv) a certified copy of the sale doc-

ument was sent to the Secretary of the CSITA within the month of the completion of the sale.[92]

The role of the CSITA was to simply watch the process of sale as it happened as a matter between the diocesan property committee/diocesan council and the Synod Executive. CSITA stood as a dummy trustee watching the sale effected by a diocesan committee which further implied that each diocesan council had a set of rules about the management of the immovable properties in the diocese. The CSITA would receive a copy of it and also be informed if there were changes made to the rules. A biennial report on the status of the properties was prepared by the Property Committee of each diocese and was duly read at its respective councils. This report was "deemed as Report of the properties held by the C.S.I.T.A. in that diocese."[93] The CSITA is therefore a puppet in the hands of the CSI administration. How can we speak of "corporate governance" in this situation?

However, in cases of some properties, the Dioceses might ask the CSITA to function directly as the Managing Trustee so that the property concerned would be acquired in the name of CSITA and transferred to CSITA as its Managing Trustee. On the whole, the role of the CSITA in the management of the CSI properties was minimal and even detached. The units within the CSITA, namely the dioceses, had a stronger role to play, and they were activating and carrying out the property related matters, while the CSITA acted as a bare or a passive Trust having little to do with the management including in the sale or procurement of immovable properties. The sixth synod of 1958 r eiterated the decision made in the first Synod meeting in 1948 that all properties both movable and immovable were to be acquired and held *in the name of the*

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[92] *Church of South India: Fifth Synod: Proceeding of the Minutes,* 1956, pp. 135-137.

[93] *Church of South India: Fifth Synod: Proceeding of the Minutes,* 1956, p. 137.

CSITA.[94] Such an important organization had no office of its own, and it utilized the office space with clerical assistance from the Madras diocese. There was no Key Managerial Personnel to actively run and monitor the Association as per the Companies Act 2013.

Are all CSI Properties and Buildings Enrolled under the Name of CSITA?

"CSITA even as bare trustee had to undergo challenges as the Land Ceiling legislation stood in the way of properties being transferred to CSITA. According to the Land Ceiling Act, no organization or person could hold more than a certain amount of lands and properties. But this ceiling limit did not apply to Charitable Trusts such as CSITA. This opened up the floodgate of all the managing trustees of missionary societies transferring their holdings to CSITA. The Wesleyan Methodist Missionary Trust Association, the Methodist Missionary Trust Association, the London Missionary Society Corporation, the Basel Mission Home Board, the SPG in Foreign Parts, the Church of Scotland Mission, the American Arcot Mission, the Australian Presbyterian Mission and the American Madura Mission were either actively transferring or making arrangements or considering the transfer of land holdings and buildings to CSITA."[95]

A new trend in the style of the functioning of the CSITA occurred after it was happily reported in the Eleventh Synod Meeting held in 1968:

We are happy to report that since the last Synod:-

The American Madurai Mission has transferred all its properties in Madurai-Ramnad Diocese to Church of South India Trust Association.

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[94] *Church of South India: Sixth Synod: Minutes of The Proceedings,* 1958, p. 30.

[95] *Church of South India: Eighth Synod: Minutes of the Proceedings,* 1962, pp. 137-139, also *Minutes of the Ninth Synod,* 1964, p. 132; *Minutes of the Tenth Synod,* 1966, p. 199.

The London Missionary Society has transferred all its properties in Kanyakumari Diocese to Church of South India Trust Association.

With the above transfers, it may be considered that all the Foreign Trusts in the C.S.I. area have transferred their properties to Church of South India Trust Association except a few properties.

Now that all Foreign Trusts have almost transferred their holdings to Church of South India Trust Association, it is essential that adequate arrangements are made for proper administration of immovable properties and funds held in Bare Trust by the Church of South India Trust Association. *The question of further strengthening the Association's office is under consideration.*[96]

From a Bare Trust towards a Centralized Management Authority

Since then, CSITA began to move away from the "bare trust" status as properties were kept being piled on them. One of the reasons was that the dioceses which were "managing" the immovable properties with CSITA passively looking on began to be very irregular in sending reports of the information on the sale and procurement of properties to CSITA.[97] The time had come for CSITA to take a more active role than just operating as an office space to hold records of investments and properties. This centralizing action has given the CSITA some prominence and importance. In the year 1971, the number of office staff at CSITA was increased, and each diocese was charged a higher management fee to which all dioceses agreed.[98] By 1972, CSITA was holding Rs. 2 crores (287,000 USD) as investment and properties of 16 dioceses were vested in it. The office then became a section within the Synod Secretariat and the work almost doubled. The Report of 1972 reads,

[96] *Minutes of the Proceedings of the Eleventh Synod,* 1968, p. 158.
[97] *Minutes of the Proceedings,* 1970, p. 160.
[98] *Minutes of the Executive Committee,* 1971, p. 79.

"Office had considerable increase during the biennium. It was found necessary to increase the staff."[99] CSITA began to insist that the CSI Synod rules for the management of immovable properties should be strictly adhered to by the dioceses. In the next biennium of 1974, the investment under CSITA almost doubled as the majority of the Mission Boards had transferred the funds to the CSITA accounts.

By 1974, the CSITA found itself to be in assertive position and taking initiatives in applying controlling measures over the properties which it still held as a bare trustee. Regarding the selling of immovable properties, the dioceses were asked to produce "a proper valuation of properties worth 1 lakh and over either by an authorized valuer or a recognized estate agent, *[which]* shall be given with the application for permission to sell."[100] Even if apprehensions and doubts existed between the missionary societies and the CSITA, they probably did not appear in the Synod official minutes or reports.

The CSITA was constantly urging the dioceses and the mission societies to hand over the properties. SPG and the Methodist Missionary Society handed over the properties in stages. The trend was that the properties should belong to the Church and not to the Mission society. Another reason may well be that the property values began to escalate in the 1970s and 1980s due to global liberalization policies that brought significant changes in the economy and real estate business. The office-bearers of the CSI who are also the ex-officio members of the CSITA Managing Committee aspired to hold the multi-crore value of properties and buildings under their supervision and control. The Synod office-bearers, the Moderator, the Deputy Moderator, General Secretary and the Treasurer become automatically ex-officio members of the CSITA General Body and also become directors in the Committee of Management as per the MoA and the AoA. This sealed the authority over the

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[99] *CSI: Minutes of the Proceedings,* 1972, p. 110.

[100] *CSI: Minutes of the Proceedings of the Synod,* 1974, p. 93.

properties by the CSI leadership who probably regarded themselves as the settlors replacing the original owners of various missionary societies.

Appointment of Bishops as Attorneys in the Diocesan Units by the CSITA

It was at this time that the bishops came to assume full control over the sale of church lands under the guise of CSITA Attorneys. The Bishops' meeting held on 26 J anuary 1977 mooted the idea of appointing Attorneys by the CSITA in each diocese consisting of 3 persons among whom the bishop of the diocese would be the prime holder of attorney. This method was further amplified in the Synod *Guidelines* of 1988 which states, "CSITA is the statutory appointed holding body in which of all immovable properties in the various dioceses of the CSI are administered."

It should be noted that CSITA is not a statutory body which is normally appointed by the State with power to create legislation. The CSITA is just an incorporated body expected to function under the law and the provisions enshrined in the Companies Acts legislated by the Parliamentary statutory authorities. The CSITA is not accorded statutory status in such a way that it can share its power with another entity or individual on its own. It needs to consult the Companies Act and on the basis of it can share responsibilities to other committees, but those committees cannot take the place of the Board of Directors which is the decision-making body having authorized signatories. It is a great error and misunderstanding to assume that CSITA can appoint individuals or a group as Attorneys in charge of properties empowered to sell, mortgage, etc., in each diocese.

Further, each diocesan Executive committee was asked to send the names of six persons including the bishop of the diocese who would hold the power of attorney given by the CSITA. This marks a change in the history of CSITA as it slowly became the sole controlling and super-

vising body over the diocesan properties and funds. In 1979, the Synod had evolved rules for movable and immovable properties to be followed by CSITA, and each diocese was asked to have its own rules.[101]

CSITA also was given the recommendatory right of supercession over the dioceses' management of properties and finances, but it is still decided and executed by the CSI Synod. The final section of the rules reads thus: "If at any time it is found that the finances of a Diocese are not properly managed, the Synod Executive Committee/Working Committee, on the recommendation of the Church of South India Trust Association, shall have the right to appoint an Administrator who will take charge of the Diocesan Accounts, Finances and Properties and hold office until the financial affairs of the Diocese are considered by the Synod Executive/Working Committee, in consultation with Church of South India Trust Association to be in order."[102] This was quite intimidating that the administration of the dioceses of the bishop who refused to toe the line of the CSI hierarchy would be taken over by the Moderator under some pretext or other. "Administrative Committees" of the Synod were set up in such dioceses to disarm the diocesan bishop and make him simply the puppet of the Moderator in his own diocese. This provided plenty of direct opportunities for the Synod office-bearers to interfere in property matters, and in some cases to effect sales which were seemingly illegal and dubious.

The general plight in the 1980s can be summarized thus: "However, there are instances of purchases and sales of properties by the dioceses and Units without prior approval by the Senate Working Committee/CSITA and in accordance with the CSI Synod Rules for management of movable and immovable properties. Such actions are invariably challenged by other interested parties, and in most cases, the very bona fides of these transactions were questioned. It is imperative for Dioceses

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[101] *CSI Minutes of the Working Committee,* 1979, pp. 191-192.

[102] *CSI Minutes of the Working Committee,* 1979, p. 192.

to strictly comply with the Synod rules so as to avoid complaints."[103] The Synod is the Master who extended its influence and control on properties in almost all dioceses, and the CSITA was the puppet in the hands of the CSI Synod office bearers who are ex-officio members of the CSITA Board and in the General Body.

Somewhat regularly until the 1990s, the role and functions of the CSITA were outlined in the reports of either the General Secretary or the Hon. Treasurer or the TA Manager, annually presented at the Working Committee/Executive/Synod meetings. Reports including the up-to-date list of properties sold (diocese by diocese), details of endowments and bank deposits along with the auditor's statement were documented. The Reports that have appeared in the last twenty years do not have the register of movable and immovable properties as part of the report as the earlier ones had from time to time.

List of Lands Sold Were Attached to the CSITA Reports in Former Years

There has to be a proper and up-to-date register of properties managed by the Trust in a printed form. It should be treated as an urgent task that CSITA has a website where one can trace a property and procure its details such as *Patta*, title deeds, survey number etc. In the cases of sale of properties, tenders or advertisements can be put on the website to obtain wider publicity and response. By this method, no secrets over the property are leaked out and it would help to have a quicker and a better update of the all the properties, their past and present situations and conditions.[104] This is not the case in the twenty-first century. No CSITA Report ever had the list of properties sold attached to it. The minutes are

[103] *CSI Eighteenth Synod: Minutes of the Proceedings*, Madras: Diocesan Press, 1982, p. 166.

also not available for the ordinary stakeholders of the CSITA, i.e. the general members of the CSI.

THE CSITA IN CRISIS: The Disturbing Side of the CSITA in the 2000s: Kodaikanal Bungalows Sold

Things began to change rapidly in the style of the functioning of the Association in the first decade of the 21st century. The Report presented by Mrs. Pauline Sathyamurthy in the 31st Synod of the CSI, 2008[105] made reference to sales of several expansive and valuable properties of historic or symbolic value with bungalow(s) built on them. Although the Report claims to have cleared the sales by the Managing Committee of the CSITA, it still lacks several crucial and important details that ought to have been revealed in a sale of a huge property lying in a hilly summer resort area near Madurai, Tamil Nadu. The CSITA Report of the year 1988 presented by K.J. Victor David stated clearly that the 10 bungalows in Kodaikanal and the three in Ootacamund were brought under the centralized administration of the CSITA.[106] The Report of the Hon. Treasurer presented at the CSI Synod of 1990 confirmed that all missionary bungalows in Kodaikanal and Ooty were enrolled by the CSITA, except a few owned by the RCA (Reformed Church of America) missionaries, and they are all "under the control of CSITA".[107] The situations that necessitated the sale of some of those bungalows are noted differently in the Report of 2008.[108]

The Charlemont Bungalow in Kodaikanal with its surrounding land of 6.79 acres was sold for Rs. 3 crores after negotiations with the buyer

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[105] *Church of South India: XXXI Synod: Minutes of the Proceedings,* 2008, pp. 225-227.

[106] *Church of South India: XXI Synod: Minutes of the Proceedings,* 1988, p. 113.

[107] *Church of South India: XXII Synod: Minutes of the Proceedings,* 1990, p. 5.

who *offered* to pay that amount. Vital details are missing in the report as to the reference numbers of the relevant minutes of the decisions taken by the committees concerned so that a reader could understand the whole procedural details or find easy access to get them. A layman, not well-versed in Real Estate business will get chill in his body over the utterly deflated amount for which such a valuable property was sold or thrown away. Adding to this chill, we read that another bungalow along with its compound area (Rosenath compound) measuring 4.59 acres consisting of small cottages was sold for the paltry sum of Rs. 1.70 crores. What makes the readers hearts freeze over these sale transactions is that both were set to be sold for a price not only many times lower than the market values, estimated by the locals at 5-10 crores an acre. Also the land price was fixed according to what the buyers were offering as the value for the property.

One more property in Kodaikanal was leased out in the same biennium. A Holiday House in Kodaikanal which has a retreat centre that can accommodate 110 members was leased out for a sum of Rs. 18,000 per month for a period of fifteen years. The lessee was the Karnataka Central Diocese which would greatly benefit from this transaction. KCD was also a beneficiary as it received Rs. 3 crores from the sale of the above bungalows. No details are given as to why all these properties had to be either sold or leased out in the manner it was done, or how and whether it could be justified that the properties lying in a particular diocesan region had to be sold directly by the CSITA and the moneys used for the development of the financially sound units like the CSI Synod (for constructing a third floor in the CSI Synod centre so that the Moderator and the Deputy-Moderator could have a rooms of their own) and the KCD (for constructing a shopping complex in Vishranthi Nilayam, Bangalore).

The same Report of 2008 tabulates the various sale deeds that were signed in 9 dioceses with an area totaling 61.16 acres put up for sale

which fetched a sum of only 16.7 crores, and during that biennium the government also had secured/acquired/purchased about 72.5 acres of properties from CSITA for a poor sum of 1.2 crores. The table of sales drawn in the CSITA Report of the Synod, 2006[109] shows that 39 acres of property in 8 dioceses were sold for 16.7 crores which included a sale of 8.75 acres of property in Kanyakumari diocese for just Rs. 43,750. Sale details such as Patta no., survey no., reasons for sale, tenders, market value, details of attorney, etc., for each of the properties are not provided in the Synodical Report. It is noted in the CSITA Report presented at the Working Committee of the year 1985 includes complete details of the each of the properties that were disposed through sale were rightly tabulated. But the practice did not seem to have been followed in the subsequent years.[110]

Someone or an independent body might undertake to study and probe these sale transactions by applying strictly the following qualifying conditions for approving a property for sale. They are as recorded in the CSITA Report of Synod, 2000: i) the property lying in out of the way places where there are no proper roads and pathways to reach the land; ii) lands susceptible to encroachment and/or those under litigation; and iii) lands that may not be useful or required for the development of the diocese. When such a category of land is placed for sale, it is understood that the money from the sale should be used not for administrative expenses or to meet a deficit but to be made into another capital asset. The report drawn by Frederick Williams in 2000 concludes with this statement, "The Trust ensures that these requirements prescribed in the Income Tax Act are scrupulously observed by the Dioceses."[111] How does one convince the Church and the Income Tax authorities that those

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[109] *Church of South India: XXX Synod: Minutes of the Proceedings,* 2006, p. 256.

[110] *Minutes of the Working Committee,* 1985, pp. 195-204.

[111] *Minutes of the Proceedings,* p. 143.

sales were in accordance with the characteristic activity of an Income Tax exempted organization?

How do we interpret these business transactions? A poor and unskilled business? Or are the children of CSI to assume that the rest of money was taken and utilized in another way? Or are the figures printed false ones, and are the readers to assume that the real sale price was high and that the account in the books shows only 3 crores? The CSITA members who decided to sell the Church assets in this fashion for the lowest of low prices, would they do the same if they had to sell their personal properties? Christian stewardship considers every piece of property as a religious symbol and they are sanctified instruments to bear witness to the values of the Kingdom of God on earth. Every piece of property both movable and immovable has the sign of cross on it and therefore any irresponsible and improper disposal of those consecrated goods and property can constitute *corrupt* conduct. Was there a breach of policy and procedure in the sale of these properties?

Is it to be called poor management and insincere commitment when it was reported to the Executive Committee, 2004 by the Hon. Secretary of CSITA that "Patta have not been obtained for most of CSITA properties and some of the Patta still stand in the name of Foreign Missions",[112] and that CSITA was requesting all the dioceses not only to obtain Patta for CSITA but also change the Patta to the name of CSITA. A similar injunction was given to all dioceses in the year 1992 after 45 years of its registration, that "the Dioceses must identify the Property, obtain the Pattas/Kattas and encumbrance Certificate from the concerned authorities."[113] By 1992, no verification of the Title Deeds of the

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[112] *Church of South India: Minutes of the Executive Committee,* 2004, p. 138-139.

[113] *Church of South India: Thirty-Third Session: Minutes of the Proceedings,* 1992, p. 182.

properties held by the CSITA was undertaken. Further, "no value have been assigned to the immovable properties of the Trust."[114]

One wonders what the members who were serving in the CSITA and in the Managing Committee since 1948 thought about their responsibility and accountability. In an Executive committee meeting of 2004, the Treasurer's report carried a note of self-appreciation, that "the CSITA have developed considerable expertise in administering the funds entrusted to them".[115] Can the same thing be said for the handling of properties? Based on the official reports alone, it can be clearly seen that the property sale dealings were operating like a pinball hitting between the bumpers, one bumper hits to the other and back! The game goes on between a few chosen ones! The 15th century Czech Reformer Jan Hus (1369-1415) declared that "all possessions of the Church are sacred and to touch them were a sacrilege."[116] He "demystified the institutional church and showed that it is a human institution in need of constant reform and accountability both to God and to the people it serves".[117]

The CSITA of Today in a Precarious Situation: Facing the Prospect of Punishment for Fraud in the Companies Act 2013

India has witnessed some massive corporate scams like that of UTI Scam, Saradha Chit Fund, Satyam Computers, and the Cobbler Scam, to name but a few. "The term 'corporate fraud' encompasses a wide range of unethical and illegal practices that officers and employees undertake in any small, medium or big scale entities. While anyone in an organiza-

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[114] *Church of South India: Thirty-Third Session: Minutes of the Proceedings,* 1992, p. 186.

[115] *Church of South India: Minutes of the Executive Committee,* 2004, p. 71.

[116] *John Hus at the Council of Constance,* by M. Spinka, New York: Columbia, 1968, pp. 42-43.

[117] C. D. Atwood, *The Theology of the Czech Brethren from Hus to Comenius,* The Pennsylvania State University Press, 2009, p. xcv.

tion can commit a crime of corporate fraud, they are usually committed by managers, executives, officers or others who are in a p osition of authority and having the ability to control management within such organizations."[118]

Is the CSITA emerging as another illustration for corporate scam? In view of the same, several complainants against the CSITA took up issues with the various statutory authorities including the Ministry of Corporate Affairs, New Delhi, the Regional Director and the Registrar of Companies, Chennai. Many of the complaints have still not been addressed in spite of several letters and reminders sent to the company. There seems to be a growing suspicion in the public perception that the business of the Company is carried on for a fraudulent or unlawful purpose. The Company was subsequently prosecuted by the RoC in 43 cases connected with money and abuse of power. The cases are now pending in the Economics Court in Egmore, Chennai. At least two of the cases were disposed of by levying a fine of Rs. 1,000 on the CSITA directors including Bishop Kadasham. But the orders have been appealed against in the higher courts. The most important development in the modern CSITA is that the Serious Fraud Investigation Office is at the door-step of the CSITA institutions.

We are not living in a world that is honest and trust-building, but prone to fraud and corruption. It is further observed, "The (old) Companies Act, 1956 did not have the required provisions to deal with the magnitude of fraudulent acts the country was witnessing in those years. With the growth in economic crimes in India and sensing the need to have the stringent provisions to tackle this problem, the Companies Act,

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[118] "So you think you can get away with fraud", //economictimes.indiatimes.com/articleshow/54749482.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, accessed on 21 June 2018.

2013 (Companies Act) for the first time introduced the provisions related to fraud in a very exhaustive manner. The Companies Act now also imposes civil as well as criminal liability on the fraudster for misconduct and wrong doing within the organization." [119]

There is not a single occurrence of the word "Fraud" in the Indian Companies Act 1913. The 1956 Act added the following sections which aim to prevent and punish fraudulent activities. The following sections should be noted: "Penalty for fraudulently inducing persons to invest money" (sec. 68); "Power to restrain fraudulent persons from managing companies" (sec. 203); "Fraudulent preference" (sec. 531); "Liabilities and rights of certain fraudulently preferred persons" (sec. 533); Penalty for frauds by officers (sec. 540); "Liability for fraudulent conduct of business" (sec. 542)

The CA 2013 has the following provisions to act against unlawful and fraudulent activities of companies. The following sections may be referred to: Serious Fraud Investigation Office [sec. 2(83)]; Punishment for fraudulently inducing persons to invest money (sec. 36); Damages for fraud (75); Establishment of Serious Fraud Investigation Office (sec. 211); Investigation into affairs of Company by Serious Fraud Investigation Office (sec. 212); Fraudulent application for removal of name (sec. 251); Fraudulent preference (sec. 328); Liabilities and rights of certain persons fraudulently preferred (sec. 331); Penalty for frauds by officers (sec. 337); Liability for fraudulent conduct of business (sec. 339); Punishment for fraud (sec. 447).

"The Act has introduced 'fraud' for the first time and given it a wide scope. Apart from the definition, the Act also contemplates presumption of fraud in certain instances. For example, furnishing false information

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[119] "So you think you can get away with fraud", //economictimes.indiatimes.com/articleshow/54749482.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, accessed on 21 June 2018.

or suppressing material information upon incorporation, providing misleading or false statements in prospectus, issuing duplicate share certificates to defraud, fraudulently transferring or transmitting shares and fraudulently applying for removal of company's name. For the board, this may have varied connotations. Proof of negligence or wilful misconduct by a director may weigh heavily in adjudging guilt for fraud. It is immaterial if there is any actual wrongful gain or loss, and proof of intent to defraud will suffice."[120]

The 2013 Act thus provides for more stringent provisions for companies incorporated with charitable objects [section 8(5-11) of 2013 Act].

Sec. 8(11) of the New Companies Act states that a Company is punishable: "When it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under Section 447." In such case, the Serious Fraud Investigation Office will be mandated to probe into the Account Books and other financial records, illegal sale of assets etc suspecting Fraud.

Sec. 8(6): "The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest …"

The Investigation by the Serious Fraud Investigation Office (SFIO)

According to Sec. 211(1) of CA 2013, "The Central Government shall, by notification, establish an office to be called the Serious Fraud

[120] "The New Provisions in Companies Act 2013, For Protecting Rights of Stakeholders", http://shodhganga.inflibnet.ac.in/bitstream/10603/183412/6/chapter%204.pdf p. 103.

Investigation Office to investigate frauds relating to a company." The SFIO is given powers to investigate corruption and fraud in companies, to prosecute the fraudsters and punish them is a new feature of the CA 2013. It was not found in the 1956 Act. The Serious Fraud Investigation Office (SFIO) is a fraud investigating bureau in India. The SFIO is a multi-disciplinary regulatory body and was set up by Govt. of India under Ministry of Corporate Affairs, comprising of specialists in the diverse fields such as (i) banking; (ii) corporate affairs; (iii) taxation; (iv) forensic audit; (v) capital market; (vi) information technology; (vii) law; or (viii) such other fields as may be prescribed. The Central Government may appoint, according to its Rules, persons having expertise in the fields of investigation, cyber forensics, financial accounting, management accounting, cost accounting and any other fields as may be necessary for the efficient discharge of Serious Fraud Investigation Office (SFIO) functions under the Act. (Notified by the Government Companies (Inspection, Investigation and Inquiry) Rules, 2014. No. 3, on 31 March 2014). The SFIO received lawful status after the charter of the Serious Fraud Investigation Office was issued by the Government on 21st of August, 2003.

Section 212 of the Indian Companies Act 2013

Sec. 212 is easy to understand even by laymen and non-experts and therefore is important that it is read and understood by every member of the church. The subscribers to the church must develop a habit of referring to the Act and learn to read it in conjunction with its Rules so that they acquire knowledge directly from authentic sources.

212.

(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, subsection (1) of section 38, subsection (5) of section 46, sub-section (7) of section 56, subsection (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Fraud

Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all

such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.

The Indian SFIO and Global Fraud Investigation Agencies

The Fraud Investigation Service in UK has a higher success rate (85%) in investigations leading to convictions than its Indian counterpart which was founded only in 2003 and does not have an inspiring record. The US Corporate Fraud Task Force's conviction rate is also higher as it brought to book several fraudsters who preyed on Church members, and had them arrested. Nevertheless, the thirteen-year-old SFIO in India, which is in the process of being revamped, has touched some landmarks of successful investigation leading to convictions and arrests. This was achieved despite speed-breakers and delays in the administrative and legal systems in India.

Further there is a shortage of qualified experts from statutory and law enforcement agencies to conduct the probe. This is the worrying factor in the investigation process in the SFIO. It is hoped that there will be good supply experts from various Government departments and law-enforcement bodies working together to unravel corporate frauds.

The SFIO was seen as a toothless body in its initial period but in 2012 its powers have been expanded. It has now become "a statutory body with the ability to initiate prosecution". "The director of the SFIO will have the power to arrest persons if he has reason to believe that

such persons are guilty of certain offences, including fraud under the Companies Bill. An investigator of the SFIO will have the powers vested in a civil court under the Code of Civil Procedure with respect to discovery and production of books of accounts and other documents, the inspection of books, registers and other documents and the summoning of and enforcing of attendance of persons." SFIO in India is still in the process of evolving to reach the stature of the Fraud Investigation Agencies in UK and USA.

The Report of the "Economic Times"

The members of the Church of South India woke up on Friday morning to hear the news through *The Economic Times* (8 July 2016) that the Indian Government has roped in the Serious Fraud Investigation Office (SFIO) to probe into the alleged illegal sale of properties, false accounting, other serious financial irregularities committed and effecting changes to the rules of the Church of South India Trust Association without the approval from the Government. The *Economic Times* reported, "A report by RoC strongly recommended an SFIO probe in a January 2016 letter to the ministry of corporate affairs. The Prime Minister's Office on October 10 last year forwarded a petition seeking swift action to the corporate affairs ministry, providing impetus to the probe effort."

The Newspaper further reported, "The RoC report lists a slew of perceived violations: alleged misappropriation of funds, concealment of facts in electing bishops, illegal sale of property and so on. As an instance, according to the RTI document, the church showed Rs 1,198.3 crore as total income in one annexure and Rs 1,317.3 crore in another for the same financial year." "It appears the business of the company is carried out on a fraudulent/unlawful purpose," read the report. "The

fraud office, which has prosecuting powers, will consider possibilities of criminal conspiracy and diversion of funds for personal gain."[121]

This has happened to a church which constitutionally believes in its autonomy from the State since the time of its formation in 1947 and has thus far acted as if it had "the right to be free in all spiritual matters from the direction or interposition of any civil Government". Now the State is turning to undertake the spiritual task of exorcising the devils that seem to lie behind all types of account books and property dealings.

The SFIO wrote the Directors of the CSITA on 6 July 2016 under the mandate of the Ministry of Corporate Affairs ordering them to submit copies of documents/information of the following to the Inspector and Investigating Officer; they also conducted investigations in some of the dioceses asking for them for the following documents: i) The Memorandum and Articles of the Association of the CSITA; ii) Copy of books of accounts of the CSITA for the last seven years including Ledgers and Trial Balances; iii) Copy of minutes of Board of Directors meetings and Annual General Meetings; iv) Copies of Disclosures of interest given by the Directors to the Trust if any; v) Details of Bank Accounts of the CSITA (operational and closed) i.e. name of the Bank and Branch, Account no., Nature of Account, Dates of Opening; vi) Copies of Income Tax returns of the CSITA for the last seven years; vii) Copies of financial statements [Balance Sheet, and Income and Expenditure Statement along with schedules] and Annual Returns filed with ROC for the last seven years; viii) Copies of service Tax Returns and Customs duty paid by the Trust for the last seven years; ix) Copy of the Register of Fixed Assets/Immovable Properties; x) Copies of Lease Agreements entered by the Trust on immovable properties and Charge creation/Modification of Trust immovable properties; xi) Details of on-going court cases of the Trust and judgements copies of the court cases. It was expected that a

[121] //economictimes.indiatimes.com/articleshow/53106502.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

report will be ready within six months. But SFIO investigations have taken longer in other cases of investigation.

According to the Indian Companies Act 2013, any non-compliance with the above directions shall make the Church of South India Trust Association and all its Directors liable to be prosecuted under section 217(8) of the Companies Act 2013.

CSITA Is Making Every Effort to Impede the SFIO Investigation

The members of the CSI all over the world should respect the Indian Government's decision without criticising it as a repressive act by a Hindu Government to threaten or bully the Christian minorities. Let us not stir up our minority complex to hide our sins and throw the blame on others. India constitutionally believes in equality of all religions, and as the church in India we pray for the government of India and its leaders every Sunday in our churches. The church should be open for correction and reproof by the State when those measures are particularly aimed to cleanse the church from evils of corruption. The people of the CSI should be in constant vigil that the powerful do not set up lobbying at the political level to cloud or derail the investigation. It is desired that the silent-spectator mindset found among theologians and lay and ordained will be demolished by now so that they all begin to work towards a constructive change.

The familiar musical prelude played by the bishops and the Synod office-bearers that the allegations of corruption that are brought against the Church authorities are engineered by the disgruntled and anti-church people who failed to occupy positions of power in the church, thus implying that the ones at the seats of power illegally are certified successful men chosen and attested by God. That myth will no longer work as the Moderators, bishops and lay-members who were in authority will have to face the music from the investigating supremo, the SFIO. It is

time, surely, for the skeletons to come tumbling down from the closets of the mighty and the high-profiled!

We should beware of the arousal of religious affinity using caste and regional affections by fraudsters to gain sympathy and trust from congregation members at this SOS stage.

The Defiant Reactions from Bishop Dyvasirvadam

The top trustee, the (erstwhile) Moderator, is Rt. Rev. G Dyvasirvadam, who believes that the special audit now undertaken by the income-tax department into the church's books for the period 2003-12 will prove that it was not a case of deliberate fraud.

Does Bp. Dyvasirvadam admit that the SFIO investigation signals wrong-doings in CSI/CSITA? But, according to him, it is not a matter of "deliberate" fraud but a "mild" and "innocent" fraud. Lack of knowledge about the Law cannot be an excuse. Ignorance cannot clear the offender from guilt. It is enough to know that one is undertaking acts that constitute an offence.

The mandates and objectives of the special audit from the Income Tax office are in no way similar to that of the SFIO investigation. Special Audit indicates conducting of investigation to find out "the nature and complexity of accounts" and to see if any income has escaped assessment, whereas the latter is an Order from the Government to look into a reported economic offence and to investigate cases of serious corporate fraud, a substantive offence. The report from The *Economic Times* states, "The Registrar of Companies, through an inspection audit last year and a series of income-tax audits since 2010, found the institution (CSITA) was not providing a clear picture of its accounts and not maintaining a list of properties." The Special Audit will further look to confirm these irregularities rather than showing the escape-route when it is almost established that the CSITA was guilty of fraudulently managing its books.

Where are the books? There used to be fuller reports on sale of properties in the Synod Minute books which were published each year for members to read and find details. In the last 10 years it is very hard to see any source carrying details on property matters. I hope that the files in the office and with the custody of individuals will not vanish, and that irrelevant documents are not dumped before the officials to frustrate a fair, complete and comprehensive investigation.

Fraudulent practices were perpetuated on the CSITA by those who were given a stewardship role to protect and manage its assets. It is not enough just to spot the thieves and understand their characteristics but to block the opportunities that are easily available for fraud or theft in the system itself. Hence those who took complaints to the official notice of the Government agencies should continue to do so in order that the Government consistently gives the go-ahead permission to the SFIO at every step of the investigation until the perpetrators are identified and punished and stolen assets are recovered from them. A new type of management is necessary with barriers preventing fraud and theft which will wash the corporate sins of the church away. If no corrective measures are taken by driving the legion of devils out into the pigs, sustainability of the CSI will be made much more difficult in future.

"There was no fraud"

Bp. Dyvasirvadam contradicts himself later by saying, "There was no Fraud". It is for the SFIO to find out and tell us that after a thorough inquiry by experts drawn from various departments. Fraud is basically "deception and dishonesty" and a breach of morality. Everything cannot be brought under an umbrella offence of fraud, but persistent offenders are incapable of repenting even at the threat of punishment. They are not shaken! For him it is "business as usual" by doing the things he enjoyed doing.

"Purported Irregularities happened before his time at the helm"

After a few seconds, Bp. Dyvasirvadam admits what he calls "purported irregularities" and claims that they happened before his time at the helm. This excuse makes him a buck-passer implying that other persons are the cause for all the discrepancies. His allies and friends who stood with him shoulder to shoulder in elections and electioneering, achieving victory for him by questionable means and supporting him even at the worst times by risking themselves should wake up to see the reality that Bishop Dyvasirvadam is blaming them for all the alleged misdeeds. One would expect from a power-wielder for 20 years at the corridors of the CSI Synod and other international forums a clear message of "willingness to face" any probe and "ready to accept" any punishment if convicted.

"Even if one diocese submits accounts with a delay, the entire church gets a bad name," he said

The SFIO becomes involved only in "serious" cases, particularly cases in which there are preliminary official reports of serious "financial statement fraud"; it does not take up cases of delayed submissions of audited accounts. The SFIO has already sensed abuses of public money in the case of the CSI through a series of reports from the Registrar of Companies, the first level of detecting the problem and then a formal mandate to start the investigation coming from an Order from the Prime Minister's office.

Dyvasirvadam says that rural parishes have not been prompt in recording income and expenditure as part of their functioning, which resulted in delayed filings with some discrepancies. It is a sheer condescension that the Bishop is showing to his people a witless condescension and moral superiority as if he is more important or more intelligent than the rural folk. Most bishops are chosen from below middle class in Indian society and have had spent their lives in villages before ascending

to the episcopal thrones, and for them to brand the villagers as "backward" is atrocious and worthy of condemnation.

"This is the result of backwardness, not corruption," Dyvasirvadam told The Economic Times by phone

Corruption is a covert activity and is hard to detect. This gives the edge to religious leaders to claim innocence and moral integrity because they are aware that proving them to convince all five senses of a human being is the hardest or well-nigh impossible task. The specific type of corrupt activities and transactions are done behind closed doors, and a high level of confidentiality is maintained between the "givers" and the "receivers" of bribes. Bribes are both offered and extorted. Episcopal seats purchased with money are hush-hush deals and nobody involved in it will dare to admit it openly and publicly. These give tremendous advantage to hide the deals and deny openly that there is corruption.

The CSI is engulfed in systemic corruption, well-oiled by persons in power. It seems that for the bishop "corruption" is probably a semantic issue. It is defined basically as "the abuse of public office for private gain". It means that an official accepts, solicits, or extorts a bribe and also sells church property to obtain secretly personal gain. In corruption, "a position of trust is being exploited to realize private gains beyond what the position holder is entitled to" and "even if the gain involved is not illicit under applicable law". This type of corruption is tolerated and even encouraged in the CSI.

The motivation for fraud and embezzlement is the pressure for the "need" of money to pay back a personal debt, accumulate wealth for oneself, win elections and to maintain authority and control in all circumstances. The system provides opportunities for fraudsters to have access to assets and also ways to conceal the illicit deals. They rationalise in their minds that "fraud" is acceptable, and as a result lies are generated to justify the covert actions.

The Court Battles to Stall the SFIO Investigation; The First Attempt to Stop the SFIO Failed

There were several other orders issued earlier than 6 July 2016. The petitioner Vimal Sukumar of Medak diocese, a director of the CSITA prays for *Mandamus* declaring the order for the SFIO investigation dated 10.06.2016 of the Ministry of Corporate Affairs and the consequential communication dated 02.08.2016 and the notice dated 21.09.2016 of the SFIO, as illegal and unconstitutional. We do not see in the final court order the consequential communication of 02.08.2016 and 21.09.2016. But we have the important letter of order issued on 10.06.2016.

The Order regarding the CSITA dated 10.06.2016:

'Government of India Ministry of Corporate Affairs No.07/131/2011-CL II (SR) 5th Floor A Wing, Shastri Bhawan, Dr.R.P.Road, New Delhi 110001 Dated: 10th June, 2016 ORDER Whereas the Central Government is empowered under section 212 of the Companies Act, 2013 to order investigation into the affairs of any company and to appoint one or more competent persons as Inspectors to investigate the affairs of the company.

2. And whereas RoC (Chennai)/RD, Southern Region, vide their report dated 2nd June, 2016 submitted to the Central Government Under Section 208 of the Companies Act, 2013 has also recommended investigation into the affairs of the company i.e., M/s Church of South India Trust Association.

3. Now, therefore, in exercise of powers conferred under section 212 (1)(a) of the Companies Act, 2013 the Central Government hereby orders investigation into the affairs of M/s Church of South India Trust Association, to be carried out by the Serious Fraud Investigation office.

4. The Inspectors appointed by Director, SFIO to investigate into the affairs of the above mentioned company, shall exercise all the powers available to them under the Companies Act, 2013. The Inspectors shall

complete their investigation and submit the report to the Central Government within a period of six (6) months from the date of issue of this order.

5. Further, if any information is required during the course of investigation, you are requested to depute some officer to coordinate with the Ministry for obtaining the desired documents/information.

6. This order is issued for and on behalf of the Central Government.
Sd/- (Himanshu Shekhar) Deputy Director

The Stay on SFIO Investigation Is Vacated for the First Time

This official mandate to investigate the external and internal management affairs by the SFIO dated 10.06.2016 was "stayed" by the Andhra Pradesh High Court by a suit (case no. WP 38841/2016) filed by the administrators of the CSI. It was a see-saw struggle at the court for one and a half years. The "stay" prevented the investigation getting closer to exposing the corrupt financial activities of the church leadership that was weakening the church and damaging its witness. The case proceedings continued in a fluctuating manner and came to an end with the court ruling on 16 November 2017 (W.P. No. 38841 of 2016) that the Ministry of Corporate Affairs should issue a fresh order to the SFIO within three weeks" so that it could restart its investigation on the CSITA. The merit of the investigation by the SFIO as to its purpose, however, was not questioned by the court.

The verdict issued by the Honourable Judge Sri. Justice S.V. Bhatt declared, "It was clarified that this Court has not examined the merits of the matter, and after perusing the record produced, the issue is remitted back to 1st Respondent (i.e. the Ministry of Corporate Affairs) for reconsideration afresh in accordance with Section 212 of the Act."

From the texts of the court verdicts one can learn that there was a major Report dated 12 January 2016 on the activities of the CSITA based on the complaints received from the Stakeholders of the CSITA. It

is to be gathered from the hints in the court verdict that that Report recommended the investigation by the SFIO into the affairs of the CSITA.

Vacated for the Second Time

Following this verdict, in the High Court of Madras a prayer was submitted by the petitioner (General Secretary, Ratnagar Sadanandha, CSITA) to quash a Report (understood to be of 45 pages) on the questionable activities of the CSITA produced by the RoC, Chennai dated 12 January 2016 (W.P. No. 32457 of 2017 & WMP No. 35754 of 2017). The Report was challenged under Section 208 of the Companies Act. It was argued that one of the procedures contemplated under the Companies Act 2013, for the purpose of ordering an investigation into the affairs of the company by "serious fraud investigating office" is on the basis of the receipt of the Report alone made by the concerned Registrar of Companies under Section 208. It was further argued that the report of the Registrar under Section 208 should have been followed by an order passed by the Central Government to support such investigations by the SFIO [sec. 212(1)].

After hearing the arguments, in the Order of the Honourable Justice Shri. M.S. Ramesh issued on 22 February 2018[122], the Judge said, "The report as such may not give a cause of action to file a writ petition, since it is for the Central Government to form an opinion and consequently, order for an investigation. In the instant case, such a decision is yet to be made and as such, the present writ petition challenging the report under Section 208 can only be deemed to be premature. In view of the same, I am not inclined to pass any order on the various grounds raised by the petitioner R. Sadananda. If at all the petitioner is of the view that the subsequent order to be passed under Section 211 is against its interest, it is always open to them to challenge the same in the manner known

[122] https://indiankanoon.org/doc/197209950/

to law." So the petitioner's prayer was turned down, and the Report of 12 January 2016 which recommended for SFIO investigation survived. The Judge did not set it aside.

The matter was then taken to Chennai High Court (WP 32457/2017) to block the SFIO investigation without making the Chennai HC aware of the verdict given by the AP High Court. Eventually that case also ended up in favour of the SFIO on 22 February 2018 and the "stay" was cleared. Yet another Writ Appeal (1306/2018) against the SFIO was filed before the Madras High Court which was also dismissed by the court. Finally, the Ministry of Corporate Affairs of the Government of India passed orders on 7 May 2018 for the SFIO investigation into the affairs of the CSITA. It is greatly welcomed by the public that the investigation is now open and that many instances of corruption and money-laundering will be traced for the benefit of the public. But the CSI party is still determined to approach Supreme Court to look for ways to block or hinder the SFIO investigation.

The Order of W.P. No. 32457/2017 dated 18 June 2018[123] summarises the issue as follows:

5. "A perusal of the records reveals that Church of South India Trust Association is registered under Section 12A of the Income Tax Act, 1961 and they used to file Income Tax Returns after claiming exemption under the Income Tax Act, 1961. While so, there was an inspection to the said Trust under Section 209A of the Companies Act, 1956 during the year 2012 and sent a report stating that 'No serious Fraud' has been brought out warranting investigation by SFIO. Thereafter, the then Regional Director Mr. B.K. Bansal sent two letters dated 14.10.2014 and 20.05.2015 to the Ministry of Corporate Affairs to conduct an investigation by SFIO. Based on the same, the 1st respondent (Registrar of Companies, Chennai) sent a Proceedings dated 12.01.2016 recommending to

[123] https://indiankanoon.org/doc/134852828/

the Ministry of Corporate Affairs to conduct an investigation by Serious Fraud Investigation under Section 212 of the Companies, Act, 2013. Following the same, the 1st respondent (RoC, Chennai) sent a Proceedings dated 02.6.2016 recommending investigation by SFIO into the affairs of the subject company at the earliest."

The Order continues,

6. On the above background, when the appeals are called today, the learned Additional Solicitor General appearing for the Ministry of Corporate Affairs produced a copy of the Order of the Joint Director, Ministry of Corporate Affairs, Government of India, New Delhi-1 in File No. 07/131/2011/CL-II (SR) issued in favour of the appellants in which it has been stated that the Registrar of Companies, Chennai vide its Report dated 13.12.2017 highlighted certain issues which necessitate the Ministry to consider ordering investigation in public interest against the appellants (CSITA). The learned Additional Solicitor General further submitted that without challenging the Report dated 13.12.2017 of the Registrar of Companies, Chennai, approaching this Court by filing the writ petition and writ appeals are not at all maintainable.

7. At this stage, the learned Counsel for the appellants submitted that the appellants may be given liberty to challenge the Report of the Registrar of Companies, Chennai dated 13.12.2017 and the consequential order passed by the Joint Director, Ministry of Corporate Affairs, New Delhi dated 07.05.2018 to relaunch the investigation by the SFIO.

8. In view of the limited prayer now made by the learned Counsel for the appellants, the Writ Appeals are disposed of by directing the appellants to challenge the Report of the Registrar of Companies, Chennai dated 13.12.2017 and the consequential order passed by the Joint Director, Ministry of Corporate Affairs, New Delhi dated 07.05.2018, if they so advised. No costs. Consequently, connected Miscellaneous Petitions are closed.

The SFIO is involved in the investigation only upon receiving an order from the central government in this regard. In other words, it cannot take up cases on its own. During the 11-year period from 2004-05 to 2015-16, the SFIO was ordered to probe 469 companies, said Minister of State for Corporate Affairs Arjun Ram Meghwal in a written reply to the Rajya Sabha. Out of them, investigations related to 252 companies have been completed and probe involving 206 firms is in progress. "Besides, investigations involving 11 c ompanies have been quashed or stayed or kept in abeyance by courts," Union Minister Meghwal said. "There is always a time lag between the occurrence of fraud, detection of fraud and ordering of investigation," he added.[124] This, of course, is the plight of the CSITA caught up in time lag.

There are three types of official inquiry: a) Scrutiny (RoC's call for information or explanation and documents relating to a company), b) Inspection (RoC's inspection of books of accounts and other records of the company with power to prosecute), and c) Investigation (investigation into the affairs of the company assigned to the SFIO by the Central Government under sections 210 & 212 of the CA 2013). It is heartening to know that an order for investigation has been given to investigate the affairs of the CSITA. It has taken almost two years before the order was given, and the investigation could not start in full swing.

"Among the many problems that the SFIO faces is the fact that it cannot launch prosecution against offenders for violations other than that of the Companies Act. SFIO has to send its investigation report to the concerned departments and many times explain the cases to them, which not only takes the sting away from the process but also delays it."[125] It is hoped that the SFIO finds efficient inspectors knowledgeable in matters of the non-profit and church-based associations like the

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[124] *Economic Times*, 2 Aug. 2016.

[125] http://zeenews.india.com/news/nation/govt-forms-committee-to-strengthen-sfio_272533.html

CSITA which is spread over the entire southern region of India in five states. The probe will not be easy and will have many challenges. The leaders may stir up the members of the church to revolt against the SFIO with false propaganda that the Central Government is set to destroy the church and its institutions. The opposition will be stiffer if an Administrator is appointed by the court/Government to manage the affairs of the CSITA.

'Stayed' by the Court for the Third Time

The news comes to us in utter displeasure that the SFIO investigation is currently (as on 31 December 2018) 'stayed' by the Chennai High Court at the time of writing the concluding part of this book. The so-called leaders of the CSI have done this. The leaders just wouldn't want to face and stand in a position of having to reply to questions of any investigation into the matters of illegal sale and mortgage of properties and massive financial irregularities. They have the wherewithal to find or set up escape routes from any statutory body chasing them for their wrong-doings. The venerable institution of leadership, the principles of just governance and the organisational culture built on transparency and accountability are under systematic destruction. We are not pointing out certain human imperfections, errors and failures that fragile human beings are subject to which need to be tolerated and corrected in Christian spirit. The CSI Synod hierarchy and the diocesan heads are accustomed to transgress law and they are negligent in financial management and as a consequence maintain false financial accounting, engaging in illegal sales of precious properties of the church, showing total disregard to the people of the church, placing the most unfit persons in positions of power so that thus appointed men and women can duly serve the bishops and Moderators in hiding their sins and misdeeds from public attention, spending lavishly the God's money for court expenses and for luxurious lives of bishops and their family members and demonising and discredit-

ing those who raise their voices against such evils of the system. The situation cannot just be easily repaired and things put together again. The culprits should be identified and punished by the Government and courts in order to cleanse the church. The members of the CSI are now pushed into the situation of rediscovering the church in order to rebuild it to serve truth and righteousness.

The CSITA Will Have an Administrator Appointed by the National Company Law Tribunal

The government regulators and the courts such as the National Company Law Tribunal (NCLT) have assessed the realities of the situation and have clear knowledge of the real state of affairs in the CSITA. The Central Government has constituted the National Company Law Tribunal (NCLT) under section 408 of the Companies Act, 2013 (18 of 2013) with effect from 1st June 2016. The NCLT is a quasi-judicial body in India that adjudicates issues relating to Indian companies.

In Sec. 408 of CA 2013, it states: "The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a P resident and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force."

The two sections 241 and 242 of CA 2013 give a summary view of the functions and powers of the NCLT.

241. (*1*) 'Any member of a company who complains that—

(*a*) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company' may apply to the Tribunal.

242. (*1*) If, on any application made under section 241, the Tribunal is of the opinion—

(*a*) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(*b*) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

An ordinary reading will convey much to the readers except it should be remembered that the word "member" does not refer to a member of the CSI but a member of the CSITA which has only 19 members. This is a great handicap to the donor or someone who pays monthly subscription to CSI/CSITA and who wishes to bring to the attention of the Tribunal practices of corruption and fraud in the CSITA. But the Tribunal will apply principles of natural justice and discretionary powers to discharge its functions. Perhaps it may waive the requirements of membership status for approaching the NCLT [see Sec. 244(1)b]**.**

The Case Filed with NCLT in 2016

A Company Petition was filed by the CSITA questioning the membership of a group of persons who approached the NCLT on the question of mismanagement of the company. The Tribunal gave the following rulings. In sec. 16 (CP 2/2016) of the order: "Further, it is worthwhile to mention that the I. A. (Interlocutory Application) under reference has been filed by the purported Honorary Secretary and Honorary Treasurer of the R1 Company (CSITA Company) who have not mentioned anything either in the I. A. or in the affidavit filed in support

thereof as to how they have been authorised to file the same on behalf of the Applicant/R1 company (i.e. CSITA). A simple mention has been made in the said affidavit that they are filing the affidavit on behalf of the Applicant (CSITA) company on the basis of the circular Resolution dated 15.9.2016. But there is no documentary evidence to prove that CSITA has authorized them to file the I. A. Therefore, they (Secretary & Treasurer) have no *locus standi* to file the I. A. The I. A. is liable to be dismissed *in limine* on this score alone."[126]

The most important sec. 18 (CP 2/2016) reads: "[…] in the given circumstances there is an urgent need to regulate the affairs of the (CSITA) company, Therefore, I proceed to remove all the directors and managing committee including the office-bearers by appointing Hon'ble Justice … as the Chairman who is authorised to nominate four suitable persons to be chosen from the sub-units/Dioceses of Churches and three office-bearers. The Chairman will recommend the names of the persons to this Tribunal for appointment as Director and as office-bearers respectively […] However, such names shall neither be chosen from the group of petitioner nor from the respondents, but they must be independent persons to be chosen from the sub-units/Dioceses of the Churches … The erstwhile management committee is directed to hand over all the documents and books of accounts and other records of (CSITA) company to the Registry of this Bench in a sealed cover within a week from the date of pronouncement of this order, so that the record could be handed over to the (new) Chairman for regulating the day to day affairs and running the management of (CSITA) company till further order."[127]

The National Company Law Tribunal has already removed the Directors and the office-bearers and has appointed a retired judge to be the

[126] CP no. 2/2016 Order dated 18.11.2016, p. 11.
[127] CP no. 2/2016 Order dated 18.11.2016, pp. 12-13.

Chairman to look into the day-to-day affairs of the company and manage it until further orders from the Tribunal.

Appealing Against the NCLT Verdict

This verdict was challenged at the High Court of Chennai (CRP 3739/2016) by the CSITA Honorary Secretary and Hon. Treasurer which issued an order on 28 November 2016 to "stay" the appointment of a retired Judge as a new Chairman mentioned in the paragraph 18 quoted above. It was a conditional "stay" as Para 10 states, "I am inclined to grant a conditional stay."

Para 11: "[…] subject to the condition that the petitioner, the Church of South India Association and others in Management of the Company, shall not assign, alienate or encumber any of the properties of the company in any manner until further orders."[128]

The matter of the appointment of the Administrator at the time of writing this is *sub judice* at the court. The case which is in the stage of final hearing is pending since 28 November 2016 until today. It is now reported that the orders are reserved and awaited in days/months.

Another Notable Case at the NCLT

E. Premkumar filed a petition (CA 64/2017) seeking for a relief of investigation under this category which contained seven prayers for the CSITA company. 1) To appoint a panel of Administrator/s heading by a retired judge of the Honourable Supreme Court or such other competent authority as this Honourable Tribunal may deem fit and appropriate; 2) To direct the inspection and verification of all the statutory records books of accounts, title documents and documents of title of the 1st Respondent Company and its Units; 3) To ask the company to furnish

[128] CRP 3739/2016 dated 28 November 2016 at the Chennai High Court.

the details of the assets sold and purchases to the Tribunal; 4) Not to deal with any properties of the company without the prior approval from the Tribunal; 5) To hold elections to the office-bearers; 6) To give injunctions for the conduct of election for the bishop in Thoothukudi-Nazareth diocese; 7) To ensure complete transparency in the affairs of the company.

The Tribunal ruled on 29 June 2018 that the Petition filed by Premkumar is superfluous (more than enough or unnecessary) for the following reasons: 1) An investigation into the affairs of the CSITA has been instituted by the Regional Director, Ministry of Corporate Affairs and the matter is *sub judice* before a higher judicial forum (the appeal against SFIO has now been disposed of); 2) In the said proceedings of the CA 12/2016 (filed by R. Sadananda and Robert Bruce), it has been DECIDED TO SUPERSEDE the Board Directors/Administrators of the CSITA. "And, therefore, the locus standi of the petitioner (Premkumar) and his consenters as well as that of the persons representing CSITA (Office-bearers and 25 Attorney-bishops) COULD NOT BE ASCERTAINED." It clearly means that nobody can claim to be representing the CSITA in any official capacity because all of them have been superseded by administrative committee already appointed by the NCLT; therefore their operations will not have basis of law and be counted as illegal. If the office-bearers, directors and members of the CSITA claimed to act on behalf of the CSITA, they would be liable for criminal offences in accordance with law; therefore it directed the petitioner along with his consenters that they may place their claims 'before the Administrator' appointed by the Order of the single bench of this Tribunal dated 18.11.2016 in CA 12/2016.

This simple but firm ruling is that there is no management committee operating for the CSITA at present, and that the appointment of the Administrator by the NCLT still stands. The petitioner along with his consenters can submit all 2,500 documents of complaint, for taking

necessary measure and action, to the Administrator when he/she is in place.

Conclusion

To conclude, the basic problem first to be cleared is whether the CSITA is an incorporated company or whether it is a Trust to be controlled and directed by the CSI. Even after 70 years, the CSITA is not functioning like a company with limited liability just as it was incorporated on 26 September 1947 but like an agent or Trust or special Trust and at worst it is called a "bare Trust" to the CSI. The history of the CSITA has clearly revealed this reality to us. This crucial problem has to be solved to re-orient the CSITA and place it on a strong footing. Now it has lost its vitality and status. This is where the performance of the CSITA stands in 2018. The CSITA is clawed by the new Companies Act of 2013, the new judicial service offered by the NCLT and NCLAT, the new investigating agency Serious Fraud Investigation Office (SFIO) operating on behalf of the Government. These were not the features of the Acts of 1913 and 1956.

It should be clearly emphasised that the CSITA is an incorporated body functioning under the Indian Companies Act of 2013 (see Sec. 7). It is not a registered body as the members of the CSI often suggest. Registration does not make a body a legal entity and it only obtains the necessary licence for its operation as a society or a trust under State laws. The incorporated non-profit company must obtain a licence for its existence too (see Sec. 9). But registered bodies do not have to be incorporated. The CSITA is thus a church corporation rather than just a registered organisation for the sake of getting a licence. Incorporation and registration are two different processes under the Companies Act. The implications of incorporation under the Companies Act mean that the CSITA's characteristics are different from those of a registered society under a prescribed law. The members of the CSI must appropriate the

meaning of an incorporated company if they have to properly understand the CSITA's role and function as a company.

4

THE CSITA OF THE INDIAN COMPANIES ACT 1913 UNDER THE NEW REGIME OF THE INDIAN COMPANIES ACT 2013

Introduction: Government Interference in Company Matters

From the time of the Indian Companies (Amendment) Act, 1951, the central Government had the right to intervene directly in the affairs of companies, and the Government was charged with the overall responsibility for the administration of the Companies Act, 1956. The 1956 Act came into force on 1st April, 1956 and it consisted of 658 sections and 14 schedules. The new Act in 2013 which repeals the 1956 Act consists of 29 chapters, 470 sections and 7 schedules. There are new provisions introduced in the 2013 Act which if followed carefully will replenish and improve the governance of the CSITA. "The phrase 'as may be prescribed' appears in the 2013 Act in more than 400 places empowering the Central Government to prescribe rules on all such occasions."[129] And it is further noted, "The rules prescribed under the 2013 Act seem to increase the compliance requirements for companies. A quick statistical analysis reveals that the number of forms and documents required to be filed under the 2013 Act is much higher than as required under the

[129] A. Ramaiya, *Guide to the Companies Act: Providing Guidance on the Companies Act, 2013,* 18th edition, Lexis Nexis, 2015, p. xxiv.

1956 Act. While this may ensure better reporting and transparency, it may also increase compliance costs, both in terms of time and fees."[130] Section 470 of the 2013 Act empowers the Central Government to remove by Order any difficulties in the interpretation and implementation of the statutes of the CA 2013. The provisions of the 2013 Act are brought into effect in stages and the bulk of the Act is operational, but where there are provisions yet to be notified the corresponding 1956 provisions will apply. Thus, the CSITA administration should prepare for a hard and difficult journey with the corporate Laws and practices of the country. The members of the CSITA cannot expect the same sympathy and generosity that they used to enjoy from the Government as before. The CSITA got out of tight corners many times when it was acting wrongfully, but preferential treatment as before will no longer be available from the Government's regulatory system.

To guide and oversee the companies both listed and unlisted, the Government has set up a regulatory system working through the Ministry of Corporate Affairs (Secretary) which controls through regional bodies (Regional Director) and state branch offices (Registrar of Companies). The legal issues were addressed by the Company Law Board (CLB) which has now been abolished and replaced by new tribunals called the "National Company Law Tribunal" (NCLT) and "National Law Appellate Tribunal" (NCLAT) in the year 2016. These quasi-judicial and constitutionally valid Tribunals are given more powers than the CLB and will dispose of and adjudicate such matters in accordance with the provisions of the 2013 Act, some of which are more complicated when compared to the 1956 Act. They expect a lot of input and a high compliance level from the companies, and companies will have to adjust to the legal difficulties and challenges to face these powerful Tribunals. The orders of the NCLT can be appealed to the NCLAT and

[130] Ramaiya, *Guide to the Companies Act: Providing Guidance on the Companies Act, 2013,* p. xxv.

then to Supreme Court of India. The CSI therefore cannot administer the Trust Association as an independent organisation without the Indian Government acquiring knowledge of its activities. This has not been realised by the CSITA members and directors.

Knowing our Corporate Roots

Those who know the characteristics of the 'Church' must learn the nature and characteristics of its Trust Association. We ought to remember that we talk about the CSITA company as a non-profit company as its objective is not to make profits. One has to read and study thoroughly the Memorandum of Association (MoA) and Articles of Association (AoA) of the CSITA. The former is the charter/constitution of the CSITA, and the latter is about the rules and procedures connected with the management of the CSITA. Both should be coherent and consistent, agreeing with each other and, most importantly, they both ought to rest on the pillars of the Indian Companies Act of 2013. One has to study and understand carefully with the help of Commentaries/Referencers sections 26, 26, 25 and 8 of the Acts of 1882, 1913, 1956 and 2013 respectively. Apart from these Company Acts, there are Company Rules, Government Notifications on Company laws, Amendments to the Company Act and various court pronouncements made in the past, both nationally and internationally over the issues of the non-profit companies. Non-profits are currently regulated by diverse statutory formulations in the USA and the UK. Some jurisdictions have separate statues for for-profits and non-profits, but the Indian Companies Acts have general corporation statutes which govern both profit and non-profit corporations with some peculiarities provided for non-profit corporations.

In this chapter, we begin by analysing the procedure and method of the functioning of the CSITA particularly referring to the involvement of the CSI. The CSI, the formidable body with 4 million members who

are ordinary subscribers to the CSITA, has an imposing presence and deep involvement in the debate of every matter of the CSITA. What is the CSI doing to the CSITA? Is it a one-way street? Is the CSI doing something always on behalf of the CSITA?

The CSI Synod Is Not the Supreme Body Over the CSITA

We begin with the critical observation that there is no clear distribution of powers between the CSITA, the Church of South India and its diocesan units. The fundamental question is: "What is the role of the CSI in matters of the management of the CSITA? Does it have a role in the first place?" This, of course, is more central to our enquiry. We have already seen in the make-up of the CSITA's history and its development that it is the church establishment which determines what the CSITA managing committee should do or not do. The CSITA is recognised by the church only to the extent that it is working under its control. It is rarely realised in institutional terms that the CSITA is a company with a separate identity from its members. Can and should the CSI stand aloof?

To recap, an Association of persons belonging to the CSI was incorporated as a legal body called the CSITA which from 26 September 1947 acquired a separate existence from the promoters and the owners. It is a company registered under what is now sec. 8 of the CA 2013. Once the incorporation of the CSITA was done, what was the role of the CSI thereafter? This is the question that occupied our attention in Chapter III. Now we turn our attentions to the following questions: What did 'corporation' mean to the CSI? How did one think of the other? What sort of relationship was maintained between the two? Why do we think that we can make a proposal to pierce the corporate veil of the Trust Association? Do the causes for piercing the corporate veil apply to the CSITA given the fact that piercing the corporate veil is not a straightforward legal pronouncement in the courts?

We observe that 'The Synod is the highest representative body of the Church of South India, its supreme governing and legislative body and the visible symbol of its unity.' This is affirmed by the *CSI Constitution of 2003* (p. 75) but it does not say that it is the highest representative body for the CSITA nor does it say that it is the supreme governing and the legislative body of the CSITA. However, for the 'CSI' it is implied that CSITA stands in the background somewhere. The Constitution affirms that 'the Synod is the supreme authority in *all* matters pertaining to the whole church' (p. 74). The church Constitution further says that the CSI Synod has 'the power to make rules and pass resolutions and take executive action as may be necessary from time to time for the general management and good Government of the Church *and of the property and affairs thereof*' (pp. 78-79). It can be easily understood when the CSI Constitution says that the general management of the Church comes under the Synod, but it is hard to understand that the management of the property and its affairs are directed and controlled by the Synod. The management of property by law is not the responsibility of the CSI Synod and it is now handed over to the incorporated body, the CSITA. This is the crux of the problem!

The Reference to the CSITA in the CSI Constitution: An Example for the Show of Propriety Mentality

Here is the only paragraph in the 150-page CSI Constitution of 2003 which mentions the CSITA. It reads, 'In as much as the Church of South India Trust Association has been formed for the purpose of acting as Trustee or Agent of all the properties, movable and immovable, of the Church of South India, *the Church of South India Synod shall have the power to elect the members of the Church of South India Trust Association*. The Moderator, the Deputy Moderator, the General Secretary and the Treasurer shall be ex-officio members of the Church of South India Trust Association' (p. 79). It is clear that the CSITA is considered as one

of the various sub-committees functioning under the Synod of the CSI. As far as the CSI is concerned, the CSITA is not a separate legal entity.

According to the CSI Constitution, 1) the CSITA is a Trustee or an Agent of all the movable and immovable properties; 2) the CSI Synod will have the power to elect the members of the CSITA; 3) the Moderator, the Deputy Moderator, the General Secretary and the Treasurer shall be ex-officio members of the Church of South India Trust Association. It is very clear that a) the CSITA is made to play a role of an agent and Trustee for the Church of South India; b) the CSI has power to elect the members of the CSITA; and c) the office-bearers of the CSI will be automatically ex-officio members of the Managing Committee (Board of Directors).

This basic assertion that the CSITA, an incorporated body, is an Agent or Trustee is a problematic one. We shall be critically looking at this role given to the CSITA throughout our discussion. The first thing that strikes us in response to this is the principle of corporate entity that was established in the Salomon case, now referred to as the 'Salomon' principle. The case of *Salomon v. Salomon and Co. Ltd* (1897) has formed the basis of company law globally. The doctrine of 'separate legal personality' laid down in Salomon's case has received increased recognition and is often cited in court today. During the debate over the case in the House of Lords, Lord Halsbury said that 'once the company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant'.[131] His further thought that *"it is impossible to say at the same time that there is a company and there is not"* is crucial for the CSI to note. Lord Macnaghten said that an incorporated company, right from the moment of the incorporation, is capable of exercising all

[131] https://www.trans-lex.org/310810/_/salomon-v-salomon-co-ltd-%5B1897%5D-ac-22/

the functions of an incorporated company. There is no growth period. Right from its birth it has to attain maturity and act in all capacity as an incorporated company. What he said further holds great importance. He said, 'The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, *the company is not in law the agent of the subscribers or trustee for them.*'[132] The incorporated company cannot therefore be considered as a Trust/Trustee or Agent. We cannot set aside or ignore the certificate of incorporation issued to the CSITA and it cannot be used as an 'agent' or 'trustee' to the Church of South India in the garb of corporation.

It is also crystal clear from the official church records that the CSITA, an organ of the CSI, is under the firm control, consistent guidance and strong influence of the CSI and its forums, and that in fact it manages both the movable and immovable properties in and through the name of the CSITA. The CSITA has a mind and will of its own and is not a mere puppet of the CSI. There is more evidence.

The Guidelines for the Church of South India Trust Association (1988): Misusing the Corporate Vehicle

In the year 1988 a nother document was composed entitled *The Church of South India Trust Association: Guidelines for the Church of South India Trust Association* (1988) (without the approval of the Central Government) consisting of rules and regulations to be followed by the CSI Synod and the dioceses in managing the properties both movable and immovable. These rules supersede the previous rules made by the Synod Working Committee in 1981 and 1983. There were two doc-

[132] Italics mine. https://www.trans-lex.org/310810/_/salomon-v-salomon-co-ltd-%5B1897%5D-ac-22/

uments before and this replaces them, which means that the CSI was working out rules of their own to manage the movable and immovable properties. 'These Rules are made under Chapter IX, Rule 14 of the Constitution of the Church of South India by the Synod Executive Committee for proper administration, supervision and preservation of movable and immovable properties held by Church of South India Trust Association and other Trust Associations already in existence and recognised by Synod for the benefit of the Church of South India in the various Dioceses and Institutions' (p. 7). In the 31-page document only half a page is devoted to outlining three of the abridged sections of the Memorandum of the CSITA, particularly relating to its objects. The *Guidelines* were prepared in the year 1988 by the then director of the CSITA, Mr. Frederick William, who writes the following words in the Preface to the document:

The Church of South India Trust Association being a statutory body registered under the Indian Companies Act 1956 is GOVERNED by a set of rules known as 'Synod Rules for the Management of Movable and Immovable Properties' for the management of the Movable and Immovable Properties lying within the jurisdiction of the 20 dioceses of the CSI. With a view to improving the management of the Finances and Properties by a better understanding of the Rules, an attempt has been made to consolidate in this Manual the various provisions of the Rules and Circulars issued from time to time and the interpretations. This will enable the Dioceses to understand the functioning of CSITA and the requirements that are necessary to be satisfied by the dioceses in the best interests of the property and financial management of the CSITA. It is hoped that this Manual may prove a useful tool to the Dioceses (p. 3).

The Guidelines Treat the CSITA as a Trust and Its Members as Trustees

The *Guidelines* further interpret the work of the CSITA from a trust-ideological perspective. They consider the CSITA as 'a legal holding body of the movable and immovable properties of the Church of South India … The properties of the Churches in Union have been transferred to CSITA' (p. 5). But the main objects in the *Guidelines* are outlined in terms of a Trust:

1) To act as Trustees for the CSI and accordingly to acquire and hold immovable and movable properties for the purpose of the Trust within the territory of India.
2) To aid and further the work of CSI and in particular to assist pecuniarily and otherwise all or any of the Societies, Schools, College, Hospitals, Institutions and other charities which exist in connection with the said Church.
3) To act as Trustees for the maintenance of the Church Bishops, and other workers of the Church.

The *Guidelines* further make the members of the Managing Committee as Trustees, with the rules and the bye-laws of the CSITA amounting to a Trust (p. 6). The management structure is worked out by the *Guidelines* which place the CSITA at a far distance from independent decision-making and direct management responsibilities. At some crucial stages in the management process, the CSITA is not seen in the picture at all.

In each diocese (a unit of the CSITA), it is the Diocesan Council which make its own Rules for the management of its finances and properties [see 'Movable Property' 2(a) and (b) and 'Immovable Property' in *Guidelines,* pp. 7-8]. The *Guidelines* states 'Every Diocesan Council shall make Rules for the management of its finances and properties. Such Rules shall be in conformity with the law and the Memorandum

and Articles of the Church of South India Association' (p. 7). There is a question mark whether the conformity of the *Guidelines* to the MoA and AoA was ever checked and whether they received the necessary authorisation from the RoC.

It further states, 'All such rules and any subsequent amendments or alternative hereto shall be subject to the approval of Synod Executive/Working Committee' (p. 9). It is the Synod Executive and the Working Committee of the Synod that are the authorising bodies for financial and property transactions. Whereas the *Guidelines* say, 'All funds in the Diocese or Institutions (United of Church of South India Trust Association) other than those required for annual expenditure shall be invested according to Law and in the name of Church of South India Trust Association' (p. 8). It permits all dioceses to decide on the amounts of money to be spent on their own annual expenditure, the rest to be kept in the name of the CSITA.

Each diocesan council sets up its own Diocesan Finance Committee and it appoints its own auditor and treasurer according to the Constitution of the Diocese, according to the *Guidelines*. The finance statement including audited statement of accounts and Balance sheet should be submitted annually to the CSITA *and* to the Synod Finance Committee. The CSITA is not the navigator with regard to managing financial affairs in the dioceses and institutions, the units of the CSITA. Each one has a structure of its own to regulate financial matters, the details of which finally come to the desk of the CSITA office if they are ever sent. The CSITA has to fall in line with whatever arrangement is made by the diocesan administrative system. Money is invested in the name of the CSITA, certainly, but the decisions on spending are made by the diocesan units. It is interesting to read, 'No loan or bank overdraft, shall be taken without the prior approval of the Church of South India Trust Association' (p.8). The incorporated body in which are vested the properties and finances of the entire church is made to function as a 'yes'

committee giving its approval. We might think that the CSITA is finally given recognition for what it is until the *Guidelines* say, 'Such approval shall not be given unless a resolution has been passed by the Diocesan Executive Committee recommending the same' (p. 8). It is an anti-climax that the approval of the CSITA will have no value unless or until the Executive Committee of the CSI also approves the decisions coming from the dioceses.

Is it not a clear case of an "alter ego" influencing and controlling the matters that should rest with the CSI? The CSITA is superseded by the CSI committees which control and direct its activities and therefore it can be argued that the CSI is the "alter ego" of the CSITA. The "alter ego" doctrine is also known as the instrumentality rule because the corporation becomes an instrument for the CSI and its administrators who are also members and directors of the CSITA. It is the courts which have to decide to disregard the corporate veil. The CSITA, a corporation, is used to provide a legal shield for the church which is actually controlling the operation. The corporation exists basically under the control of the CSI. The CSI is operating as the second self and projects as if the CSITA is taking the decision itself. But if there is any director who has acted unjustly he will be personally liable. The 'limited liability' cannot protect the members and the directors from taking responsibility for wrong-doings. The CSI makes the CSITA to do what it wants, and thereby it acts like the "alter ego" of the corporation. The CSITA cannot be treated as if it is a nullity.

Bishops Are the Attorneys in Corporation Sole Pattern

Who are the Attorneys according to the *Guidelines*? What do they do? The position of Attorney is normally issued to four persons in a diocese including the bishop of the diocese who will be one of the signatories, and the others will be nominated by him. The four persons are nominated by the Diocesan Executive committee (not the CSITA), two

of which will represent the CSITA. The CSITA will be represented by two who are not members or directors of the CSITA and who are present in the Attorneys committee. The fourth person will be nominated by the bishop. The power of attorney is said to be valid for two years. The bishops usually continue as Attorneys during the whole of their tenure as bishops. If any bishop falls out of favour with Synod office-bearers, particularly the Moderator, such bishops will not be made Attorneys. Among the CSITA Attorneys illicit activity is suspected while they are said to be fulfilling their regulatory/supervisory responsibilities themselves. Members of the Attorneys committee are selected by the Diocesan Executive committees and the bishops themselves. The CSITA Committee of Management does not have any role.

In the words of the *Guidelines,* 'The Church of South India Trust Association or other Trust Association approved by the Synod of the Church of the Church of South India are the holding bodies of all immovable properties of the Church of South India. Immovable properties in the various Dioceses of the CSI are administered, supervised and preserved by the Attorneys of the Church of South India Trust Association, in the Dioceses. The Church of South India Association normally issues Power of Attorney to four persons in a Diocese of whom any two can jointly act on behalf of the Church of South India Trust Association. However, *in all transactions where immovable property is involved, it shall be obligatory on the part of the Bishop/Commissary or one of other Attorneys nominated by him specifically for each registration to be one of the signatories.* The Diocesan Executive will nominate four names including the name of the Bishop, Diocesan Secretary, Diocesan Treasurer and one other to be appointed as Attorney by the Church of South India Trust Association. *The power so granted is valid for two years at a time from the date of issue'* (p. 9).

In Chapter III of the *Guidelines* the Attorney arrangement is further interpreted. The Attorneys are appointed by the CSITA and they have

'power among other things to lease, sell immovable properties … lease or mortgage only after obtaining the permission in writing from the CSITA. Every Diocese shall maintain a permanent record of all immovable properties of the CSITA … The details of the title deeds should be entered in a register and the originals should be kept in the safe custody of the attorney of the Diocese. Xerox copies of the said documents should be made available to the CSITA for a record … Properties should be acquired in the name of CSITA. Trust properties should on no account be leased, mortgaged or sold without the prior approval of the CSITA' (p. 15).

First of all, the Attorneys and their functions have to be understood in terms of the Companies Act 2013 and not by the Power of Attorney Act, 1882, which was passed on 24th Feb 1882 and came into force on 1st May, 1882. The CA 2013 does not duplicate the provisions of the Power of Attorney Act 1882. The meaning of 'Power of Attorney' given in the Power of Attorney Act might form a template to the CSI's granting of power of Attorney and the practice associated therewith. The Companies Act does not endorse the Power of Attorney as practised by the CSI bishops on behalf of the CSITA. The roles of Power of Attorney in principle are found in sec. 22 of CA 2013.

Sec. 22 (1) A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.

(2) A company may, by writing under its common seal, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

(3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.

In Sec. 22(2) might be a clause to be adopted by the CSITA as 'deed', which means 'a legal document that is signed and delivered, especially one regarding the ownership of property or legal rights'. But an Attorney's actions are subject to the overall corporate authority, and he/she is not expected to use the Board and General Body of the CSITA as a rubber-stamp. There are cases in which those CSI members who do not have Powers of Attorney have sold CSITA lands, and there are those who have created fake Powers of Attorney to effect transactions with the bank handling the CSITA bank accounts.

The CSITA Is the Instrumentality of Bishops – The Power of Attorneys

With regard to managing immovable properties, the Synod of the Church can bypass the CSITA, the registered body, and work with some other Trust Association who can hold all the immovable properties of the CSI. There seems to be a corporate impropriety evident here that an incorporated body is given up in preference to a Trust other than the CSITA. Recently, it was brought to the notice of the public that valuable properties of the CSITA in a place called Dichpally, Telangana were transferred to a new Trust called *Medak Diocesan Education Society of Church of South India Trust Association.* In violation of CSITA, one of the bishops of that diocese transferred the CSITA lands at Suddapalli, Dichipalli Mandal, Dist. Nizamabad, Telangana to the illegally registered Medak Diocesan Education Society formed by him and his family members through a 'Gift Deed'. The Trust drew loans to build a Medical College which ended up in failure, and the new Trust fell into debt. Now the situation is that the entire property of about 42 acres might go under the hammer to repay the 27 crores borrowed including the accrued inter-

est. This happened because the bishop in question was also the President of the CSITA. Each diocese had the Attorneys who make decisions over property matters on behalf of the CSITA. The *Guidelines* state, 'Immovable properties in the various dioceses of the CSI are administered, supervised and preserved by the Attorney of the Church of South India Trust Association, in the dioceses. The Attorneys assume full power to decide on the state of properties and they could shift the church lands to the Society formed on their own.

Bishop Dyvasirvadam has made a syphon by which he puts one end of the hose in the pool, the diocese, and the other end into a reservoir which he has built for himself and his relatives. He has discovered a way in which the looting should look almost legal. He has registered in Machilipatnam, where the Bishop's House is, a Society called Krishna Godavari Diocesan Educational Society under the A. P. Societies Registration Act 35 of 2001 with the Registration number 729/2003. It has an aim "To establish and maintain educational institutions, viz. schools and colleges, for imparting knowledge and promoting education at all levels in Arts, Commerce, Fine Arts, Sciences, Engineering & Technology, Law, Medicine, School/College of Nursing, College of Psychotherapy, Hotel Management, and other vocational Trades/skills/disciplines within the jurisdiction of Krishna Godavari Diocese". It is an independent Society, not bound to the CSI Synod (of which he was the Moderator) or the Church of South India Trust Association (of which he was the President).

He has formed a diocesan educational Society for the present and future institutions/schools/colleges belonging to the diocese, and the Society is, as its Memorandum says, "falling in line with the educational mission of the Church of South India and in particular the Diocese of Krishna-Godavari", and it will be endeavouring "to make its own contribution in the light of the teachings of Christ … based on the principles of justice, freedom, equality and respect for religious and moral values;

in carrying out its aims the Society as a minority institution reserves to itself, its inherent and constitutionally recognised RIGHT OF MANAGEMENT AND ADMINISTRATION". This means that all the diocesan educational institutions will be managed and administered by the Society whose General Body/Executive Committee members will be the bishop himself (as the President), his wife with her maiden name, his son, his nephew, the bishop's chaplain and other close relatives and loyalists.

The Society thus formed, using the diocesan name, inherently violates its registration status already secured under the Church of South India Trust Association (formed a day before the formation of the Church of South India on 26 September 1947) which accepts all the diocesan schools/colleges/training institutes under its management and administration.

For many years Govada Dyvasirvadam was a director of the CSITA Management Committee which had a fiduciary duty to safeguard the assets of the church. He was also its President for some years when he was the Moderator of the CSI. As he was in the chair both for the CSI and the CSITA General Bodies, he could divert the attention of the CSITA and the CSI, should the matter be raised in any forum, and make majority directors explicitly agree to the formation of the new Society "to maintain and manage the institutions" belonging to the CSITA. This means that all the monies earned though these educational institutions will come to the store-house of the Society functioning under the cloak of being in charge of maintenance and management. In future, under whose custody and ownership will these properties be, apart from the Society making big sums of money? Nobody had the courage to oppose this avaricious move! Everybody is aware that they can expect rough treatment from the hands of the corrupt leader, should they dare to raise a critical voice.

Abuse by the Corporators

The company, a legal body and artificial person, can still be abused by the corporators as in the case of *Daimler Co Ltd v Continental Tyre and Rubber Company (Great Britain) Limited (1916)*, a German company which was operating after the First World War as an enemy company to Britain.[133] Hence the Chief Justice passed a judgement saying, 'It (company) is not a mere name or mask or cloak or device to conceal the identity of persons and it is not suggested that the company was formed for any dishonest or fraudulent purpose. It is a legal body clothed with the form prescribed by the legislature …'[134]

Henry B. Buckley, a British Barrister and Judge who delivered a dissenting judgment, would have held that, though the company is a legal person existing apart from its corporators, it still had enemy character. 'The artificial legal person called the corporation has no physical existence. It exists only in contemplation of law. It has neither body, parts, nor passions. It cannot wear weapons nor serve in the wars. It can be neither loyal nor disloyal. It cannot compass treason. It can be neither friend nor enemy. Apart from its corporators it can have neither thoughts, wishes, nor intentions, for it has no mind other than the minds of the corporators.'[135]

In response, Lord Parker said, 'I do not think … the character of its corporators must be irrelevant to the character of the company.' Similar judicial wisdom should be applied in the case of the CSITA that the

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133 http://swarb.co.uk/daimler-co-ltd-v-continental-tyre-and-rubber-company-great-britain-limited-hl-1916/

134 https://en.wikipedia.org/wiki/Daimler_Co_Ltd_v_Continental_Tyre_and_Rubber_Co_(GB)_Ltd

135 https://en.wikipedia.org/wiki/Daimler_Co_Ltd_v_Continental_Tyre_and_Rubber_Co_(GB)_Ltd

directors and members are made responsible for all fraudulent and unlawful activities committed in the name of the company.

Positively speaking, in order to comply fully with the company law system for the re-organisation of the CSITA, the administrators of the CSITA ought to have section-wise knowledge of the Companies Act, particularly those sections that concern the Section 8 Companies within which the CSITA occupies a special place. They should be able to add to that wealth of knowledge, i) the details of the Rules prescribed for each section by the Ministry of Corporate Affairs, ii) the information in the official forms related to Companies Act kept with the Registrar of Companies, and iii) the contents of the notifications and circulars released from time to time by the MCA. Ever since the CA 2013 came into existence, more than 100 Rules have been introduced, and they correspond to 'as prescribed' mentioned in the Act. They should have clear knowledge of the sections of the Companies Act 2013 that are approved and not approved as sections came into force at different periods of time.[136] The key corporators such as the bishops hide their identity behind a corporate vehicle which increases the vulnerability of the corporate vehicles to misuse.

The CSITA Is Illiterate on Corporate Law

The effect of the incorporation is best summed up in Sec. 9 of CA 2013: 'From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to

[136] For details see http://www.companiesact.in/pdf/Enforcement_Status_Companies_Act_2013.pdf.

acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.' These are the fundamental characteristics of the incorporation which the CSITA should learn and relearn. We ought to keep in focus this clause that the CSITA has 'power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible'.

It is clear that the standards and procedures specified in the CA 2013 have not percolated into the system of management of properties and finance. To change the metaphor, the CSI/CSITA has not taken an immersion baptism into the company formalities and obligations. The Trust Association is a mere spectator when all the business is done by the Synod Executive, Working Committee, Diocesan Councils and Diocesan Property Committees and even by *ad hoc* administrative committees in the name of the CSITA. There is no clear distribution of power between the CSITA and the CSI dioceses. The outcome is that the dioceses, the CSITA units, follow their own accounting methods and procedures for selling properties, and the attorney or the bishop can manipulate the diocesan machineries to deal with the properties in whatever way he prefers. Bishops have the big advantage of selling properties and spending money according to their plan when they have an administrative committee consisting of their coteries and sycophants in the place of democratically elected Diocesan Councils.

Over the past 70 years, several bishops have formed Trusts of their own while in office by grabbing some of the prime properties of the Church worth many crores which might eventually end up as their personal/family properties! Because of the unique position of the CSITA as a religious body, the favourable tax exemption, and its potential to earn large profits, the non-profit CSITA is ripe for abuse. The untaxed wealth gives the CSITA the edge to be an economic power. *The Devil's Dictionary* (1911) defined a corporation as 'an ingenious device for obtain-

ing individual profit without individual responsibility'.[137] Individuality of the corporation has ceased and it is the individual directors who are responsible for corporate failures, and therefore the CSITA is a candidate for the corporate veil to be pierced by the courts. According to one source of information there are 20 different Trusts and Societies, either carved out of the CSITA with CSITA properties registered under them or the Societies and Trusts which operated before the formation of the CSITA, still existing separately holding on to their properties. Two more Trusts/societies can be named, and the rest will have to be traced by the SFIO. They are: Krishna Godavari Diocesan Educational Society, Machilipatnam with the office address of Door no. 23/49-2, Ramanaldupet; and the Machilipatnam Central Travancore Diocesan Trust Association (24/07/1929) registered under the Companies Act 1913. The CSITA is functioning as the 'corporate dummy' of the ex-officio members of the management Committee. Thus the corporation has no interests except fulfilling the plans and desires of the dominant members who are obviously the CSI hierarchy who walked into the Committee of Management as ex-officio members who influenced every decision of the CSITA, circumventing the procedures and principles of Corporate Law.

The CSI has not accorded the rightful place to the CSITA and also has not properly understood its own place within the structure of the CSITA. What is lacking is the knowledge of corporate law and the principles of corporate governance. Good corporate governance must be everybody's concern in the CSITA, a Section 8 Company. Corporate governance refers to a system by which companies are directed and controlled by a Board-process administration where decisions are made as per the 'Board of Directors' system specified in the CA 2013 and not

[137] D. S. Chopra and N. Arora, *Company Law: Piercing the Corporate Veil,* Kolkata: Eastern Law House, 2013, p. 1.

by one man- or one family- or one community-dominated administrative practice.

The CSITA has the following characteristic features which have never been properly understood by the CSI. The CSI's lack of understanding of the principles and functions of incorporation is having negative consequences on the company's management. The CSITA is divested of its incorporated power due to the intervention of the CSI committees. It is thought of as providing the legal identity to the CSI, and the business is taken care of by the CSI Synod and Executive committees. The result is that Company Law is brushed aside, company structure is damaged and the CSITA has lost its attributes as a body corporate. The following characteristics cannot be shredded off from the CSITA.

Beware of Wrong or Loose Use of Company Law Terminology

How can we explain the Indian Companies Act 2013 to the CSITA? The new Act uses many technical terms and terminologies on Company matters and particularly on corporate governance which do not correspond to any of the terms or phrases found in the CSI Constitution. They are in most cases untranslatable into Christian and ecclesiastical vocabulary. How do we work out the equivalent words for the CSI's understanding? How can the words of the provisions of CA 2013 become the basis for the Synod's description of the role of the Trust Association? Some are using Company terms in a sensational manner and give misleading content to them. Caution should be exercised in mimicking the terms and phrases used in the Act which belong to a specific context and are applicable to a particular class and category of company.

"Stakeholders" is an important term to grapple with. One must take into account the different types of 'stakeholders' operating at different levels. Every subscriber to the Memorandum of the Company is regarded as a stakeholder, but the employees of the Company such as the pas-

tors and bishops are primary stakeholders, and the common, unemployed members in the church are the third level stakeholders. There are no special authorities or privileges prescribed in the CA 2013 for the lower level stakeholders who are not employed in the CSITA. The term 'beneficiaries' denotes those who receive financial and other types of support from the Company charity resources.

There are applicability and non-applicability of certain provisions of the Companies Act 2013, depending on different statutes of the companies. There are broadly two types: listed and non-listed. The Act is vague and not specific about the liabilities of Section 8 Companies such as the CSITA, and the framers of the Act had no or insufficient knowledge about religious Trusts and church-related charity organisations such as the CSITA. A turnover of more than Rs. 100 crores is one of the criteria to judge a class of a company which puts the CSITA into a different category among the non-listed public companies since its annual turnover is about 1,200 crores. Therefore, the CSITA is required to follow certain new norms and measures introduced by the new Act which will re-orient the CSITA towards transparency and sound corporate governance. The flexibility in application of rules should not be abused by a charity Trust like the CSITA.

We, the laymen with naked eyes, cannot decide on the applicability of the rules and provisions of the Act on our own reading of them. Yet it does not mean that we should not read them, study them and be familiar with them. But the temptation is to act like scribes and pundits of Company law and read our own wishes into it. There is also a severe clash of opinions and interpretations among individuals on applying Company law to the CSITA, forgetting the fact that not every page of the Act has to be followed by the CSITA which is in a class of its own, a company of limited liability with guarantee. The RoC, Ministry of Corporate Affairs and the judiciary have to guide us over the years, as and when

problems of interpretation arise, as to what is the extent of the application of the rules and provisions of the Act to the activities of the CSITA.

The CSITA Must Fall in Line with Corporation Characteristics

Separate Legal Entity: Under Incorporation law, a company becomes a separate legal entity as compared to its members. 'The company is distinct and different from its members in law. It has its own seal and its own name, its assets and liabilities are separate and distinct from those of its members. It is capable of owning property, incurring debt, and borrowing money, employing people, having a bank account, entering into contracts and suing and being sued separately.'[138] The CSI has to submit itself to the characteristics of the company and work side by side with the CSITA to behave in a corporate manner. The company is an artificial person created by law and it has independent corporate existence. The CSITA has to be understood in the following terms.

Limited Liability: The company itself, as a legal entity, is liable for the debts and unfulfilled obligations and not the members. The members are not by theory responsible and do not risk their personal possessions if the company fails.

Perpetual Succession: The continuation of a corporation's or other organization's existence despite the death, bankruptcy, insanity, change in membership or an exit from the business of any owner or member. The membership of the company can only be terminated by law.

Separate Property: The company properties and the money belong to the company, though the CSI may claim ownership of them. The

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[138] "Characteristics of a Company", http://www.company-formation.co.in/characteristics-of-a-company.php

CSITA is capable of owning, enjoying and disposing of properties in its own name. The company is the real person on which all the properties are invested for its control and management.

Common Seal: The company has no physical existence and it has to operate through agents and all its activities should be under the seal of the company.

Capacity to sue and being sued: The CSITA only has the requisite legal capacity to be a party to a lawsuit. It can sue and be sued in the company's name.

Separate Management: The separation of ownership and control is well justified by the fact that managers are professionals more trained and qualified than shareholders for such a role. It means that the CSI does not manage, and there has to be a separate management; and changes in management can be brought about through the General Body, not through the CSI Synod. It has only a passive role to play in the direction of the corporation. Control is in the hands of the management personnel with mutual interaction taking place from time to time.

Corporate governance has to do with general organisational behaviour, and it is a Science and Art that every bishop has to learn should they be involved in the CSITA management. Mr. Robert Bruce's famous reply to the RoC on behalf of the CSITA when he was asked to explain the irregularities is worth noting here. He is known to have written, 'The official members of CSITA are of honorary basis and they keep changing over two years, and these Committee members are religious heads and they are not conversant with the provisions of the Companies Act.' In the same vein, M. M. Philip, the Hon. Secretary of the CSITA wrote from Chennai on the 26th September 2011 to the Registrar of Companies seeking permission to hold the AGM at a later date than 30 September. He wrote,

'The Petitioner company (i.e., the CSITA) is required to hold the Annual General Body Meeting of the Company on or before 30th September 2011 to consider accounts for the year ended 31 March 2011 and other matters connected with the AGM. However, the company is unable to convene the AGM before 30th September 2011 for the following reason:

'All the Committee Members of the CSITA are elected members and they are Honorary Members only. The Committee members elected are from different regions of South India viz., from Andhra, Karnataka, Kerala and Tamilnadu. Due to the political turmoil in Andhra Pradesh on account of the Telangana issue, the committee is unable to meet and the Annual General Body Meeting is unable to be held. Further, the Committee Members are being Honorary and they are otherwise connected with their own prior engagements on account of their individual professional commitments. Further most of the committee members are all Clergy persons and they had to go carry on their religious activity also.'

He continues, 'It is under these circumstances, …it is prayed that the Hon'ble Registrar of Companies may be pleased to extend the date for convening the AGM initially by a period of 3 months.' – Hon. Secretary

This was a s hameful admission of the weak administrative/managerial system of the CSITA. If the religious leaders could not plan for an event taking place only once a year, why should they be members/directors on account of conflict of interest? It is not true to say that most of the members were clergymen. There were at that time 3 or 4 clergy among the 19 members. How could the Telangana issue have affected a meeting taking place in Chennai hundreds of miles away from Telangana? The travel of one or two members from the Telangana region would not have suffered inconvenience but they were going to fly to Chennai anyway. Why was an extension for three months asked for? The request asks for an extension *initially* for three months! That means

a request for further extension is likely. Long postponement would not be permissible under the Companies Act 1956 (secs. 166 and 210) and under the AoA (sec. 20). This was a reflection of sheer callousness and negligence!

We need to develop an administrative culture which inculcates good organisational behaviour with ethical responsibility. By 'administration' the bishops and lay-persons in authority think that they should know how to violate and circumvent rules cleverly without being seen or caught. 'Administration' means to them to exercise power to control and subdue others to protect their authority. 'The office of the bishop' means to them a position to enable them to loot church resources and become millionaires by the time they retire. In this scenario, how can we generate an ethic of responsibility in finance and property matters to safeguard the assets? Church leaders impose rational constraints on the members of the church so that they do not ask pertinent questions on the affairs of the CSITA.

The Need for Developing a Culture of Compliance

There is an urgent need to reorganise the CSITA administration in accordance with the spirit and the letter of the provisions of the CA 2013 with corporate governance norms at its very core. All CSI members ought to put their trust in the Company law system. The assets of CSITA are dedicated to the charitable, educational, literary, scientific, or religious purposes of the association. We must find out what are the mandatory provisions in the CA 2013 that are meant for the CSITA. We are certainly interested to know the provisions of Companies Act 1913 and the conditions under which the licence was granted to the CSITA. It will be then easy for us to assess how the Company law for non-profit associations developed over a period of 100 years.

The 1913 Act defines 'Company' in words which are relevant even today as modern corporate professionals have either repeated or restated

that definition. The context in 2013 has changed from 1913 but the definition is still in vogue. 'Company' means 'a corporation or, less commonly, an association, partnership, or union — that carries on a commercial or industrial enterprise.'[139] Section 2(20) of the 2013 Act defines the term "company" to mean "a company incorporated under the Companies Act 2013 or any previous company law" with no reference to the commercial and industrial activity as a determining factor. The 1913 Act states, 'A company formed and registered under the Companies Act has a real existence with rights and liabilities as a separate legal entity. It is a different person altogether from the subscribers to the memorandum or the shareholders on the register. Once it is validly constituted it is an artificial creation of the Legislature and it r etains its existence for all intents and purposes. It is a living thing with a separate existence which cannot be swept aside as a technicality. It is not a mere name or mask or cloak or device to conceal the identity of persons. It is a legal body clothed with the form prescribed by the Legislature.'[140]

Indian Companies Acts Built on British Foundation

The Indian Companies Acts have their antecedents in the Companies Acts in United Kingdom. The Companies Act was first instituted in 1844 for the regulation of trading and joint-stock companies. A similar Act was passed in 1850 in India, the first company legislation in India, which provided that 'every company established for some literary, scientific or charitable purpose which did not carry on any business for the *pecuniary benefit* of any of the proprietors or shareholders, should be entitled to registration thereunder'.[141]

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[139] *Black's Law Dictionary*, p. 846.

[140] B.L. Buckland, *The Indian Companies Act VII of 1913,* 2nd edition, Calcutta: Thacker, Spink & Co, 1916, p. 14.

[141] P. L. Buckland, *The Indian Companies Act VII of 1913,* 2nd ed., Calcutta: Thacker & Spink & Co, 1916, p. 2.

Thus the charity organisation entities first entered the corporate scene in 1850 and obtained certificates of registration with Limited Liability. The Limited Liability was explained in terms of the Limited Liability Act, 1855. The English Acts of 1844 and 1855 were repealed in 1856 by the Joint-Stock Companies Act 1856. This Act elaborated the company concept of incorporation of any association of individuals with limited liability by signing a Memorandum and complying with the requirements of the Act. Such an Association thus became a corporate body with perpetual succession (company existing for an indefinitely long time even after members have quit, replaced or died) and a common seal.

The Indian Companies Act 1857 amended its laws by incorporating the principle of Limited Liability and company as a legal entity. The British Act of 1856 and the Indian Act of 1857 provided the foundation for the company legislation upon which the modern Companies Acts in India built themselves by amending them each time. The Acts of 1844 and 1856 in Britain were repealed by Acts of 1862 and subsequently in 1908. In India, the Indian Companies Act 1882 substantially embodying the provisions of the English statues at that time in force was then passed, and this Act, until its repeal by the Act of 1913. The Indian Companies Act of 1913 was based on the British Companies Act of 1908. 'Hence all companies formed and registered under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Act of 1882 and carrying on business in all parts of India are brought within the provisions of the Act of 1913.' [142]

Company legislation in UK attempts to be user-friendly, and it is emphasized that rules should be stated in accessible language and not in highly complicated expressions which can only be explained and clarified by legal and corporate experts. There are regulatory measures corresponding to those of UK law and those that differ from the UK. We

[142] Buckland, *Indian Companies Act 1913,* p. 10.

suggest a new regulatory and institutional framework to the functioning of the CSITA. How do we build one to fit the need and expectations of a non-profit organisation? Corporate governance denotes processes and structure consistent with various regulatory instruments that are both mandatory and advisory. Failure to observe corporate formalities in terms of behaviour and documentation will invite the lifting of the corporate veil by the Courts.

The Type of Company Formation for the Management of the CSITA

The licence granted to the CSITA by the Government of Madras on 25 September 1947 h as this important paragraph for the twenty-first century members of the CSITA to note. It declares,

Whereas it has been proved to the Government of Madras that the Church of South India, a Trust Association which is about to be registered under the Indian Companies Act, 1913, AS AN ASSOCIATION LIMITED BY GUARANTEE is formed for the purpose of promoting objects of the nature contemplated by the 26th section of the Act and that it is the intention of the said Association that the income and property of the Association whenever derived, shall be applied solely towards the promotion of the objects of the Association as set forth in the Memorandum of Association of the said Association and that no portion thereof shall be paid or transferred directly or indirectly by way of dividend or Bonus or otherwise howsoever by way of profit to the persons who at any time are, or have been members of the said Association, or to any of them, or to any person claiming through any of them …

… Now, therefore, His Excellency the Governor of Madras in pursuance of the powers vested in him and in consideration of the provisions and subject to the conditions contained in the Memorandum and Articles of Association, and subject also to the regulations made under the 26th section aforesaid as in force for the time being by this license directs the

Church of South India Trust Association to be registered with LIMITED LIABILITY, without the addition of the word "Limited" to its name.

Signed by Order of His Excellency the Governor, this twenty fifth day of September 1947 (sd. W. R. Sathianathan, Secretary to Government)

This is the birth certificate of the CSITA. It was licensed under sec. 26 of the Companies Act 1913 as an association limited by guarantee with limited liability and subject to the provisions of the MoA and AoA. This fact has implications for understanding the CSITA today.

Section 26 of the Indian Companies Act 1882

Section 26 of the Indian Companies Act 1882 defines 'Associations Not for Profit' thus: 'Where any association which might be formed under this Act as a limited Company proves to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or the other income of the Association, in promoting its objects and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its secretaries, direct such association to be registered with limited liability, without the addition of the word "Limited" to its name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited Companies; with the exceptions that none of the provisions of the Act that require a limited company to use the word "Limited" as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar, shall apply to an association so registered.'[143]

[143] *The Indian Companies Act 1882,* p. 62.

Registration under sec. 26 of the CA 1913 reminds the CSITA that it is now placed within the corporate sector framework under the category of Limited Company with all its privileges and obligations, and that the Government is responsible for its birth in issuing a licence to become a company, and that the Government will further be an ally in all matters of the activities of the CSITA with its regulations and conditions. This reality has to be fully recognised by the members of the CSI, and the CSI must know its strength and limitations both as a corporate body and as a church. If the CSI does not allow the CSITA to function on the basis of the 'given' by the Government then it will face some dire consequences. The Government has the power to revoke the licence and the CSITA will not only lose its exemptions and privileges as a Limited Company but also its corporate identity and membership.

The CSI cannot be a church constitutionally believing in its autonomy from the State since the time of its formation in 1947 and has thus far acted as if it had "the right to be free in all spiritual matters from the direction or interposition of any civil Government." This mind-set reflected in the management of the CSITA though the leaders of the CSI from time to time paid lip-service in affirming that it is not anti-Government and will abide by the country's laws. The spiritual matters can be decided upon by the leaders of the faith community called the CSI. The CSI also considers itself 'as an autonomous church and free from any control legal or otherwise, of any Church or Society external to itself'.[144] This position has to be given up entirely and since the CSI has put on a new identity as a company limited by guarantee in the form of the CSITA it has to live and function in accordance with the new status accorded by the Central Government.

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[144] *CSI Constitution,* 2003, p. 19.

What Is a Corporation?

According to *Black's Law Dictionary* (8th edition) 'corporation' is 'an entity (usu. a business) having authority under law to act … and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it. 'Corporation' is also termed corporation aggregate; aggregate corporation; body corporate; corporate body. The *Dictionary* adds, 'A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law [...] [I]t possesses only those properties which the charter of its creation confers upon it."[145] On the registration of a company, the registrar of companies shall give a certificate that the company is incorporated. It makes it clear who the members of a registered company are and that the members may vary over time. They constitute a 'corporate entity' by the name of the CSITA authorised by the certificate of incorporation. Prof. Haney defines succinctly thus: 'A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal.'[146]

To understand the meaning of corporation, it is important to understand the concept of a legal person. A legal person is a being or entity with the capacity both to: a) enjoy by virtue of its existence, or acquire, enforceable legal rights or property; and b) be by virtue of its existence, or become subject to, enforceable legal obligations and liabilities. The term 'person' is used to cover both natural and artificial persons. All artificial or juristic persons are 'corporations'. 'Corporation' and 'to incorporate' come from the Latin verb *corporare* which means to fur-

[145] *Black's Law Dictionary*, p. 1032.

[146] G. K. Kapoor and S. Dhamija, *Company Law, A Comprehensive Text Book on Companies Act 2013, 20th edition*, New Delhi: Taxmann Publications, 2017, p. 7.

nish with a body or to infuse with substance. This is what the law does when it creates or recognises an artificial or juristic corporation: it furnishes an artificial construct with substance in the eyes of the law; with the ability to have legal rights and incur legal liabilities.

Corporations fall into two categories: A) corporations aggregate; B) corporations sole.

Corporation Aggregate

"The first division of corporations is into aggregate and sole. Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever: of which kind are the mayor and commonalty of a city, the head and fellows of a college, the dean and chapter of a cathedral church."[147] The CSITA is a corporation aggregate composed of many members rather than on one particular person such as bishop or Moderator as owners. The chapter of a cathedral church means 'a college of clerics formed to advise a bishop'; the mayor of a city and the head of a college are the representatives of the people and therefore constitute an aggregate body.

The episcopal leaders (bishops and moderators) act as if they have no higher authority over them. In the context of a corporation, they have to act as a representative of the aggregate rather than as a sole proprietor who will hand the properties over to his successor.

Black's Law Dictionary further defines, "The corporation aggregate is the typical corporation, which, at any given time, normally contains a number of individuals as members. This number may be great or small, varying from the hundreds of thousands of burgesses of a large borough to the two members of a private joint-stock company. It is even said that a corporation aggregate would not necessarily cease to exist if all its

[147] *Black's Law Dictionary*, p. 1033.

members died, leaving no successors; and this is, probably, sound doctrine."[148] The CSITA and its incorporation have to be understood in these terms. The bishops do not have inherent power to control on their own the properties of the church. They are all confined to powers of the aggregate who govern the corporation through the General Body, Board members, Directors and various Stakeholders.

Corporation Sole

'Corporations sole' are limited by law to one member at any given time. Corporation sole is often attached as an incident of an office held by one person who occupies the post such as the Crown or the Archbishop of Canterbury at any point in time. The individual office-holder changes over time, but the corporation sole continues with no need to transfer any property or rights to the new incumbent. The individual's acts in the capacity of the corporation are separate from the individual's personal acts.

A series of successive persons holding an office; a continuous legal personality that is attributed to successive holders of certain monarchical or ecclesiastical positions, such as kings, bishops, rectors, vicars, and the like […] But English Law knows another kind of corporation, the 'corporation sole', in which the group consists, not of a number of contemporary members, but of a succession of single members, of whom only one exists at any given time. This kind of corporation has been described by eminent legal writers as a 'freak'; but it is a freak which undoubtedly has a legal existence. It has been said that the Crown is the only common law lay corporation sole; though the Master of Trinity College, Cambridge, has been claimed as another example, and statutory examples, such as the Public Trustee and the Treasury Solicitor, are conspicuous. But the examples of ecclesiastical corporations sole are numerous.

[148] *Black's Law Dictionary*, pp. 1033-34.

Every diocesan bishop, every rector of a parish, is a corporation sole, and can acquire and hold land (and now also personal property) even during the vacancy of the see or living, for the benefit of his successors, and can bind his successors by his lawful conveyances and contracts.[149]

Business organisations are not run with corporations sole; they are concerned with corporations aggregate. Corporations aggregate may have more than one member at any given time. The examples are: statutory corporations, chartered corporations, registered companies, building societies, industrial and provident societies (co-operatives and community benefit societies), credit unions and limited liability partnerships, which are all examples of corporations aggregate.

In the USA, a corporation sole gets tax exemption. Church leaders go after the status of corporation sole in order to find shelter from tax trouble. However, it has led to abuses which earned the corporation sole a place on the Internal Revenue Service Dirty Dozen tax scam list. A man called Saladino falsely or fraudulently advised participants that they could treat their corporations sole as a "church" with no tax return filing requirement, and yet can control and use the assets and income of the corporation sole for their own personal benefit.[150] How to build a better bishop? Now is a good time to ask whether reform might be in order in the theory and practice of episcopacy.

But most preferred the corporation sole model whereby the religious leader holds legal title to all assets in the diocese. For some, the corporation sole policy became a corporation sole mentality allowing the religious leader to manage the church assets in the name of his office. This type of corporate sole is handed down from the missionary era from the UK, and is till overshowing the CSITA's affairs. The Free Dictionary

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[149] *Black's Law Dictionary*, p. 1034.

[150] RICHARD H. FRANKE, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent, 2011. United States v. Saladino, 95 AFTR 2d 2005-1230 (C.D. Cal. 2005).

defines corporation sole, 'A corporation sole is a one-person corporation, usually with power vested in a religious leader, which provides for a corporation to be administered without a board of directors, ownership shares, or other diffusion of control.'

Corporation Sole vs. Corporation Aggregate

The Corporation Sole is an ancient form of corporation, which has but a single person such as Archbishop of Canterbury, holding a single office, particularly an ecclesiastical office. The single shareholder and single officer constitute the "sole" person involved with the corporation – thus giving rise to its name.

A corporation sole is described as an "[u]nusual type of corporation consisting of only one person whose successor becomes the corporation on his death or resignation; limited in the main today to bishops and heads of dioceses".[151] The modern edition of Black's defines Corporation Sole as "a series of successive persons holding an office, a continuous legal personality that is attributed to successive holders of certain monarchical, or ecclesiastical positions such as kings, bishops, rectors, vicars and the like. This continuous personality is viewed … as having both the qualities of a corporation."[152] "In fact it is even defined by the IRS as a natural person … (for) all business related transactions giving it the same ability as a natural man, not only as a corporation sole. It is an office within a church not the church itself that manages all the churches' financial assets." Corporation Sole probably dates back to medieval times. The Successor to the ecclesiastical office will inherit the title and whatever assets the church owns.[153]

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[151] https://www.thefreedictionary.com/Corporation+sole

[152] *Black's Law Dictionary*, p. 1034.

[153] https://www.youtube.com/watch?v=CeOoS-OMDnI

In the definitions in Sec. 2(7) "body corporate" or "corporation" are said to include even a company incorporated outside India but do not include a corporation sole.

The term "body corporate" is defined in Section 2(11) of the Companies Act 2013. It includes a private company, public company, one personal company, small company, Limited Liability Partnerships, foreign company, etc. "Body corporate" or "corporation" also includes a company incorporated outside India.

However, body corporate does not include—

> (i) a co-operative society registered under any law relating to co-operative societies; and
> (ii) any other body corporate (not being a company as defined in the Companies Act 2013), which the Central Government may, by notification, specify in this behalf;

The CA 2013 has dropped 'corporation sole' from its definition but it does not mean that it accepts 'corporate sole' as part of 'body corporate' or 'corporation'. 'Body Corporate' in CA 2013 includes a single shareholder company like a one-person Company and it is one of the reasons that 'Corporation Sole' has been deleted from the definition. But Corporation Sole is authorized by statute only for non-profit purposes (usually religious purposes), whereas a sole shareholder corporation exists primarily for commercial for-profit purposes. Perhaps it was thought that corporate sole is an ancient traditional practice for which the CA 2013 could not find a place in it.

The point to note here is that the CSITA is not a "corporation sole" just because it is an organisation attached to the Church and its bishops. The Bishop's staff does not have supreme power in deciding on property matters and decisions on the disposal of the properties. Bishops indulge in illegal sale of assets as they are the corporation sole. Incorporation of the CSITA as a Company Limited by Guarantee reminds us that it is an

alternative type of corporation used primarily for non-profit organisations that becomes a legal personality for an association of persons, not for an individual bishop or Moderator. A company limited by guarantee does not usually have a share capital or shareholders, but instead has members who act as guarantors who have guaranteed a certain amount in case of winding up of the company. Hence, by its very nature the CSITA is a co rporate aggregate and not a co rporate sole bound to an individual bishop or Moderator. The 'corporation sole' is not endowed with a separate legal personality as the corporation aggregate. [154]

Section 26 of the Indian Companies Act 1913

It is important that we have good knowledge of the Company Law provisions that govern the CSITA. We begin from sec. 26 of the 1913 Act under which the CSITA was incorporated.

1. Where it is proved to the satisfaction of the Local Government that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, charity or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the local Government may, by license under the hand of one of its Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

2. A license by the Local Government under this section may be granted on such conditions and subject to such regulations as the Local Government thinks fit, and those conditions and regulations shall be

[154] S. Govinda Menon v. Union of India, AIR 1967 SC1274 (1279): 1967 2SCR 506.

binding on the association, and shall, if the Local Government so directs, be inserted in the memorandum and articles, or in one of the documents.

3. The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of filing lists of members and directors and managers with the registrar.

4. A license under this section may at any time be revoked by the Local Government, and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section: Provided that, before a license is so revoked, the Local Government shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

An association licensed under this section which may desire to alter its memorandum by extending its objects, should obtain a sanction of the Local Government before applying to the Court for the sanction required by sec. 12(a).

Section 26 Evolved into Section 25 of the Companies Act of 1956

The fact that the CSITA was betrothed to the corporate laws by virtue of its registration and the licence from the Government finds more emphasis and amplification in the subsequent Act of 1956 whether the CSITA realised it or not. It should be noted that 'Religion' was not one of the objects covered by the 1913 Act. 'Religion' was added in the 1956 Act which openly acknowledges the religious service of the CSITA. The CSITA has failed to grow into the evolution of corporate

laws since its inception in 1947 and is accustomed to seeing itself as a minorities' association complying only in a superficial manner with the requirements of corporate legislations. This is the crisis with the CSITA which this book seeks to explore and address by specifically highlighting the issues and working out solutions relating to corporate governance in accordance with the corporate spirit in India.

The contents of sec. 25 of the CA 1956 are presented below which have more sub-sections than the 1913 Act. The latter Act stood repealed with the enactment of the 1956 Act. The essence does not change but there are additions and further expositions. The corporation concept has steadily evolved which the CSITA failed to match. The heading itself suggests that charitable companies can find their places under section 25. The duties and liabilities of the CSITA have to be viewed within the purview of this section as the new Act was introduced just five years ago.

Power to Dispense with "Limited" in Name of Charitable or Other Company –Sec. 25 of the 1956 Act

(1) Where it is proved to the satisfaction of the Central Government that an association-

(a) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and

(b) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited".

(2) The association may thereupon be registered accordingly; and on registration shall enjoy all the privileges, and (subject to the provisions of this section) be subject to all the obligations, of limited companies.

(3) Where it is proved to the satisfaction of the Central Government-

(a) that the objects of a company registered under this Act as a limited company are restricted to those specified in clause (a) of sub-section (1), and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members, the Central Government may, by licence, authorise the company by a special resolution to change its name, including or consisting of the omission of the word "Limited" or the words "Private Limited" ; and section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease.

(5) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under sub-section (1), shall, if the Central Government so directs, be inserted in the memorandum or in the articles, or partly in the one and partly in the other.

(6) It shall not be necessary for a body to which a licence is so granted to use the word "Limited" or the words "Private Limited" as any part of its name and, unless its articles otherwise provide, such body

shall, if the Central Government by general or special order so directs and to the extent specified in the directions, be exempt from such of the provisions of this Act as may be specified therein.

(7) The licence may at any time be revoked by the Central Government, and upon revocation, the Registrar shall enter the word "Limited"" or the words "Private Limited" at the end of the name upon the register of the body to which it was granted ; and the body shall cease to enjoy the exemption granted by this section: Provided that, before a licence is so revoked, the Central Government shall give notice in writing of its intention to the body, and shall afford it an opportunity of being heard in opposition to the revocation.

(8) (a) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing.

(b) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (a).

(c) In according the approval referred to in clause (a), the Central Government may vary the licence by making it subject to such conditions and regulations as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(d) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (a) to (g) of sub-section (1) of section 17, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section.

(9) Upon the revocation of a licence granted under this section to a body the name of which contains the words "Chamber of Commerce", that body shall, within a period of three months from the date of revocation or such longer period as the Central Government may think fit to allow, change its name to a name which does not contain those words; and-

(a) the notice to be given under the proviso to sub-section (7) to that body shall include a statement of the effect of the foregoing provisions of this sub-section; and (b) section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(10) If the body makes default in complying with the requirements of sub-section (9), it shall be punishable with a fine which may extend to [five thousand] rupees for every day during which the default continues.

At the time of winding up or dissolution, surplus assets, if any, may be transferred to another company registered under Section 8 of the 2013 Act having similar objects, subject to such conditions as National Company Law Tribunal may impose, or the assets may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of Insolvency and Bankruptcy Code, 2016. [Sec. 8(9)]

Formation of Companies with Charitable Objects, etc., in CA 2013

Sec. 8 of the CA 2013 corresponds to sec. 25 of the 1956 Act. The title to the section is not different. Sec. 8 is not exclusively 'charitable companies' block. The word "etc." allows other types to be included in the non-profit section 8. Sec. 25 of 1956 Act also had the title "Charitable or Other Company".

The present Act has expanded the list of the objects with a wider range of objects, viz., promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object. The list is not exhaustive and a host of things confined to the spectrum of these objects can be done by the CSITA. The restriction on the alteration of MoA and AoA are found in all three Acts. Other new features have been added to CA 2013. They are: i) Change in status of the company [sec. 8(6)]; ii) Order for amalgamation of the company having similar objects and registered as a sec. 8 company [sec. 8 (7, 8 & 10)]; and iii) Order for winding up [sec.8(7&9)]. The Central Government can effect these three actions if 'a company registered under the 2013 Act contravenes the requirements of the section or the conditions subject to which licence was granted; or if it conducts its affairs fraudulently or in a manner violative of the objects of the company or prejudicial to public interest'.[155] Punishment for non-compliance is very severe in the 2013 Act. Sec. 8(11) should be taken special notice of. Non-compliance to the requirements of sec. 8 will invite a fine of from 10 lakhs to one crore (USD 15,000 to 150,000), imprisonment and revocation of licence. The provisions of sec. 8 should be read with the Companies (Incorporation) Rules, 2014 (19-23).

Sec. 8: Formation of Companies with Charitable Objects, etc.

Sec. 8. (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

[155] Ramaiya, *Guide to the Companies Act*, vol. I, p. 438.

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" , and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

(2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that subsection, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or

as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amal-

gamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

To add to our knowledge of the CSITA as an incorporated body we should read what the Licence issued under the Companies Act 2013 by the Registrar instructed in addition to the Certificate issued on 26 September 1947.[156]

Rules for Section 8 Companies

The general provision applicable to all classes of companies is codified here in Sec. 469(1): 'The Central Government may, by notification, make rules for carrying out the provisions of this Act.' The Central Government prescribes rules to properly understand the sections of the Act and apply them in varying circumstances. These rules are important to be followed as something complementary to interpreting the Provisions and procedures specified in the Act. The point here to note is that 'the Central Government' prescribes the rules for all matters enshrined in the Act [Sec. 498 (2)].

Sub-section (2) says, 'Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.'

These include notification of Rules under the Indian Companies Act, 2013 and other notifications made by Indian Government or the MCA from time to time. Some of the Rules and Regulations framed under the Companies Act, 2013 are applicable to non-profit associations, e.g. a) Companies (Incorporation) Rules, 2014; b) Companies (Prospectus and Allotment of Securities) Rules, 2014; c) Companies (Accounts) Rules, 2014; d) Companies (Cost Records and Audit) Rules, 2014; e) Companies (Corporate Social Responsibility Policy) Rules, 2014; f) Companies (Audit and Auditors) Rules, 2014; 7) Companies (Appointment and

[156] See chapter 3.

Qualification of Directors) Rules, 2014; g) Companies (Meetings of Board and its Powers) Rules, 2014; h) Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014; i) Companies (Inspection, Investigation and Inquiry) Rules, 2014; j) Companies (Authorized to Registered) Rules, 2014; 12) Companies (Miscellaneous) Rules, 2014; k) Companies (Indian Accounting Standards) Rules, 2015.

If the rules are contravened by companies, such companies will be fined Rs. 5,000, and if the contravention continues a fine of Rs. 500 will be added to it each day until the contravention is discontinued [Sec. 469, (3)].

Forms

The provisions of the Companies Act, 2013 require a large number of forms to be filled by companies to meet various formalities of official transactions. The filing requirements relevant for each chapter of the Companies Act have to be fulfilled without fail. The provisions of the Companies Act, 2013 require a large number of filings by the Companies, the Registrar of Companies, Directors, Auditors and Key Managerial Personnel. We cannot provide an exhaustive list of the all hundred and twenty-three different forms as not all forms are required for every company. The MCA has added 65 new forms to those already used under the 1956 Act. The CSITA will have to use most of those forms for information and disclosure to the RoC, Chennai. It is important that the company secretary of the CSITA will have to be well versed with the contents of the forms that teach a lot of things helpful for maintaining corporate governance.

The CSITA stands under the Companies Act 2013 and its additional Rules by making appropriate use of the forms for smooth functioning of the company in accordance with Company Law. Added to these mandatory requirements, the Government issues notifications authorising al-

ready existing provisions and announcing exemptions from compliance by prescribed companies to certain statutes.

Notifications[157]

1. The minimum paid up share capital requirement for a public and a private company will not be applicable to Non-Profit Companies [Sec. 2(68 & 71)].

2. The notice for general meeting and circulation of financial statements may be on notice of 14 days notice instead of the 21 days for Non-Profit Companies [Sec. 101(1)].

3. The requirement for holding meetings of the board of directors will apply to Non-Profit Companies only to the extent that the board of directors are required to hold at least one meeting within every six calendar months. The whole provisions of section 118 shall not apply to section 8 companies except that minutes may be recorded within 30 days.

4. The quorum requirement for meeting of the board of directors to be one-third of its total strength or 2 directors, whichever is higher will be modified for Non-Profit Companies to be either 8 members or 25% of its total strength, whichever is less subject to a minimum of 2 members.

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[157] MCA Notifications-Exemptions, Relaxations to Section 8 Licensed Companies with Charitable Provisions of the Companies Act, 2013 (06-06-2015)" https://abcaus.in/companiesact2013/exemptions-to-section8-license-charitable-objects-companies-mca-notification.html; "Exemptions to companies licensed u/s Section 8 of CA 2013", https://www.aubsp.com/exemptions-to-section-8-non-profit-companies/

5. The requirement of minimum number of directors will not apply to Non-Profit Companies and therefore the requirement of passing a special resolution to have more than prescribed number of directors will not be required. Section 8 companies are exempted from all above minimum and maximum requirements of directors in company [Sec. 149(1)]. Hence, companies registered with charitable objects are free to appoint any number of directors and there is no need to pass special resolution for appointment of more than 15 directors.

6. The limit on the number of directorships a person can hold will not be applicable to directorships in Non-Profit Companies.

7. Section 160 of the Companies Act on the right of persons other than retiring directors to stand for directorships will not apply to those Non-Profit Companies whose articles provide for election of directors by ballot.

8. Disclosure of interest by a director in every contract or arrangement or proposed contract or arrangement as per section 184(2) of the Companies Act and register of contract or arrangement in which directors are interested to be kept by a company as per section 189 of the Companies Act will apply to Non-Profit Companies only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds INR 100,000 (USD 15,00).

9. Provisions related to "independent directors" will not be applicable to Non-Profit Companies. This includes provisions related to requirement of independent directors; appointment of independent directors; manner of selection of independent directors and maintenance of data bank of independent directors. The sub-sections (4), (5), (6), (7), (8), (9), (10), (11), clause (i) of sub-section (12) and sub-section (13) of section 149 of CA 2013 in connection with 'independent directors' will not apply to Sec. 8 companies.

10. The requirement under section 177(2) of the Companies Act for an audit committee to have independent directors forming a majority will not be applicable to Non-Profit Companies.

11. For Non-Profit Companies, a proviso will be inserted in relation to Annual General Meeting that the time, date and place of each annual general meeting are decided beforehand by the board of directors of the company.

12. Note that as per sub-section (1) of section 174 of the Companies Act, 2013, the quorum for a BM of a company shall be 1/3 of its total strength or 2 directors, whichever is higher.

13. For Non-Profit Companies, matters referred to in Section 179(3) (d), (e) and (f) of the Companies Act which are "to borrow monies"; "to invest the funds of the company" and "to grant loans or give guarantee or provide security in respect of loans" can be decided by the board of directors by circulation instead of a meeting. Relaxation for 7 days (i.e. 14 days instead of 21 days) has been given to companies licensed under section 8 of the companies Act, 2013 for sending copy of the financial statements (including Consolidated Financial Statements, if any, Auditor's Report and every other document required by law to be annexed or attached to the financial statements) to its members and trustees etc [Sec. 136(1)].

14. The requirement under section 178 of the Companies Act to constitute Nomination and Remuneration Committee and Stakeholders Relationship Committee will not be applicable to Non-Profit Companies.

15. Definition of a "company secretary" or "secretary" under section 2(24) of the Companies Act will not be applicable to Non-Profit Companies.

The Companies Act (Amendment) Bill, 2017 has been introduced which brought no significant changes to the sec. 8 companies. Nor are there any cuts in the exemptions. The Amendment Act 2017 seeks to clarify existing exemptions while seeking to improve the governance standards, as privileges and exemptions will be available only to those section 8 companies which have not committed default in filing financial statements and annual return with the RoC. If the CSITA is found having committed default then some, if not all, exemptions will not apply.

Form No. INC-16

Licence under Section 8 (1) of the Companies Act, 2013
[Pursuant to Rule 20 of the Companies (Incorporation) Rules, 2014]
WHEREAS it has been proved to my satisfaction that.....,

a person or an association of persons to be registered as a company under the Companies Act, 2013, for promoting objects of the nature specified in clause (a) of subsection (1) of section 8 of the said Act, and that it intends to apply its profits, if any, or other income and property in promoting its objects and to prohibit the payment of any dividend to its members; NOW, THEREFORE, in exercise of the powers conferred by section 8 of the said Act, I, the Registrar at ……..., hereby grant, this licence, directing that the said person or association or persons be registered as a co mpany with limited liability without the addition of the word "Limited", or as the case may be, the words "Private Limited" to its name, subject to the following conditions, namely:

(1) that the said company shall in all respects be subject to and governed by the conditions and provisions contained in its memorandum of association;
(2) that the profits, if any or other income and property of the said company, whensoever derived, shall be applied solely for the promo-

tion of the object as set forth in its memorandum of association and that no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise by way of profit, to persons who at any time are or have been members of the said company or to any of them or to any person claiming through any one or more of them;

(3) that no remuneration or other benefit in money or money's worth shall be given by the company to any of its members except payment of out-of-pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the company;

(5) that nothing in this clause shall prevent the payment by the company in good faith of prudent remuneration to any of its officers or servants (not being members) or to any other person (not being member), in return for any services actually rendered to the company;

(6) that nothing in clauses (3), (4) and (5) shall prevent the payment by the company in good faith of prudent remuneration to any of its members in return for any services (not being services of a k ind which are required to be rendered by a member), actually rendered to the company;

(7) that no alteration shall be made to the memorandum of association or to the articles of association of the company, which are for the time being in force, unless the alteration has been previously submitted to and approved by the Registrar;

(8) The Company can be amalgamated only with another company registered under section 8 of the Act and having similar objects; and

(9) that, without prejudice to action under any law for the time being in force, this licence shall be liable to be revoked, if the company:

(a) contravenes any of the requirements of section 8 of the Act or the rules made thereunder or any of the conditions subject to which a licence is issued;

(b) if the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest.

……..
Registrar

Dated this..... day of.....20...……

CSITA Is a Company Limited by Guarantee

In the *Guide to the Indian Companies Act 1913*, the phrase "company limited by guarantee" is explained thus: 'The Act [i.e. 1913] provides for the formation of Companies limited by guarantee, the principal feature of such Companies is, that each Member undertakes to contribute to the assets of the Company in the event of its being wound up … towards the debts and liabilities of the Company incurred before … a sum not exceeding a specified amount. The above provision is particularly applicable to Clubs, whose members are each of them personally liable for the debts incurred on the Club's account, except such debts as have been incurred under particular circumstances. By incorporating themselves into a Company limited by guarantee, the Members limit their liability to a sum of Rs. 100 or such other amount as may be stated in the Memorandum of Association' (p. 5). But the CSITA is not a club-sized company!

Sec. 2(21) defines "company limited by guarantee" as 'a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up. "The Memorandum of a Company limited by guarantee has to state that each member undertakes to contribute to the assets of the Company in the event of

its being wound up, for payment of the debts and liabilities of the Company, such amount as may be required not exceeding a specified amount' (Company Law, p. 554). The MoA of CSITA has specified an amount of Rs. 15 from each member in case of the company being wound up to meet the cost and expenses of winding up (Sec. 4. ii B; MoA 7). The Company limited by guarantee, as Paul Davies observes, is particularly 'suitable for carrying on a not-for-profit business' (p. 17). He further notes that 'the guarantee company and the company limited by shares are not regulated fundamentally different ways' (p. 17).

The Indian Companies Act 2013 was primarily written for commercial companies, and it is in this context that non-profit associations join this jurisdiction, though under a different class. It is beneficial to view a non-profit company such as the CSITA on a par with the commercial companies, though there are exemptions from several provisions of the Companies Act that are applicable to profit-oriented corporates.

Is CSITA a Charitable Organisation or a Trust Company?

We now concentrate on the words 'trust' and 'trustee' used in the Memorandum of the CSITA. They appear eight times in the memorandum which significantly seems to alter our perception of the nature of the role of the CSITA and the purpose of its incorporation (formation as a corporation). The official name of the CSITA carries within it the word 'Trust' and it is approved by the Government. What does this word convey, and does it prevent us from understanding the corporate nature of the CSITA?

Sec. 33 of 1913 Act says, 'Trusts not to be entered on register (of a corporate company). No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar'. If the CSITA was a Trust by registration, it would not have found a place in the statutory register of the company and the Registrar would

not have accepted such a company. If the trust status cannot be openly expressed, even be implied or derived by inference that the CSITA cannot be a hidden trust is Trust clothed by incorporation. The CSITA, a Section 8 Company, is a Trust Association registered under the Central Government's "Ministry of Corporate Affairs (MCA)" through the Registrar of Companies, and it is not a Trust registered under State Government rules and regulation or a Charity Commission of a State.

Non-profit corporations are different from charitable Trusts. Trusts are governed by Trust Laws, and a corporation is grounded in Companies Act but rich with fiduciary concepts as in a Trust.[158] Yet corporation trustees must go beyond the care that the trustees can give under the Trusts Act. In a Corporation, as Henn & Boyd note, "Corporation law principles, rather than trust principles, govern the administration of funds donated for specific charitable purposes. Assets donated to not-for-profit corporations become the property of the corporation even if transferred by a trust instrument."[159] The CSITA organization holds the assets in trust for specific purposes and not as any type of Trust. Subjecting the incorporated body to a Trust level should be discouraged. "The trustee concept is a vestige of the law of charitable trusts and is inappropriate for non-profit corporations."[160] The Trust concept applies Trust principles to non-profit corporations which do not neatly fit. The CSITA is a registered corporation with separate legal entity and not a Trust registered under the Charity Commission and Indian Trust Act 1882. One may detect close parallels between a non-profit corporation and charitable Trust sometimes closer than between a non-profit and

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[158] Henn & Boyd, "Statutory Trends in the Laws of Nonprofit Organizations", *Cornell Law Review,* vol. 66, August 1981, p. 1106.

[159] Henn & Boyd, "Statutory Trends in the Laws of Nonprofit Organizations", p. 1121.

[160] Henn& Boyd, "Statutory Trends in the Laws of Nonprofit Organizations", p. 1130.

market-oriented company. But a sec. 8 company cannot be wholly termed as charitable Trust.

A company can hold property in its own name under a common seal, but an unincorporated club cannot. The question arises as to who controls the property belonging to an unincorporated association. The trust is one means by which the property of the club can be transferred into the name of a few of the members who will hold the property on behalf of the other members. The Trustees are the owners of the properties on the ground of law but not real owners. It has long been recognised that a trust and contract relationship can coexist but not a Trust and a body corporate like the CSITA.

S. Atkinson remarks, 'It's vital that charities get their heads around governance. Following good governance practices, not just paying lip service but really understanding and applying them, could have averted many of the bad headlines of the last two years. It's more than ticking the boxes. It's about attitudes and culture, whether a charity puts its values into practice. It's about how trustees make decisions and how well they understand what's going on. We have seen the consequences of failing to do that.'[161] The famous scams in the US are Enron, Ponzi Scheme, Lehman Brothers, Goldman Sachs, WorldCom, Tyco International. In India: the Punjab National Bank, Saradha Group, Satyam Computer Services, etc. SEBI probes 59 companies for stock market fraud, ends up finding 14,720 such entities. Exploiting charity intentions persons use some underhanded accounting tactics and use the charity money and assets for their own personal needs.

It is to be noted that the legal title to the trust property is vested in the trustee but not so in Company Law. There was no Trust instrument creating the CSITA, a non-profit corporation. Typically, a public charitable trust must register with the office of the Charity Commissioner

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[161] S. Atkinson, "https://charitycommission.blog.gov.uk/2017/07/13/the-new-charity-governance-code-essential-reading-for-all-trustees/

having jurisdiction over the trust (generally the Charity Commissioner of the state in which the trustees register the trust) in order to be eligible to apply for tax-exemption.'[162] In many States, purchases or sales of property by a Trust must be approved in advance by the Charity Commissioner. The CSITA did not take this journey route and it chose to be functioning as an incorporated company. The majority of not-for-profit companies and incorporated social enterprises are limited by guarantee. Companies which are registered as charities with the Charity Commission, for example, must be limited by guarantee.

The statutory obligations are more than the benefits (as they are called) enjoyed by a Section 8 Company. The benefits cover exemption from stamp duty for registration, tax deduction to the donors and exemption from keeping any title such as "Private Limited" or "Limited". The statutory obligations are that i) profits should be spent on the promotion of the objects of the company, and ii) they are not to be divided among members. The most important rule is that the company registered under Section 8 of the company shall not alter the provisions of its memorandum or articles unless previously approved by the Central Government. This has not been adhered to by the CSITA. The exemptions are the 'killers' that it denies the CSITA an opportunity to compete with the for-profit companies to enhance the effectiveness and efficiency in corporate management. If one clause or sub-section is altered without prior approval from the Central Government the validity of the entire Memorandum/Article will be brought under question.

Is CSITA a Charitable Organisation or Trust Company? The answer is a qualified 'no'. The CSITA has charity as one of its objects but it is not a charitable organisation. The directors and members of the CSITA have fiduciary duties to fulfil like the trustees but it is not a Trust. Corporate is a better mode for the CSI than forming a Trust or Society. It should not be forgotten that the CSI Trust Association is an incorporated

[162] http://www.ngosindia.com/resources/ngo_registration1.php.

company. We do not need to feel shy about the word 'company' as it has a specific meaning in a corporate context and it is not degrading the sacred 'church'. If 'church' is a symbol of religious holiness, the 'company' is a symbol of corporate personality of the church.

Conclusion: Piercing of the Corporate Veil

To conclude, two things are paramount to the understanding of the nature and character of the CSITA as a company. First, it is formed to promote certain specific objects such as commerce, art, science, charity, religion, or any other useful object, and secondly, the CSITA applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members. These two aspects of the non-profit company should be firmly fixed in the minds of the Association's members and leaders. These two remain unchanged in the CAs 1956 and 2013 except that the word 'Religion' was not in the objects list in 1913 but found a place in 1956 and 2013 Acts. The list in the 2013 Act is slightly lengthier with an added clause: 'the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity protection of environment or any such other object' [sec. 8 (1) a].

The sense of 'company' has not infiltrated into the mores of the CSITA/CSI administrative culture. The CSI takes the CSITA merely as a hired servant who could do things in accordance with its directions and decisions. More on this point later. Is the CSITA regulated on the terms of the Trust Acts in consonance with its name 'Trust Association'? The CSITA is a chronic defaulter in complying with the mandatory requirements of the provisions of the Companies Act. A trust mind-set still prevails, and the CSI is in a confused state of mind. It ignores and disrespects the corporate personality of the CSITA. At all relevant times, the corporation was influenced, dominated and controlled by the CSI that the individuality and separateness of the CSI as a church and the CSITA

as the corporation ceased.[163] Hence it is time for lifting the corporate veil to see the real affairs of the company.

A company like the CSITA is therefore said to have 'separate legal personality' or 'corporate personality'. We showed that a registered company is a body corporate and is a legal person separate from the members and promoters. This was recognized most famously in Salomon v A. Salomon & Co Ltd (1897). The company is at law a different person altogether from the subscribers to the memorandum, i.e. 19 members and 10 directors of the CSITA. The effect of corporate personality is to create a 'veil of incorporation', and in certain circumstances this veil of incorporation can be 'lifted' or 'pierced', i.e. when the corporate personality is persistently ignored for some other purpose. The situation will still be worse when the purpose is fraudulent and unjust.

It is a common understanding that the Church called the Church of South India being a religious institution must be thought of as a charitable trust. The CSI, an association of persons, registered itself under the Companies Act of 1913 has 'charity' as one its objects. Sec. 26 of the Companies Act 1913 has a list of objectives which do not have 'religion' as an objective that a company of sec. 26 can promote. The Indian Companies Act of 1866 was replaced by The Indian Companies Act 1913.The Indian Companies Act was based on the English Acts, therefore in cases pertaining to Company Law, the Indian Courts closely followed also the decisions of the English courts. 'Companies limited by guarantee' are widely used for charities, community projects, clubs, societies and other similar bodies. Most guarantee companies are non-profit companies. The main reason for a charity, community project, etc. to be a company limited by guarantee is to protect the directors running the company from personal liability for the company's debts and other types of failures. A not for profit company limited by guarantee can be

[163] Cf. COURTNEY C. PLATT, Plaintiff and Respondent, v. GLENN BILLINGSLEY et al., Defendants and Appellants.1965.

exempted from having the word 'Limited' (or 'Ltd') at the end of its name if it is set up for clearly laid-out objects. This is the class to which the CSITA belongs.

We have seen in a detailed manner on the basis of the official documents how the CSI has been the dominant force in domesticating the CSITA, a corporate entity. The CSI Synod with its 'proprietor-mentality' has been treating the Trust Association as a bare trust merely as a depository of the lands properties. The CSITA Committee of Management is doing not more than a rubber-stamp service. It should be determined whether the corporate veil should be pierced. The courts have come up with a number of tests that primarily focus on the relationship between the controlling persons of the corporation and the corporation itself. The most important of these tests is the Alter Ego test, and we propose that this is the guarantee that will set us on course to finding the right remedy. Under the Alter Ego test, the separate existence of a corporation is not respected if a controlling Church of South India can exercise so much influence over the corporation CSITA. The "alter ego" test will allow piercing the corporate veil which will redeem the CSITA from the clutches of the CSI and prevent fraud and injustice to make permanent dwelling.

The courts are reluctant to apply the doctrine of 'Lifting the corporate Veil' straightway unless the facts and circumstances permit 'piercing of the corporate veil'. "Despite the seemingly categorical statement made by Lord Halsbury in Salomon's case, a few years later, the English court held that in certain situations it was permissible to disregard this principle and to 'pierce the corporate veil'. In this context, 'piercing of corporate veil' describes situations wherein the separate entity principle may be deemed unfair and the courts may make decisions contrary to this principle on various grounds. The court often does this so as to

reach the person behind the veil and to reveal the true nature of the company.' [164]

In Littlewoods Mail Order Stores Ltd V. Inland Revenue Commrs, Lord Denning observed stated that, "The doctrine laid down in Salomon v. Salomon and Salomon Co. Ltd, has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited liability company through which the Courts cannot see. But, that is not true. The Courts can and often do draw aside the veil. They can and often do, pull off the mask. They look to see what really lies behind". [165]

It has however become a hard task for academics and practitioners to find a basis on which courts may lift the veil. This is an area which is said to be inconsistent and quite unpredictable. *In Briggs v James Hardie & Co Pty Ltd,* there is pointed out the lack of a common and unifying principle underlying the court's decision to lift or ignore the corporate veil. "This is largely due to the fact that this is an area where case facts and personal views of judges have a bearing on the outcome. Nonetheless, the principle in Salomon case is widely recognized and followed in courts. This principle which is enshrined in article 16 of the Companies Act 1997 has since been followed in company proceedings in court. Salomon's case has become a landmark company case law in the UK and is often cited in most cases within the area of company law." [166]

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[164] "The Doctrine of Separate Legal Entity: A Case of Salomon Vs. Salomon Co. Ltd.," https://writepass.com/journal/2016/11/the-doctrine-of-separate-legal-entity-a-case-of-salomon-vs-salomon-co-ltd/

[165] "Lifting of the Corporate Veil", http://www.ckadvocates.co.ke/2013/10/lifting-of-the-veil-principle/

[166] "The Doctrine of Separate Legal Entity: A Case of Salomon Vs Salomon & Co Ltd."

5

THE NORMS AND STANDARDS OF CORPORATE GOVERNANCE FOR THE NON-PROFIT CSITA

Introduction

Awareness of our corporate status and the characteristics of incorporation should lead us to embark on addressing the most vital question of corporate governance (CG). The phrase ‘corporate governance’ was not heard of some thirty years ago, but nowadays there are over 3 million references to the term in Google. Not-for-profit organizations of all classes and sizes have to place extra emphasis on corporate governance. Recent fraudulent activities and scandals involving major not-for-profit organizations have brought attention to the lack of governance at board level. Today, even Europe is looking to the USA for guidance for drawing up corporate law regulatory systems for non-profit associations as developments started much earlier in USA than in the rest of the world. The US has a century-old tradition in charitable corporations, and it is the forerunner in non-profit corporations; it now has more than 1.6 million non-profit organisations. As K.J. Hopt observes, ‘Today the non-profit corporation is the typical form of nonprofit organization in the US, and the Model Nonprofit Corporation Act 1952 set standards for its

regulation.'[167] But the need for its modernising and up-dating are felt much more strongly even by the American corporates, as Hopt adds, "While even in the US nonprofit corporations have been described as 'corporate Cinderellas' and the 'neglected stepchildren of modern organization laws'." Harvey J. Goldschmid maintains that borrowing from corporate law with a number of modifications may render Cinderella ready for the ball.[168]

One can imagine how difficult and challenging this is in a country like India where the non-profit sector is a neglected area in comparison with shareholding business enterprises. Although the non-profits are blessed with special treatment by Company Law, that too is in a piecemeal fashion, and there is no wonder that they are lagging far behind in developing a culture of board management, compliance to law and maintaining transparency and financial accountability. Corporate governance is to project a true and fair picture about a company's dealings. There are stringent measures and penal provisions laid out for the non-profits, but positive directions and opportunities for achieving higher results are not provided by the corporate regulatory systems. We have to search hard for remedial provisions in CA 2013 to solve the crisis of a company like the CSITA. We encounter a condescending attitude shown by the dominant for-profit philosophy towards the non-profits. Naturally, they seem to be on the wrong side of the law. We find our own Cinderella in the Indian corporate context and the Government, as the Fairy Godmother, should prepare her for going to the ball!

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[167] "The board of nonprofit organizations: some corporate governance thoughts from Europe" in *Comparative Corporate Governance of Non-Profit Organizations,* ed. by K. J. Hopt and T. Hippel, Cambridge University Press, 2010, p. 533.

[168] "The board of nonprofit organizations: some corporate governance thoughts from Europe", p. 533.

The Great Indian Purge

The Deccan Chronicle on 22 July 2017 reported, "The Registrars of Companies (RoCs) have removed 1,62,618 companies from the register of companies as on July 12, 2017 after following the due process under Section 248 of the Companies Act, 2013." Thus said the Corporate Affairs Minister Arun Jaitley to the Lok Sabha on 21 July 2017, because many such corporations had been found to be indulging in large scale tax violations. The companies were used as conduits for dealing in black money and hawala transactions which have come to the notice of the government. Out of the 1,62,618 companies that were struck-off the register, the registration of 33,000 were cancelled by RoC (Mumbai). Among others, the RoC (Delhi) has struck off 22,863 companies from the register, and 20,588 firms were deregistered by RoC (Hyderabad). Jaitley said the task force on 'shell companies' has submitted its recommendations, and that actions were being taken. The minister further said, 'Where there is infraction of law, action is taken under the relevant provisions.'[169]

"There are about 15 lakh (one lakh is 1,00,000) registered companies in India and only 6 lakh companies file their annual return. This means a large number of these companies may be indulging in financial irregularities," reported *The Indian Express.*[170] *The Indian Express* further reported, "In the latest move to curb tax evasion, the government has set up a task force to monitor actions of deviant shell companies." It is noted with appreciation that in five months' time, a report was made ready by the task force on this large-scale operation and, based on this, suitable action was also taken within that time by the Ministry of Corporate Affairs. At one stroke, 1.62 lakh companies were erased from the book

[169] *Economic Times*, 21 July 2017.
[170] 17 February 2017.

of registration. We do not have the record of how many non-profit companies were part of the great purge.

How are the NGOs doing with this backdrop? Licences of around 20,000 out of 33,000 NGOs have been cancelled by the government after they were found to be allegedly violating various provisions of the FCRA, thus barring them from receiving foreign funds. How do we explain this phenomenon? The CSITA has its own FCRA problems of violation. Should we blame it on human weaknesses of avarice and greed? It is, by and large, a problem of governance.

What Is 'Governance'?

The word "governance" came from the Latin verb *gubernare,* or more originally from the Greek word *kubernaein*, which means "to steer". Based on its etymology, governance refers to the manner of steering or governing, or of directing and controlling, a group of people or institution or corporation. 'Good governance is understood through its eight indicators or characteristics: (1) Participatory; (2) Rule of Law; (3) Effective and Efficient; (4) Transparent; (5) Responsive; (6) Equitable and Inclusive; (7) Consensus Oriented; and (8) Accountability. They are inextricably related to each other.' Any system that fails to exhibit these qualities will be termed as 'corporate misgovernance'. [171]

How can we assure proper oversight and steady management in all CSITA institutions? How do we administer and direct them to fulfil the aims and the objectives of the company? Governance is the way the rules, norms and actions are structured, sustained, regulated so that every unit of the CSITA is held responsible, transparent and accountable. How do various levels of employees democratically engage with each other?Are there ethical principles, 'norms' and codes of conduct that

[171] "What is Governance?", https://tamayaosbc.wordpress.com/2014/08/21/what-is-governance/

shape and steer the entire governing process whether in a single institution or among the collective units. How does the CSITA work collaboratively ensuring high quality joint performance? How do we manage the resources and use them to produce more resources? Are there assessment mechanisms in governance? How can we manage finances in a proper and transparent way? How is our feudal hierarchical use of power felt throughout the CSITA? Shouldn't governance mean to facilitate or regulate, not to dominate or command? Is the CSITA's financial statement credible? Such questions are connected with the art of governance.

What Is 'Corporate Governance'?

All Corporate entities, both for-profit and non-profit, are in need of governing. Corporate Governance is a multi-faceted subject and is difficult to comprehend in a concise definition. "Corporate governance" is normally defined as 'the system of rules, practices and processes by which a company is directed and controlled'. Governance is the systems and processes concerned with "ensuring the overall direction, effectiveness, supervision and accountability of an organisation".[172]

In India, the Confederation of Indian Industry (CII) took the first initiative in 1977 which was purely for the listed companies. The Securities and Exchange Board of India (SEBI) set up a committee under the chairmanship of Kumar Mangalam Birla to promote and raise the standards of corporate governance predominantly for stock-exchange companies. The Birla Committee Report was approved by SEBI in December 2000. The said report led to introduction of Clause 49 in the listing agreement requiring companies to comply with corporate governance norms. On the basis of recommendations of the Committee under the Chairmanship of N.R. Naranyana Murthy, Chairman and Mentor of

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[172] https://knowhownonprofit.org/governance/getting-started-in-governance/getting-started-in-governance-1, 31 March 2018.

Infosys Technologies Ltd., SEBI revised Clause 49 of the Listing Agreement which came into effect in 2006. These norms are recommended also to unlisted companies. Recently, the Ministry of Company Affairs has set up the National Foundation for Corporate Governance (NFCG) in partnership with CII, ICAI and ICSI. Its mission is very challenging: a) To foster a culture of good governance and voluntary compliance, and facilitate effective participation of different stakeholders; b) to further research, scholarship, and education in corporate governance in India; and c) to catalyse capacity building in new emerging areas of Corporate Governance.

Corporate governance is about the way in which corporate entities are governed. N. R. Narayan Murthy defined it thus: "Corporate governance is maximizing the shareholder value in a corporation while ensuring fairness to all stakeholders, customers, employees, investors, vendors, the government and the society-at-large. Corporate governance is about transparency and raising the trust and confidence of stakeholders in the way the company is run. It is about owners and the managers operating as the trustees on behalf of every shareholder – large or small."[173] For the sake of non-profits, we drop the word 'Shareholders' and replace it with an all inclusive word 'stakeholders'. To make sense to the CSITA the word 'shareholders' may be replaced by the 'settlors' who handed over the properties of the church to the CSITA. The CSI can be viewed both as the settlor and the beneficiaries to make things simple for our understanding. It would be better for our understanding not to press it too hard and get too technical.

Corporate Governance is defined as referring to the rules, regulations, policies and standards for sustaining accountability, transparency and general corporate integrity. The emphasis we give to corporate governance in this volume is on the constitutions (MoA and AoA) of non-profit corporate entities such as the CSITA. As B. Tricker has pointed

[173] http://www.nfcg.in/introduction-page-10.

out, 'The entity has an existence separate from its members, runs activities, and needs to keep separate financial accounts. Its constitution should define the rights and duties of its members, and lay down the rules about the way in which it is to be governed … Whether the constitution is formal, as required under the law, or an informal set of rules, it is fundamental underpinning of the corporate entity and, hence, its governance.'[174] There is a definition which brings the stakeholders under the purview of corporate governance. H. Eller writes, 'And on the other side [there is] the more widespread meaning of corporate governance considering all stakeholders: "Corporate Governance is the system by which organizations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the board, managers, shareholders, and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs".'[175] Nonprofit-organization like the CSITA faces the challenge of being multiple-stakeholder (members, directors, worshippers, religious workers, volunteers, employees, board, interest groups, governments).

We are not looking at corporate governance in terms of a mere management science. The ensuing volume, i.e. Part II, will deal with the relationship between the Board of Directors and the Members of the company from a governance perspective. But now we look at the sources of power for achieving and maintaining corporate governance. We are interested in setting up sign-posts and drawing road-maps. The main source of power and the hub of all corporate activites in a company are the MoA and AoA in addition to the good corporate sense sustained by corporate laws and rules guiding the institution at every step.

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[174] *Corporate Governance,* pp. 34-35.

[175] "Corporate Governance in Alpine Clubs – a Must Have*?" Journal of Business and Economics*, May 2014, Volume 5, No. 5, Academic Star Publishing Company, 2014, p. 748.

The unlisted companies with 'charity' as an object make a major contribution to development and social welfare in India. They make a huge contribution to education, ecology, the alleviation of poverty and many other human resource developments. However, the corporate governance needs of unlisted companies like the CSITA, to date, have been relatively neglected by governance experts as well as by company policy-makers. The Indian Companies Act 2013 does not define 'Charity' and even the word 'non-profit' does not find a place, whereas the word 'profit' occurs 126 times. In particular, the SEBI (Securities Exchange Board of India) Corporate Governance Code (clause 49) is primarily aimed at listed rather than unlisted enterprises. The non-profits deserve to talk about corporate governance as it is not a field meant only for the business companies.

Good corporate governance in this context is concerned with i) the relationship between board of directors and the members of the Genral Body and donors in the ordinary membership level, ii) compliance with formal rules and regulations in MoA and AoA and the CA 2013 as in listed companies, and also iii) establishing a framework of company processes and attitudes that add value to the religious institution, help build its reputation and ensure its credibility. The CSITA is lagging in all these three areas, and our concern is how to help the CSITA in at least taking small steps to set corporate governance as its goal.

In an environment of mounting societal scrutiny targetting public and religious companies, even unlisted companies which enjoy privileges from the Government have to devote attention to the liabilities of key managerial personnel, directors, members and the donors. it is important to recognise that the company is not an extension of the personal property of the owner, i.e. the Church of South India.

Boardroom behaviour and corporate culture should be developed in the non-profit CSITA. An incorporated Association under the Indian Companies Act 1913, CSITA has a Managing Committee of 10 directors

out of the 19 persons who are called Association members and subscribers. 'Strong corporate governance means that internal controls are set in place to protect the company. Proper internal controls significantly reduce the chance of any type of fraud or embezzlement within the company. Non-profits, more than any type of company, must remain beyond reproach in the eyes of the public.'[176] This issue will be dealt with in Part II.

It is time for the Church of South India Trust Association's position in the Indian corporate sector to be closely studied. In order to do that we need to prepare ourselves to get used to corporate language and idioms in our search for understanding the status and the identity of the CSITA and its beneficiary the CSI in the corporate world. The question is whether the CSI has a corporate side to look at, and if yes what it is and how should it behave within the national corporate sector.

A corporate's major activity is not to achieve the goal of sustainable wealth maximization, though that goal may be in the background for the benefit of future generations of the Church of South India. The CSITA may see itself engaging in revenue-generating activities. At the present juncture, however, a credible and professionally functioning corporate system is put in place as a result of its incorporation as a company and it should work against all forms of inefficiency, mediocracy and corruption that pervade the ecclesiastical administration.

The Need for Corporate Governance for both Listed and Unlisted Companies

The number of Listed Companies was reported by the Bombay Stock Exchange statistics, as 5,629 units in March 2018. The number of Listed

[176] M. Garcia, "Importance of Corporate Governance in a Nonprofit Organization" https://smallbusiness.chron.com/importance-corporate-governance-nonprofit-organization-62533.html.

Companies data are updated monthly as there are variations each time. The average figure since January 1993 until March 2018 has remained 5,305. It is also reported that half of India's listed firms are on the verge of falling. This is in the context of the total number of about 800,000 companies out of which there are 83,000 public companies. The Lok Sabah was informed on 29 December 2017 that there are 10,68,829 active unlisted private limited companies and 66,063 unlisted public limited companies operating in India.[177] The top unlisted companies are performing well in revenue generating and profit growth than most of the Listed Companies. The concern here is that the Indian Companies Act is heavily in favour of listed companies compared to the non-profit companies which are not far behind in terms of numbers. It should be admitted that trading should receive all attention and hence the Acts are designed to promote listed companies that contribute to the economic growth of the country. The listed companies get priorities in a capitalist context of business atmosphere and economic growth. What about Sec. 8 companies? Does Section 8 cover almost all the provisions necessary for the nature and function of non-profits?

S.K. Chaturvedi, M. Dubey and C.M. Sadiwala who make an analysis of Section 8 companies rightly remark, 'A country cannot do well without strong corporate governance; to make sure that the spirit of the corporate culture is balanced, government has to make various laws & regulations that not only keep a watch on various activities of corporate but also *provide provisions for their better exercise & effective management as well as functioning.*'[178] This is a fitting observation in the

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[177] "Over 10 lakh active unlisted private companies exist: Jaitley in Parliament",
http://timesofindia.indiatimes.com/articleshow/62294178.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

[178] Italics mine. S. K. Chaturvedi *et.al.,* "An Analysis of Section 08 Companies in India", *International Journal of Innovative Science, Engineering & Technology*, Vol. 2 Issue 12, December 2015, pp. 349-50.

light of the 12 provisions in Sec. 8 because half of the provisions touch on the issues of non-compliance and the attendant punitive actions against the non-profits. The provisions for directions and prescriptions to help the Sec. 8 companies are the elements that are more necessary than announcing penalties for violations and procedures for winding-up and revocation of license. The privileges and exemptions granted to them by the Central Government may not serve well to make progress by the non-profit companies towards the attainment of growth and good governance.

The CSITA Is a Big and Wealthy Company

The CSI has an ordinary membership of about 4.5 million people living in the five southern states of India and in Jaffna, Sri Lanka. It is the second largest church in India next to the Roman Catholics. Its history can be traced back to 1706 CE, but it was formed as a united Church in 1947 securing a huge amount of assets from the missionary administration. In the financial statement 2015-2016 of the CSITA, the following activities are listed:

"CSITA continues its Charitable activities which have grown in magnitude and utility. Through these activities the Church continues to serve the public at large in rural, sub-urban and urban areas irrespective of caste, creed and religion and they are summarized as follows:-

1. The Medical needs of the masses are being attended to by Hospitals and Health Centres numbering about 50.

2. The number of educational institutions within the CSITA – 94 Colleges, 578, Secondary Schools, 1,467 Elementary and Nursery Schools, 47 T echnical Institutions, 24 P ara Medical Institutions, Others 44 continue to cater for the educational needs.

3. The Boarding Homes, Hostels and Day Care Centres cater to the needs of Children who are orphaned, poor, deserted and differently abled.

4. The provision of drinking water facilities and other amenities are extended to the under privileged communities.

5. Professional Training Schools both formal and non-formal continue to provide skills to men and women.

6. Assistance in Community Development, environmental concern and self employment schemes are also being carried out."[179]

The CSITA owns more than 2,000 colleges and schools at all levels and has 50 hospitals/health centres with a total of over 20,000 employees. The beneficiaries and stakeholders of the CSITA, namely the Church of South India has over 14,000 congregations which are led by over 12,000 ministers and there are 24 heads of churches holding powers of Attorney for the CSITA. Goodcorporate governance is vital for such an organisation whose performance is low heeled. The company is lacking in good corporate behaviour.

The Corporate Failures of the CSITA

The CSITA's Committee of Management does not consist of different categories of directors as specified in the CA 2013. One director has been on the Committee since 2009. Does not a rotation policy apply to him? There is no woman director. The CSITA has no non-executive directors and no independent directors. There could be at least two independent directors, based on the net worth of the company which is estimated as one lakh crore Indian rupees (about 15 billion USD). There are now only 10 directors in a General Body of 19 members which manages

[179] The Balance Sheet of 2015-2016 along with Financial Staement was submitted to the RoC, Chennai only on May 2018.

the finances and properties to support 4.5 million beneficiaries. The number of members is highly disproportionate to the total number of donors and ordinary subscribers in the CSI congregations. The directors do not work full-time, and all of them play the roles of honorary directors only in the free time they might have from their respective professions. Their educational qualifications have nothing to do with company management. Unprofessional individuals with incompetence in company matters are in charge of the CSITA!

To add to the trouble, the directors were removed by the NCLT on 18 November 2016 (CP 2/2016). An appeal was made to the Chennai High Court which stayed the order. Nothing more can be said as the case is *sub judice* at the court. In another case filed at the NCLT (CA 64/2017) the judicial verdict (29 June 2018) was that none of the present members can represent the company on any capacity because they are already replaced by an Administrator appointed by the Tribunal. With the appointment of administrator pending *sub judice* at the Chennai High Court (CRP 3739/2016) the CSITA is reportedly subjected to investigation by the Serious Fraud Investigation Office (SFIO) from May 2018. The CSITA management is found in the worst possible condition.

Mr. A. Bennet who was in charge of the CSITA in 2012 confessed to the then Company Law Board that he did not comply with the provisions of Sections 220 (failure to submit balance-sheet to RoC for several years), 166 (failure to meet as Annual General Meetings for several years) and 160 (failure to submit Annual Returns for several years) of the Companies Act 1956. He gave an excuse by saying that 'being a Sec. 25 company the directors are otherwise engaged in their personal engagements' and they are only honorary persons. Hence there is a higher chance of conflict of interest damaging the progress of the company. The directors should not not be in a position where their fiduciary duties for the company conflict with their personal interests. Bennet admitted that there was discontinuity in the appointments of directors as each one

needed more time to understand the functioning of the CSITA. He further submitted that the compounding offence was not intentional. He prayed before the Law Board 'to levy only normal and minimum fine as the institution is a Charitable, Religious one and managed by Elected Honorary Directors once in two years'. He therefore prayed 'to compound the offence and levy the lowest minimum fee'.[180] The CLB was also sympathetic, and no prosecution was initiated against the directors. Each director and the CSITA were fined Rs. 5,000 each for the offences committed under the 1956 Act. Such misconduct would be severly punished if they were to be judged today, with the more stringent law of CA 2013 in place. The CSITA might not get the same paternalistic treatment under the the NCLT, the successor of the CLB. There are more penal provisions in CA 2013 than in CA 1956.

The 2012-13 Report of Varma & Varma, Chartered Accountants exposed the irregularities and flaws in the CSITA's 2013 Financial. They made a qualified opinion on the following grounds:

'Liabilities and Short term Loans and Advances include certain balances including inter unit balances which are pending confirmation/reconciliation. The impact of the same on the accounts is not ascertainable.

The accompanying financial statements have not been drawn up in all material aspects in accordance with the Revised Schedule VI to the Companies Act, 1956. Specific deviations include but are not limited to the following: i) Comparative figures have not been furnished in respect of Notes to Balance Sheet and Statement of Income and Expenditure; ii) Non-disclosure of certain other mandatory information.

CSITA Head Office (in Chennai) has not prepared and presented the Cash Flow Statement for the year ended 31st March 2013, as required

[180] "Before the Company Law Board – Application in the Matter of Compounding of Offence under section 621A of the Companies Act, 1956", 18 April 2012.

under Sec. 211(3C) of the Companies Act, 1956 read with Accounting Standard 3 of the Companies (Accounting and Standards) Rules, 2006.

Comment (b) is very important for our concern in that the auditor reported that mandatory information was not disclosed by the CSITA in its financial statement of 2012-13.'[181]

The members of the CSITA, as usual, excused themselves by citing their lack of knowledge, thus acknowledging their failures. The CSITA responded by saying, 'Owing to practical difficulties, CSITA could not comply with all the requirements,' and 'The requirement will be complied in the following years'.[182] It shows that the company does not expect to fulfil all requirements, and it is erroneous to think that the company overseers should accept them if a few mandatory requirements are not met. The most delinquent boy in the class!

The Board is the company's power base which determines the efficiency and effectiveness of the non-profit company. Good corporate structure is so essential for maintaining good governance. The CSITA should adhere to the qualifications expected of a director. Being a Sec. 8 company, the CSITA has taken advantage of the exemption not to appoint full time Key Managerial Personnel. There should be a f ullfledged managerial team to control and administer the hundreds of institutions and thousands of employees and ordinary members who are not part of the AGM. The CSITA must make use of director training and development programmes run by professional bodies and research organisations. The Institute of Chartered Secretaries and Administrators also offers guidelines on the selection and induction of directors. A director ought to have commitment, character of integrity, collaborative spirit, appropriate qualifications and potential to make contributions.

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[181] "Independent Auditors' Report" in *Report of the Committee of Management for the Year 2012-2013.*

[182] "Before the National Law Company Tribunal: case CP 2/2016, p. 4.

How to implement corporate governance at the board level will be studied in Part II of this book.

Lack of Professionalism in the CSITA

The minutes of the CSITA Committee of Management are not made available to the public. There is no company Prospectus informing the public about the essentials of the company.

An important step was taken by the CSITA after the introduction of the Indian Companies Act 1956 that some changes were made to the Articles of Association to bring them in conformity with the CA 1956 and its Rules. The CSITA's Report to the Synod 1970 states, "During the biennium the Articles of the Church of South India Association were amended in order to bring them in conformity with the Indian Companies Act, 1956 and its Rules. The Amended Articles were approved by the Regional Director, Company Law Board, Madras, and adopted by the Association at its meeting held on 17-8-1969."[183] It is not clear as to what changes and modifications were made to the AoA, and there are no reports available on those amendments. A comparison between the MoA and AoA documents supposedly amended up to 26 July 1956 and the available text amended up to December 2005 are identical and do not show any trace of correction or change. Whether there are other revised documents available no one knows for sure.

The 2005 version, the latest we have in print form, which ought to be the new document amended as reported to the 12th meeting of the Synod (1970), did not even alter the amounts of money specified in 1947 draft to match the money values of the 21st century. If and when the CSITA is to be wound up, each member has to pay an amount of Rs. 15 for the payment of the debts and liabilities of the company (MoA 7).

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[183] "Church of South India Trust Association to the Synod 1970", *Church of South India: Minutes of the Proceedings of the Twelfth Synod* – 1970, p. 159.

That meagre amount still stands in the 1956 and 2005 drafts. In modern days, one is able to get only a cup of coffee for Rs. 15. Even if the adult members of the CSITA which may be roughly estimated as 2 million have to make a contribution of Rs. 15 it cannot redress the balance of loss suffered by the assets of CSITA which is estimated as one lakh crores rupees (appr. 15 billion USD).[184] The amount of Rs. 15 should have been redone to reflect 21st century economic values. The other examples is that the petty cash limit specified in the 1956 draft is Rs. 5,000 and the same amount is retained even after 50 years (AoA, 43). In practice, a larger amount of money must be utilised as petty cash. The documents could not modernise themselves. The questions is: What were the modifications and changes made to the MoA and the AoA which are traceable in the later documents?

We have at our disposal a copy of the "Extract of the Resolution no. 6 passed in the 56th Annual General Meeting held on 6th September, 2004 at Chennai". This gives us an example to see how the AGM viewed the Companies Act and the Government regulatories such as the RoC and the MCA. Here is the case of the AGM trying to include the name of the Deputy Moderator of the CSI in the CSITA membership and also makes him a director in the Committee of Management. How did they proceed towards accomplishing it? It is thus minuted: 'The Hon. Secretary, CSITA reported that in the revised Constitution of the Church of South India, the Deputy Moderator, CSI has been made as Ex-officio member of the CSI Trust Association. After detailed discussion, it was suggested that the Moderator, the General Secretary and the Treasurer of the Synod, the Deputy Moderator, assume offices as the Chairman, Secreatry and Treasurer and Member of the CSITA respectively.'[185] The appointment of member/director came by discussion and

[184] Some estimate the CSITA's assets worth 100 billion US dollars.

[185] "Extract of the Resolution", 6(c)

suggestions. It is doubtful that the appropriate appointment procedure was followed as per the CA 1956.

The wildest violation, in our opinion, is that the with the addition of a new member/director the AoA of 1947 stands altered. AoA 3(b) states, 'The Moderator, the General Secretary and the Treasurer of the Synod of the Church shall be ex-officio members.' Now the Deputy Moderator is added to the list of AoA 3(b) wihout securing approval from the Government. The AoA of the CSITA 2005 version states: 'The Moderator of the Synod of the Church of South India ex-officio is also the Ex-officio Chairman of the Association, the General Secretary of the Synod of the Church of South India, Ex-officio is also the Ex-officio Secretary of the Association and Treasurer of the Synod, Church of South India, Ex-officio is also the Ex-officio Treaurer of the Association' (Sec. 4).

CA 1956 on Alteration of the AoA: Sec. 31(2) – 'Any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution. (2A) Where any alteration such as is referred … has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval.'

This procedure seems to have been violated, and the following resolution makes the violation more serious. The Extract of the Resolution 6(d) reads, 'Resolved to authorise the General Secretary CSITA to make all the necessary amendments in the Memorandum and Articles of Association of CSI Trust Association and intimate the same to the Registrar of Companies.' The General Secretary cannot be the sole person to make all changes to the MoA and the AoA. This shows that the illiteracy of the GB members on corporate law matters. The one man who alters the MoA and the AoA would forward the same to the RoC as if the RoC is a person only to receive only information. The resolution speaks vol-

umes of absence of professionalism in the CSITA by the standards of corporate governance.

The General Body also decided to alter Articles 6 of the MoA and the AoA which has no connection whatsoever with the above decision. No reasons are stated as to why the MoA and AoA had to be altered. Nor the procedures for doing so were discussed. Alterations cannot be at the will and fancy of the CSITA members and they cannot adopt any procedure convenient to them to implement their intention. This clearly marks a breach of Company Law.

What should the CSITA do if it intends to alter the Articles? Paragraph 30 under the Rule 3 of the Companies (Compliance Certificate) Rules, 2001 reads as follows: "It should be recorded that 'the company altered its articles of Association after obtaining the approval of members in the general meeting held on […] and the Amendments to the Articles of Association have been duly registered with the Registrar of Companies.'"

The steps for the CSITA to follow are: (i) the Board of Directors had passed a resolution approving the alteration of the Articles; (ii) the company had called and held the general meeting and obtained approval of the company in general meeting by a special resolution for the alteration; (iii) a copy of the special resolution containing the amendments to the Articles of Association along with e-form no. 23 had been duly filled with the RoC within 30 days; and (iv) the alteration had been incorporated in all copies of Articles.

Corporate Governance Rests on Ethical Behaviour

By corporate governance, we are not thinking of an ideal 'rule book' to be worked out for the CSITA to follow. The biggest corporate failure, the USA company Enron, was an well admired company, had a respected auditor, and had very sophisticated codes of conduct and a highly respected board until it was found it had lost 66 billion USD. How did

Enron fail in spite of having all the quality infrastructure? We are not aiming to achieve creating a 'rule book' for good corporate governance although its importance cannot be minimised. Our study is seeking to develop in the CSITA a culture of values for professional and ethical behaviour in corporate management. The CSITA is far outdated and has to make up a lot of ground before it behaves as a corporate body. This chapter is an effort to futher deepen the corporateness we are attempting to discover for the CSITA so that it can operate both in manner and matter as a company of limited liability with guarantee under Sec. 8 of the Companies Act 2013.

Corporate Governance Is Indispensable for a Non-Profit Organisation

Our question is, "Why should corporate governance principles be seen differently between for-profit and non-profit organisations?" The method and practice may change in implementing the principles between business and charity companies. Yet both are in the same boat in their search for making governance work at the institutional level in their respective domains.

Bob Tricker, wrote the first book on "Corporate Governance" in 1984 when the phrase 'corporate governance' was not much in use. According to him, the twentieth century Corporate studies were concerned with management, whereas the twenty-first century is focussing more and more on corporate governance concept itself. The third edition of his magisterial book entitled, *Corporate Governance Principles, Policies, and Practices* (2015) published by Oxford University Press 'takes a comprehensive and international perspective on a subject that is of ever increasing significance – the way power is exercised over corporate entities'. Bob Tricker offers a penetrating analysis of corporate governance from a global perspective.

Tricker stresses in his very first chapter that all corporate entities need governing, and he rightly observes, 'All corporate entities, including profit-oriented companies, both public and private … and not-for-profit organizations such as voluntary and community organisations, charities, and academic institutions, as well as governmental corporate entities and quangos, *have to be governed.*'[186] Corporate governance cannot be neglected by non-profit companies assuming that it is a subject that belongs to the profit-making business domain. In fact, Corporate governance is a must for non-profit sector Sec. 8 companies. If Foreign Contributions Registration Act (FCRA) violation is of any indication to measure corporate governance in our country today, we should take seriously the report published in *The Hindu* (20 March 2018) that 5,000 NGOs were barred by the government from receiving foreign funding after cancellation of their licences since April 2017 for not submitting financial statements, Balance Sheet and Annual Returns.

The Enforcement Directorate has registered cases against 2,745 companies under the provisions of the Foreign Exchange Management Act (FEMA), 1999. According to *Firstpost* (28 December 2016) the Government has cancelled the FCRA licences of close to 20,000 of the 33,000 NGOs operating in the country after they were found to be flouting certain norms laid out in the Foreign Contributions Registrations Act (FCRA), 2010. A communiqué from the Ministry of Corporate Affairs dated 24 April 2018 was sent to 3,258 NGOs registered under the FCRA Rules urging them to submit their mandatory financial Returns for the years 2011-12 to 2016-17, failing which appropriate action would be taken against those associations on account of the said violation. The majority of the NGOs in the list of such organisations are non-profit organisations. These erring companies should be taught and equipped for acting in accordance with the corporate rules.

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[186] Italics mine. Tricker, *Corporate Governance,* p. 4.

Company law is understood mainly from the perspective of profit-making companies aiming to maximise the profit for its share-holders. J.M.B. Balouziyeh notes, 'The directors of a co rporation have broad discretion in running the corporation, but this discretion must be exercised primarily to maximize the pecuniary gains of the corporation's shareholders.'[187] Charity has a marginal place in this market-oriented enterprise. The corporate mentality is to make a small contribution from the huge profits the companies are supposed to make. We cannot evolve corporate governance from such a foundational thought, as it would be detrimental to the non-profit companies. 'Mission is what distinguishes nonprofits from their for-profit cousins: Nonprofits have missions instead of owners or shareholders. While the prime directive for board members of for-profit organizations is to ensure the highest possible value for owners, by contrast, nonprofit board members' prime directive is mission fulfillment.'[188]

What Is Corporate Governance for the CSITA?

This is the question we attempt to explore throughout the book. In this section, we begin corporate governance discussion mainly as a response to the demanding context of corporate failures, alleged financial irregularities and to a perceived lack of governance and breach of accountability in the CSITA, a leading non-profit company in India. The momentum for this discussion comes from several factors, and the first and foremost is the alleged corrupt and fraudulent activities of the company which necessitated the on-going Serious Fraud Investigation Office investigation ordered by the Ministry of Corporate Affairs of the Central

[187] *A Legal Guide to United States Business Organizations. The Law of Partnerships, Corporations and Limited Liability Companies*, 2nd ed., Berlin: Springer Verlag, 2013, p. 50.

[188] "Nonprofit Corporate Governance: The Board's Role", https://corpgov.law.harvard.edu/2012/04/15/nonprofit-corporate-governance-the-boards-role/.

Government.[189] The National Law Company Tribunal, Chennai has already made an order on 18 November 2016 for a full-time Administrator, possibly a retired Judge, appointed by the Tribunal who will also select his own administrative committee members. This part of the order has been 'stayed' by the Chennai High Court, and the case is in progress (CRP 3739/2016). So no comment can be made on the likely outcome of that case. We are told that the verdict in that case might be written any time now.

This is the living context. The other side also must be looked at. The company has grown in many ways; particularly, the membership of the CSI has increased four-fold since its formation in 1947. According to statistics furnished by Bishop M. Azariah, the Church of South India after 60 years of its existence (2007) had in total 2,103 schools, 2 medical colleges, 3 engineering colleges, 51 polytechnics, 50 training centres, 104 hospitals and clinics, 512 boarding homes and hostels (with a total of 35,000 children), and 22 homes for the aged. At this time the number of Christians was 2.8 million, dioceses 21, with 11,000 congregations, 2,244 pastors, 1,930 schools, 38 colleges and 2,103 lay workers. Now the number of members has risen to 4 million, dioceses to 24, congregations to 14,000, and the other numbers will not have remained static in the last 10 years. Now in the year 2015-2016, 'CSITA continues its Charitable activities which have grown in magnitude and utility. Through these activities the Church continues to serve the public at large in rural, sub-urban and urban areas irrespective of caste, creed and religion.'

The financial Statement 2015-16 continues, 'The work can be summarized as follows:- The Medical needs of the masses are being attended to by Hospitals and Health Centres numbering about 50. The number of educational institutions within the CSITA - 94 Colleges, 578, Secondary Schools, 1,467 Elementary & Nursery Schools, 47 Technical

[189] Read further in Chapter 3.

Institutions, 24 Para Medical Institutions, Others 44 continue to cater for the educational needs. The Boarding Homes, Hostels and Day Care Centres cater to the needs of Children who are orphaned, poor, deserted and differently abled. The provision of drinking water facilities and other amenities are extended to the under privileged communities. Professional Training Schools both formal and non-formal continue to provide skills to men and women. Assistance in Community Development, environmental concern and self employment schemes are also being carried out.'[190]

The issue of corporate governance is an especially fundamental topic for the CSITA because of the exceptional diversity of its stakeholders (e.g. members of the organization, ordinary members and subscribers, those who make offerings regularly and donate to the CSITA's cause, employees, religious workers and government officials). Adequate governance structures and mechanisms are highly important prerequisites for governance, since many failings and wrongdoings within the CSITA suggest governance failures.[191] It is feared that based on court petitions which make references to orders and other reports regarding the CSITA's involvement in corporate fraud, the CSITA will soon be in trouble. Garcia maintains, 'Strong corporate governance means that internal controls are set in place to protect the company. Proper internal controls significantly reduce the chance of any type of fraud or embezzlement within the company. Nonprofits, more than any type of compa-

[190] CHURCH OF SOUTH INDIA TRUST ASSOCIATION: Standalone Financial Statements for period 01/04/2015 to 31/03/2016, p. 11.

[191] Cf. P. Siebart & C. Reichard, "Corporate Governance of Nonprofit Organizations", in *Future of Civil Society: Making Central European Nonprofit-Organizations Work*, Wiesbaden: VS Verlag für Sozialwissenschaften, p. 272.

ny, must remain beyond reproach in the eyes of the public.'[192] Fraudulent behaviour and activities can easily set in.

The Adrian Cadbury Committee Report in UK concludes (7.2) with the following paragraph addressing the issue of fraud: 'No system of corporate governance can be totally proof against fraud or incompetence. The test is how far such aberrations can be discouraged and how quickly they can be brought to light. The risks can be reduced by making the participants in the governance process as effectively accountable as possible. The key safeguards are properly constituted boards, separation of the functions of chairman and of chief executive, audit committees, vigilant shareholders (stakeholders) and financial reporting and auditing systems which provide full and timely disclosure.'

Corporate Governance for Non-Profits Is Still at Crawling Stage: Learning from the International Codes

The Indian statutory framework as found in the CA 2013 has, by and large, been in consonance with the international best practices of corporate governance. The major problem is that the new features introduced by the Act are limited to and meant for the listed companies. The non-profit company of as big a magnitude as the CSITA must require those measures applied to the listed companies, given that its total Annual Revenue is above 2,000 crores (about 300 million USD which is about 100 crores (about 15 million USD) more than the previous year) and excess of income over expenditure is over 173 crores (about 25 million USD) and the total net worth is more than 2,400 crores (about 360 million USD) if we can trust the CSITA balance-sheet of 2015-16 on its face-value.[193] To construct principles and practices of corporate gov-

[192] M. Garcia, "Importance of Corporate Governance in a Nonprofit Organization" http://smallbusiness.chron.com/importance-corporate-governance-nonprofit-organization-62533.html.

[193] Standalone Financial Statements for period 01/04/2015 to 31/03/2016.

ernance for the non-profits which deal with high resources and income, we need to do some boundary-crossing from unlisted to listed territory which, we believe, is permissible as long as positive elements are identified and utilised in a proper manner.

Corporate governance is a like cooking recipe. Good governance requires the right ingredients and right mix-ups and one can help the Board master the recipe with the right resources. We look for those resources in the new Act of 2013 and also in international Codes for corporate excellence. Corporate Governance for the non-profits is yet in the budding stage. The adoption of our recommendations that emerged from the global Codes will mark an important step forward in the continuing process of raising standards in corporate governance.

The first ever corporate governance code was published in 1978 in the United States. By 2008, 64 countries had issued at least one code of governance. At an international level, the OECD Principles of Corporate Governance (first published in 1999 and re-issued in 2004) have proved highly influential in shaping governance agendas both for Profit and Non-Profit organisations. There is further in the UK The Combined Code on Corporate Governance of 2008, following the Cadbury Committee (1992), the Greenbury Committee (1995), and the Companies Act (2006).

A report of a committee chaired by Sir Adrian Cadbury (1992) set out recommendations on the arrangement of company board and its role, on the appointment of non-Executive directors (those who do not participate in the day-to-day management of the company and are expected to monitor and challenge the performance of the executive directors and the management personnel), and on accounting systems and reporting on internal controls to mitigate Corporate Governance risks and failures. The report's recommendations have been adopted in varying degrees by the European Union, the United States, and the World Bank. Commenting on the Cadbury Report, Neeta Shah and Christopher Napier are of

the view that the Cadbury definition is not confined to profit making companies, but also to non-profit making organisations.[194]

Its paragraph 2.5 is still the classic definition of corporate governance:

"Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies … The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business … The board's actions are subject to laws, regulations and the shareholders (members) in general meeting."[195] It is important that questions are allowed to be asked and that checks and balances are in right places. The corporate ethos needs to be lived out by the organisation through every single person every day.

Complaints of fraud and the government official reports that the CSITA is a fraudulent character make the subject of 'fraud' a serious one. The summary paragraph of the Cadbury Report is vital for achieving good corporate governance. It states, 'No system of corporate governance can be totally proof against fraud or incompetence. The test is how far such aberrations can be discouraged and how quickly they can be brought to light. The risks can be reduced by making the participants in the governance process as effectively accountable as possible. The key safeguards are properly constituted boards, separation of the functions of chairman and of chief executive, audit committees, vigilant shareholders and financial reporting and auditing systems which provide

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[194] "The Cadbury Report 1992: Shared Vision and Beyond", http://www00.unibg.it/dati/corsi/900002/79548Beyond%20Cadbury%20Report%20Napier%20paper.pdf, p. 5.

[195] "Report of the Committee on The Financial Aspects of Corporate Governance", December 1992.

full and timely disclosure.'[196] The 'shareholders' here can primarily understood to mean the 'stakeholders', the counterpart word for the non-profits.

There are global initiatives on eradicating corruption and bribery which should inspire each company to join their programmes and activities and give a local expression to them. J. Sullivan reports, 'OECD (Organisation for Economic Cooperation and Development) Anti-Bribery Convention; United Nations (UN) Convention against Corruption; World Economic Forum's Partnering Against Corruption Initiative; Transparency International's Business Principles for Countering Bribery; International Chamber of Commerce Rules of Conduct to Combat Extortion and Bribery; and the UN Global Compact's 10th Principle, among others. Growth of strong national anti-corruption legislation such as FCPA (Foreign Corrupt Practices Act) also affects the emerging global standards. The challenge is to make sure that international and national commitments to anti-corruption as well as leadership calls for anti-bribery at the board level trickle down through the whole company to every last employee on the ground in countries around the world.'[197]

Learning from the UK Corporate Governance Code 2016

The Preface of the Code which is published by the Financial Reporting Council (FRC) is trimmed and presented here:

1. Over two decades of constructive usage of the Code have contributed to improved corporate governance in the UK. The Code is

[196] Sec. 7.2, "Report of the Committee on The Financial Aspects of Corporate Governance" December 1992.

[197] J. Sullivan, "The role of corporate governance in fighting corruption", https://www2.deloitte.com/content/dam/Deloitte/ru/Documents/finance/role_corporate_governance_sullivan_eng.pdf, pp. 1 & 2.

part of a framework of legislation, regulation and best practice standards which aims to deliver high quality corporate governance with in-built flexibility for companies to adapt their practices to take into account their particular circumstances.

2. Boards must continue to think comprehensively about their overall tasks and the implications of these for the roles of their individual members. Absolutely key in these endeavours are the leadership of the chairman of a board, the support given to and by the CEO, and the frankness and openness of mind with which issues are discussed and tackled by all directors.

3. Essential to the effective functioning of any board is dialogue which is both constructive and challenging. One of the ways in which constructive debate can be encouraged is through having sufficient diversity on the board.

4. One of the key roles for the board includes establishing the culture, values and ethics of the company. It is important that the board sets the correct 'tone from the top'. The directors should lead by example and ensure that good standards of behaviour permeate throughout all levels of the organisation. This will help prevent misconduct, unethical practices and support the delivery of long-term success.

5. This update of the Code has been driven by the consequential changes required from the implementation of the European Union's Audit Regulation and Directive.

6. Companies should be presenting information to give a clearer and broader view of solvency, liquidity, risk management and viability.

7. To run a corporate board successfully should not be underrated. To achieve good governance requires continuing and high quality effort.

8. Chairmen are encouraged to report personally in their annual statements how the principles relating to the role and effectiveness of the board have been applied.'[198]

The new and revised Code (2018) focuses on the application of the Principles. It discourages 'boiler-plate reporting' (a unit of writing that can be reused over and over without change) and directs, 'The focus should be on how these have been applied, articulating what action has been taken and the resulting outcomes. High-quality reporting will include signposting and cross-referencing to those parts of the annual report that describe how the Principles have been applied.'[199] The CSITA is highly expected to fall into this groove of governance pattern rather than presenting the same type of financial Report submitted to the RoC year after year only with minor changes.

The Sarbanes-Oxley Act in the USA 2002

As a speedy response to the corporate failures, the USA enacted the Sarbanes-Oxley Act in July 2002. It was the U.S. government's response to massive corporate frauds that hit the United States. 'The notorious collapse of Enron 2001, one of America's largest companies, has focused international attention on company failures. In addition, it (The Sarbanes-Oxley Act) also presents the role that strong corporate governance plays in preventing these failures.'[200] These will help the CSITA to

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[198] https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf.

[199] *The UK Governance Code*, July 2018.

[200] R. Dibra, "Corporate Governance Failure: The Case of Enron and Parmalatp".

develop high standards of governance depending on its unique mission and circumstances. 'One of the most significant and valuable developments of the post-Sarbanes-Oxley Act environment has been the emergence of governance "Best Practices" proposals designed to enhance and improve corporate responsibility and governance.'[201]

Is this of any help to the non-profit associations? 'Although the Act and SEC (U.S. Securities and Exchange Commission) rulemaking are directly applicable only to public companies, many corporate governance experts believe that the "best practices" reflected in these initiatives will influence how private companies and nonprofit agencies are governed.'[202] 'Although these standards were primarily directed towards publicly traded companies, Sarbanes-Oxley ushered in a new attitude toward corporate governance for all companies. Both the government and the public expect nonprofits to maintain pristine standards of corporate governance.'[203] A US document on "Governance for Nonprofits" states that 'good corporate governance practices in the for-profit world are migrating to the non-profit arena' (p. 6), and Sarbanes-Oxley is still important to non-profits as many commentators are recommending that the non-profits adopt the general principles enshrined in the SO Act. It is becoming a standard Act by which all companies' governance will be judged.

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https://pdfs.semanticscholar.org/90a2/ea061926e898edf50c598d77210a7fd70d7f.pdf, p. 284.

[201] "Best Practices: Nonprofit Corporate Governance", https://www.mwe.com/en/thought-leadership/publications/2004/06/best-practices--nonprofit-corporate-governance.

[202] "Corporate Governance Redefined: The Sarbanes-Oxley Act of 2002 and Related Rulemaking", https://corporate.findlaw.com/finance/corporate-governance-redefined-the-sarbanes-oxley-act-of-2002.html.

[203] M. Garcia, "Importance of Corporate Governance in a Nonprofit Organization", https://smallbusiness.chron.com/importance-corporate-governance-nonprofit-organization-62533.html.

The non-Profits like the CSITA, one of the largest of the Sec. 8 companies, must adopt and adapt the principle-based corporate governance practices similar to those adopted by the publicly-listed companies. It is no longer enough for a Sec. 8 company to merely meet its objectives; it also needs to demonstrate good corporate governance through ethical behaviour and rigorous corporate practices.

OECD Principles of Corporate Governance 1998

The Organisation for Economic Cooperation and Development (OECD) is 'a unique forum where the governments of 30 democracies work together at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population.'[204]

The OECD Principles of Corporate Governance 1998 are corporate governance standards and guidelines. They have formed the basis for corporate governance initiatives in both OECD and non-OECD countries alike. India is a non-OECD country but works closely with the OECD member countries. According to the OECD's Preamble, 'The Principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries … they might also be a useful tool to improve corporate governance in non-traded companies …'[205] There is a common basis for the trading and non-trading companies and hence we draw upon the discussions that are happening among the business sector companies and use those insights

[204] Corporate Governance and the Financial Crisis: Key Findings and Main Messages, June 2009, https://www.oecd.org/corporate/ca/corporategovernance principles/43056196.pdf, p. 2.
[205] *OECD Principles of Corporate Governance*, Paril: OECD, 2004, p. 11.

in new circumstances of the non-profit sector. 'While some of the Principles may be more appropriate for larger than for smaller companies, it is suggested that policymakers may wish to raise awareness of good corporate governance for all companies, including smaller and unlisted companies.' [206]

The Role of Stakeholders in Corporate Governance According to OECD

Who is a Stakeholder? 'A person, group or organization that has interest or concern in an organization. Stakeholders can affect or be affected by the organization's actions, objectives and policies. Some examples of key stakeholders are creditors, directors, employees, government (and its agencies), owners (shareholders), suppliers, unions, and the community from which the business draws its resources. Not all stakeholders are equal. A company's customers are entitled to fair trading practices but they are not entitled to the same consideration as the company's employees'. [207] Tricker rightly observes that in a stakeholder approach the Board members do not have to aim to please the members/directors 'but need to balance the potentially conflicting interests of a diverse set of stakeholders'. [208]

The OECD Codes promote a stakeholder approach which we ought to consider. It means that the Stakeholders should participate in the corporate governance process and it is important, first of all, that they have access to information about the company. They are the resource-providers through their monthly subscriptions, offerings and special offerings, gifts and donations. The Grants, contributions and donations received in the year 2014-15 as per the Balance Sheet is 653 crores

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[206] *G20/OECD Principles of Corporate Governance*, 2015, p. 4.
[207] http://www.businessdictionary.com/definition/stakeholder.html.
[208] *Corporate Governance,* p. 65.

(about 98 million USD) and the year 2015-16 received only 184 crores (about 28 million USD). The rights of stakeholders must therefore be respected by the companies.

Everybody is a stakeholder within the corporation from the Chairman of the Board to the newest employee who joined the organization. Chapter IV of the *OECD Principles of Corporate Governance:* Sarbanes-Oxley Act (2004) states, 'The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.'[209]

The following principles can be adopted by the CSITA:

A. The rights of stakeholders that are established by law or through mutual agreements are to be respected. The CSITA has a very large number of stakeholders in the form of donors, monthly subscribers, employees, evangelistic workers, presbyters and bishops. How can their grievances be addressed?

B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

C. Performance-enhancing mechanisms for employee participation should be permitted to develop. This is a vital obejective for the CSITA as it has thousands of employees of medical institutions, Principals, Professors, teachers of higher, middle and elementary levels, trainers, religious workers, presbyters and bishops.

D. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable in-

[209] *OECD Principles of Corporate Governance:* Sarbanes-Oxley Act (2004), p. 21.

formation on a timely and regular basis. The culture of secrecy maintained by the bishops and office-bearers should be broken. It does not mean that every indoor management detail should go public. But major decisions of the General Body, financial Report and such things should be published in the CSITA website.

E. Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board, and their rights should not be compromised for doing this.

F. The board should apply high ethical standards. It should take into account the interests of stakeholders. Skilled and efficient stakeholders in various fields of law, accountancy, administration, education and social service.'

The Institute of Company Secretaries of India[210] has produced a document entitled "Corporate Governance" which has emphasised the Stakeholder approach and has also issued a "Guidance Note on Corporate Governance Certificate" (2005) regarding compliance of conditions of Corporate Governance as stipulated in clause 49 of the Listing Agreement (discussed below).

It defines CG thus: 'Corporate Governance is the application of best Management Practices, Compliance of Laws in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.'

'The objectives of Corporate Governance is to ensure the following:

– Properly constituted Board capable of taking independent and objective decisions.

[210] "Corporate Governance", www.icsi.edu

- Board is independent in terms of Non-Executive and Independent Directors.
- Board adopts transparent procedures and practices.
- Board has an effective machinery to serve the concerns of the Stakeholders.
- Board to monitor the functioning of the Management Team.
- Properly constituted Board capable of taking independent and objective decisions.
- Board is independent in terms of Non-Executive and Independent Directors.
- Board adopts transparent procedures and practices.
- Board has an effective machinery to serve the concerns of the Stakeholders.
- Board to monitor the functioning of the Management Team.'

Learning from SEBI (Securities and Exchange Board of India) Regulations on Corporate Governance

The objectives and the principles of Corporate governance are spelt out in Clause 49 of the SEBI Regulations. These are almost exclusively for the for-profit and listed companies. We can glean some useful principles from it, the most important of which is found in section (B) of Corporate Governance, clause 49. It is entitled "Role of stakeholders in Corporate Governance". The section reads: '1. The company should recognise the rights of stakeholders and encourage co-operation between company and stakeholders. (a) The rights of shareholders that are established by law or through mutual agreements are to be respected. (b) Stakeholders should have the opportunity to obtain effective redress for violation of their rights. (c) Company should encourage mechanisms for

employee participation. (d) Stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in Corporate Governance process. (e) The company should devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their respective bodies, to freely communicate their concerns about illegal and unethical practices.'[211]

Disclosures and Transparency are also emphasised in section C of Corporate Governance. It states: '1. The company should ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the company. (a) Information should be prepared and disclosed in accordance with the prescribed standards of accounting financial and non-financial disclosure. (b) Channels for disseminating information should provide equal, timely, and cost efficient access to relevant information by users. (c) The company should maintain minutes of the meeting explicitly recording dissenting opinions. (d) The company should implement the prescribed accounting standards in letter and spirit in the preparation of the financial statements taking into consideration the interest of all staeholders and should also ensure that the annual audit is conducted by an independent, competent and qualified auditor.'[212]

Clause 49 stresses that 'the top management should conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture for good decision-making.'[213]

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[211] A. Ramaiya, *Guide to the Companies Act: Providing Guidance on the Companies Act 2013,* 18th edition, Appendix 2, Lexis Nexis, p. 4078.

[212] Ramaiya, *Guide to the Companies Act: Providing Guidance on the Companies Act 2013*, p. 4079.

[213] Ramaiya, *Guide to the Companies Act: Providing Guidance on the Companies Act 2013*, p. 4079.

In Section X on "Report on Corporate Governance" clause 49 every company for 'a separate section on Corporate Governance in the Annual Reports of the company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted.'[214]

There is a close connection between the SEBI clause 49 and the Indian Companies Act 2013, and the latter is the mother document. The SEBI has taken some of the provisions of the Act to a stricter level which can be of assistance to the unlisted companies. 'Whilst in many cases clause 49 requirements have been changed to bring it in line with Companies Act 2013 but in few areas revised clause 49 has imposed much stricter requirements than Companies Act 2013. This effectively means that listed companies will have to comply with requirements of Companies Act 2013 or revised Clause 49 whichever is stricter.' [215]

The CSITA can learn a lot from the SEBI corporate governance Code outlined in Clause 49 in the Equity Listing Agreement (2000) and in its revised document (2004) which now serve as a standard for corporate governance in India for the listed companies. Some of the key principles and sound practices can be adopted in the formulation of corporate governance for Sec. 8 companies.

The Indian Companies Act 2013 – the Major Source for Corporate Governance

We ought to evolve a concept of corporate governance for non-Profit Organisations with the above emerging definitions. First and foremost,

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[214] Ramaiya, *Guide to the Companies Act: Providing Guidance on the Companies Act 2013*, p. 4090.

[215] https://www.ey.com/Publication/vwLUAssets/EY-sebi-clause-49-and-companies-act-13-a-comparison/$FILE/EY-sebi-clause-49-and-companies-act-13-a-comparison.pdf.

good governance must ensure compliance with the 2013 Act and with the MoA and AoA and their regulations to show that an organisation is efficient and well run. As the primary source, the Indian Companies Act 2013 has much to teach us about the principles and practices of corporate governance. The key aspect of governance is found in Sec. 179 of CA 2013. This states:

The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

The directors have all the powers not inconsistent with i) the provisions of the Companies Act, ii) the Memorandum and Articles of the Association and iii) resolutions made by the company in general meetings. Highest standards of efficiency and integrity are expected of them, and here is the essence of a healthy corporate remedy for the CSITA. What is needed is the will to improve its effectiveness.

This Corporate Law embodies a system of corporate governance. The Indian Companies Acts and more particularly the version of 2013 and the Memorandum and Articles of the Association of the CSITA provide a normative framework with which we can assess the legitimacy of corporate behaviour within the CSITA. This normative framework invites us to change the way in which the CSITA is accustomed to act and function.The CSITA is not one of the committees of the CSI nor is it

a social club consisting of friends and relatives of the Moderator of the Church of South India. It is a body corporate run by an engine of corporate governance.

Under the Indian Companies Act 2013, various provisions are made to develop and nurture corporate governance. There are at least 11 heads which should be closely studied. They are: Composition of the Board, Woman Director, Independent Directors, Director Training and Evaluation, Audit Committee, Nomination and Remuneration Committee, Subsidiary Companies, Internal Audit, SFIO, Risk Management Committee and Compliance to provide a rock-solid framework around Corporate Governance.[216]

Re-visiting Sec. 8

In India, non-profit organisations can be registered by three modes:

1) Registering as Society through the Societies Registration Act, 1860; 2) Forming a Trust through the Indian Trust Act, 1882; and 3) Registering a company through Section 8 of the Companies Act 2013. The CSITA chose the third option as it registered itself under Section 26 of the the Indian Companies Act of 1913 which now corresponds to Sec. 8 in the CA 2013. It did not register itself under the Indian Trusts Act, 1882, nor is to be regarded as a Society under the Societies Registration Act. At this most basic level, the CSITA chose to become a body corporate and therefore it is right to expect it to operate in accordance with the characteristics of a company. The image of the CSITA as a committee as found in the CSI constitution should be shredded off, and the CSITA ought to listen afresh to the

[216] "Corporate Governance: Clause 49 and Companies Act 2013 Provisions". https://www.gktoday.in/academy/article/corporate-governance-clause-49-and-companies-act-2013-provisions/.

essentials of Company Law. We take another brief look at Sec. 8 of the 2013 Act.

Sec. 8. (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
(b) intends to apply its profits, if any, or other income in promoting its objects; and
(c) intends to prohibit the payment of any dividend to its members.

The above three clauses form the core of the non-profit. Company law enactments with regard to Sec. 8 companies are rather soft and do not impose strong regulatory requirements. But Sec. 8 gives enough warnings to the erring companies when they are found to have given false information and suppressed material information about the company at the time of incorporation. When a company is mismanaged and the affairs of the Company are conducted fraudulently, the licence of the Company concerned may be revoked or, if it was declared a sick company, it may be amalgamated with another company functioning with similar objectives.

Sec. 8 companies do not get much importance in the over-all corporate law discussion. It is debatable whether the Indian Companies Act 2013 has given adequate attention to this class of companies in terms of remedial provisions. It definitely finds its place in company law in Sec. 8 but its corporate mechanisms are not fully worked out in the Act and the Rules, where the focus is on the growth of the profit-making companies. Section 8 companies, also called 'licensed companies' with a tinge of pejorative tone, cover a wide range of categories of companies of

different sizes and financial capabilities. The CSITA should be regarded as a top level non-profit company in the country having a huge number of immovable properties which fetch a large income and it further receives donations/subscriptions from its members both in cash and kind from its ordinary members. The schools and colleges run by the CSITA make good profit which ought to be spent on the promotion of the objectives of the Association.

Although the CSITA is not exclusively a profit-making organisation, it does business with education, medical service and other activities. Hence, the CSITA should not be regarded a club where individuals have to be encouraged to become members and directors attracting them by giving exemptions from following some of the toughest rules and regulations. There is a patronising attitude evidently shown by the trading corporate professionals towards the non-profits. It should recognised that the non-profits also in many ways have to manage the affairs like the listed companies. At times, they have to demonstrate higher efficiency and management excellence than the profit-companies. The CSITA is spread over five states and is quite bigger than many profit-oriented companies. It has more than 500 schools and colleges, 100 training instituions. It has a networth of more than 1,000 crores. The question is whether the CSITA, a non-profit company is at the mercy of the regulating bodies for more privileges and exemptions. How far do the exemptions granted to Sec. 8 companies serve towards maintaining good corporate governance? The exemptions hinder governance rather than promoting it.

The Privileges Granted to Sec. 8 Companies

Section 462 of the Companies (Amendment) Act, 2015 empowers the Central Government to exempt a class or classes of companies from the provisions of Companies Act (CA), 2013. Accordingly, certain provisions shall not apply or apply with some exceptions and modifications

to companies registered under Sec. 8 (Non-Profit) of the Companies Act, 2013.

The 2017 Amendment Act came into effect on 4 January 2018. It consists of 93 amendments to the 2013 Companies Act, resulting in changes related to legal definitions, corporate governance, and management compliance. It impacts different aspects of business management in India, including key structuring, disclosure, and compliance requirements but none significant for the Sec. 8 non-profits.

The (Indian) Ministry of Corporate Affairs issued a notification dated 5 June, 2015 providing that various provisions of the Companies Act, 2013 ("Companies Act") will not apply or will apply with exceptions, modifications and adaptions to a body to which a licence is granted under the provisions of Section 8 of the Companies Act, i.e. companies with charitable objects, etc ("Non-Profit Companies"). Non-profits do not have commercial owners and must rely on funds from contributions, membership dues, programme revenues, fundraising events, public and private grants, and investment income. The exceptions/modifications available to Non-Profit Companies are set out in brief below.

Sec. 2(24): Exempted from having company secretaries appointed as per the Company Secretaries Act, 1980.

Sec. 96: Exempted. The date, time and place of Annual General Meeting can be decided by the board itself, if the members have given directions to the board to this effect in the general meeting.

Sec. 101: General Meetings of a Section 8 Company can now be conducted with notice of 14 clear days instead of 21 days as prescribed by Sec. 101.

Sec. 118: The entire provisions of Section 118 relating to minutes of proceedings of general meetings, Board meetings etc. recorded within thirty days of the conclusion of every such meeting concerned, shall not apply. However, it will have to be observed if the AoA has made reference to thirty days.

Sub-section (1) of Section 149 and first proviso to sub-section (1) shall not apply. A company registered under Sec. 8 may have any number of Directors, and the requirement of passing of special resolution for having more than fifteen directors will not be required.

Sec. 160: If the Articles of the company provide for the election of directors by way of Ballot, then the entire provisions of Section 160 will not be applicable. In other cases, Section 160 will continue to apply.

Sec. 165: A person holding office as Director in more than 20 Companies can still be appointed as a Director in a Section 8 Company.

Sec. 173: The requirement to have at least 4 meetings in a year and to hold a board meeting within 120 days of the previous board meeting is dispensed with. It is sufficient if the companies conduct at least one board meeting every six calendar months.

Sec. 174: The requirement of appointment of independent directors has been done away with; the requirement in the audit committee to have majority as independent directors is also removed by virtue of this exemption.

The constitution of nomination and remuneration committee and related compliances sec. 178 has been deleted.

Sec. 179: The amendments for Sec. 8 companies indicate, "'The following powers of the Board can be exercised by means of passing of resolution by circulation instead of at a meeting of the Board – to borrow monies; to invest the funds of the company; to grant loans or give guarantee or provide security in respect of loans."

The sub-sections in Sec. 8 do not cover all principles and statutes necessary for a company like the CSITA which is a Sec. 8 company with an annual turn-over of more than Rs. 1,000 crores (appr.138 million USD), much higher than some of the listed companies. The sub-sections of Sec. 8 basically highlight matters of incorporation, objects, dividends, non-compliance and punishments. Sec. 8 companies enjoy the privileges of the limited liability companies, and they are also grant-

ed exemptions through Government notifications. The central Government is empowered to grant exemptions according to circumstances and exigencies. The Government can exercise its powers under Sec. 462 of CA 2013 to exempt a company registered under Sec. 8. The text-books on company law list about 20 exemptions, all said to be in favour of Sec. 8 companies. They have to be closely analysed to see how far they can be counted as privileges to the functioning of those classes of companies. Do they bring advantages or disadvantages for the efficient administration? What are the assumptions underpinning those privileges?

The Annual Turnover of the CSITA

Before, we look at the exemptions, we get a sneak preview of the turnover the company is claiming to have achieved as the turnover determines the company's class. On the basis of turnover, the CSITA can be judged as a high class unlisted company. It is not a small company and is bigger than some of the listed companies. According to sec. 2(91) of the CA 2013, "turnover" means 'the gross amount of revenue recognised in the profit and loss account from the sale, supply or distribution of goods or on account of services rendered, or both, by a company during a financial year'.

The company showed in a consolidated statement submitted to the Committee of Management 2012-2013 the total income (revenue) as Rs. 22,071,860 (2.2 crores for the year ended 31.03.2013) and the excess of income over expenditure as Rs. 9,50,371 (9. 5 lakhs for the year ended 31.03.2013). The total revenue for the previous year 2012 was also 2.2 crorers but the excess of income over expenditure was shown a mere 1.3 lakhs rupees.[217] The figures have multiplied 1,000 times in the subsequent years. It is not clear whether it is due to the introduction of the new Companies Act 2013 which set higher standard for making the

[217] "Report of the Committee of Management for the year 2012-2013" p. 1.

financial statement. A more detailed FS was demanded by the new Companies Act which revealed the true picture of the company's transactions?

THE PARTICULARS OF TURNOVER FOR THE YEARS ENDED 31.03.2016; 31.03.2015; 31.03.2014 and 31.03.2013 (1 crore is equivalent to 150,000 USD appr.)

- Total Revenue Rs. 21,004,671,902 (*2100 crore*) in the year ended 31.03.2016
- Rs.20,122,995,468 (*2012 crore* in the year ended 31.03.2015)
- Rs.12,39,43,17,641 (*1239* crore in the year ended 31.03.2014)
- Rs.11,98,39,54,533 (*1198* crore in the year ended 31.03.2013)
- Excess of Income over Expenditure Before Depreciation Rs. 2,719,740,659 (272 crore) in the year ended 31.03.2016; Rs. 2,500,817,791 (250 crore) in the year ended 31.03.2015; Rs. 1,11,16,40,580 (111 crore) in the year ended 31.03.2014; and Rs. 1087,96,69,808 (109 crore) in the year ended 31.03.2013.
- Excess of Income over Expenditure Rs. 1,737,435,085 (*174* crore) in the year ended 31.03.2016; Rs. 1,432,228,434 (*143* crore) in the year ended 31.03.2015;[218] Rs. 1,11,16,40,580 (*111* crore) in the year ended 31.03.2014; and Rs. 1,10,42,84,725 (*110* crore) in the year ended 31.03.2013.

A Review of Amendments and Exemptions

The major exemptions are summarised and commented upon as follows:

[218] Standalone Financial Statements for period 01/04/2015 to 31/03/2016, p. 7.

Sec. 2(24): "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under the Act 2013. This definition is not applicable for the non-profits.

Comment: It will be a great handicap if approved secretarial standards do not have to be followed by the companies with charitable objects. The CSITA requires urgently a highly qualified leadership at the administration level. Secretaryship is normally placed in the hands of someone who has all religious qualifications of a priest with no or little experience of administration, management of corporation and who is illiterate in finance and Company law. This has been the case for the last 70 years with the CSITA. Men who had little knowledge in the field of Company Secretary are mismanaging the Association. It is a pity that the whole of Section 118 of CA 2013 does not apply to CSITA. Sec. 118(10) clearly demands, 'Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under Section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.' If secretarial standards ought to be followed why not appoint a company secretary with all qualifications specified by the Act and the Rules? Some qualifications such as net worth value, annual turnovers should be attached to this so that the huge organisations like the CSITA will be benefitted by having a professionally qualified Company Secreatry to achieve good corporate governance. A bad choice is given here for charitable companies to choose between the path of inefficiency and incompetence.

The minimum paid up share capital of 1 lakh (for private company) and 5 lakh rupees (for public company) is not applicable to the non-profit companies [Section 2(68) and 2(71)].

Comment: It is understandable that it does not fit into the non-profit financial system where we are not dealing with such things as capital, shares and market dynamics. The exemption may be helpful to listed companies with scant resources and low budgets. However, the CSITA is a giant company, quite extensive and larger than most of the listed companies. It has four million ordinary subscribers who donate money every week and almost every day towards the cause of maintaining religion which is one of the objectives of the CSITA. It has 1,000 lakh Rupees worth of properties and buildings whose value escalate year by year. The Balance-sheet should have adequate provision to give account of these rich resources. Vital information can remain hidden in the present balance sheet system. There should be a separate printed balance-sheet meant for non-profit and Sec. 8 companies. While this exemption may not have a significant impact on the corporate, it will lower the cost of registration.

3) The notice of General Meetings and circulation of the financial statement can be at the notice of 14 days instead of 21 days [Sec. 101(1)]. Consequent to the relief granted under Sec. 101, which provides that notice of general meeting can be sent 14 days before the meeting instead of 21 da ys, amendment has also been made to Section 136 providing that copies of financial statements and documents to be annexed thereto can be sent to the members 14 days before the meeting instead of 21 days as was required before this amendment.

Comment: This can hardly be called a privilege granted to the Sec. 8 companies. The change in the number of days does not matter. It may even be a disadvantage that the members will have only two weeks to go through it before attending the AGM. The CSITA financial statement is quite extensive and will require more than 14 days to study as it does not have a club level budget.

Any of the provisions relating to requirement of having Independent Directors, their appointment, and manner of appointment etc. (Secs 149-152) as contained in any of the Sections mentioned in the first column shall not be applicable to Section 8 Companies.

Comment: Any of the provisions relating to requirement of having Independent Directors, their appointment, and manner of appointment etc. as contained in any of the Sections mentioned in the first column shall not be applicable to Section 8 Companies. This is an important requirement and why the Sec. 8 companies are exempted from it.

Section 149, subsection 1 and first proviso provides that (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have (a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and (b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution.

Comment: A company registered under Sec. 8 may have any number of Directors and the requirement of passing of special resolution for having more than fifteen directors will not be required.

Section 160 provides, 'A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed …'

Comment: It shall not apply to companies whose articles require the election of directors by ballot. If the Articles of the company provide for the election of directors by way of ballot, then the entire provisions of Section 160 will not be applicable. In other cases, Section 160 will continue to apply. The AoA of the CSITA has provisions for 'election' and for conducting poll in case of accepting a resolution.

The Board of Directors are required to meet at least once in six months [Sec. 173 (1)].

Comment: This exemption does not make much difference to the functioning of the Board. What is important is the Board's effectiveness in administration. Even the phrase 'Board of Directors' is not used by the CSITA. It still uses the old phrase of 'Committee on Management' which is suitable for chambers, societies, trusts and clubs. The company vocabulary and expressions in the MoA and AoA of the CSITA are drawn from the nineteenth or early twentieth centuries. Instead of working out equivalents to the modern company law terminology the entire documents have to be revised to reflect the corporate environment of the twenty-first century. The CSITA should be brought under the Board of Directors system in which there should be a clear distinction between member and director. In the CSITA the members of the Association are in the same position of influence as a director. This should remarkably change! Will the Companies Act help to bring that vital change to maintain good corporate governance?

The required quorum for the meeting can be just two Directors [Sec. 174(1)].

Comment: If the CSITA adopts this option of two directors, that will spell doom for the company administration. Two persons are allowed to have a say on the management of the vast company of 24 dioceses/units and institutions with plenty of immovable assets and

with massive financial transactions. These two persons will naturally be the Moderator of the CSI and one more office-bearer of the CSI Synod. This will pave the way for corrupt practices and fraudulent activities as the decision-making is in the hands of just two for an Association of 4 million ordinary subscribers.

Section 118 of the Companies Act for recording the minutes of proceedings of general meeting, meeting of board of directors and other meeting and resolutions passed by postal ballot will not apply to non-profit Companies as a whole except that the minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.

Comment: The entire provisions of Section 118 relating to minutes of proceedings of general meetings, Board meetings etc. shall not apply except that in case the AoA of the Company contains a provision that minutes have to be confirmed by circulation, then in that case, the minutes have to be recorded within 30 days.This again will have serious set-back to the CSITA governance. If an exemption is given on this vital aspect of corporate governance, it opens up the way for subjective and arbitrary reporting and interpretation of the proceedings of the Board, general and extraordinary meetings. With minutes we shall come to know that the meetings happened on a particular date and time and that decisions and resolutions were made. They then become facts of evidence. See for example clause 8 of Sec. 118: 'Where the minutes have been kept … the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.' If we are understanding this

exemption from Sec. 118 correctly, even the resolutions and appointments do not have to be in a recorded form!

However, the last sentence in the exemption gives us some relief as Sec. 39 of the AoA of the CSITA emphasises recording and maintaining a Minutes book. It reads: Minutes of the proceedings of all meetings, whether general or special or of any committee or sub-committee, shall be recorded in books to be kept for the purpose, and shall be signed by the Chairman of the meeting, or of the meeting at which the minutes are read and confirmed, or in default by any two members present and every such minute purporting to be so signed, shall be *prima facie* evidence on the facts stated therein.' Here the AoA takes precedence and the maintenance of minute books should be kept as priority and appropriately used to promote orderly governance.

Borrowing monies, investing the funds of the company, to give loans and to give guarantee to loans need not be decided by the Board of directors in a meeting but through circulation [Sec. 179(3)(d), (e) and (f)].

Comment: Borrowing monies by the CSITA should be discussed in a meeting where individuals express their views freely and deliberate on the proposal in one physical space. The CSITA is a habitual borrower particularly through lease and mortgage. They borrow not too infrequently in crores. Such transactions should not be discussed and decided through circulation.

The requirement under Section 178 of the Companies Act to constitute Nomination and Remuneration Committee and Stakeholders Relationship Committee will not be applicable to non-profit Companies.

Comment: The CSITA is like a banyan tree with a large number of supportive pillar branches with a heavy annual turnover and huge assets. It accommodates 4 million subscribers/ordinary members, hundreds of schools and institutions, thousands of employees and foreign partners. We need to try and change the perception of the

Committee of Company Law appointed by the Parliament to consider framing rules for company such as the magnitude of the CSITA. The Company authorities who advise the Central Government are showing ignorance over a giant Sec. 8 company, i.e. the CSITA, and the Companies Act and Rules are not fully adequate to deal with the crisis the CSITA is in. It is unfortunate that the CSITA is exempted from Sec. 178 which has some vital regulatory provisions which the CSITA ought to have made use of to ensure good corporate governance. But there are other Provisions of the Act, the Rules and the Amendments that can assist CITA to implant the corporate governance idea into its system of things. This is where we need to burn the midnight oil.

Definition of a 'company secretary' or 'secretary' under section 2(24) of the Companies Act will not be applicable to non-profit Companies. Rule 8A of Companies (Appointment and Remuneration) Rules 2014 states, 'A company other than a company covered under Rule 8 of the Companies (Appointment and Remuneration) Rules, 2014 which has a paid-up share capital of five crore rupees or more shall have a whole-time company secretary.'

Comment: Company Secretary is the person who is a member of the (ICSI) Institute of Company Secretary of India appointed by the company to perform the functions of the Company Secretary. Section 2(24) defines company secretary or secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

The provision should not apply. The Company Secretary or secretary in relation to a Section 8 Company need not be a company secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company

Secretaries Act, 1980. This opens up the possibility of unqualified persons being appointed by Sec. 8 companies.

13) Sec. 203(1): In terms of Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, whole-time key managerial personnel are required to be appointed by every listed company and every other company having a paid-up share capital of Rs. 10 crores or more.

The exemptions are valid only if the CSITA has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar: the CSITA does not have any paid-up share capital. So it has an advantage of not appointing any key managerial personnel which means that the CSITA cannot assure itself of good corporate governance. If all the key requirements to enforce good corporate governance are not wilfully demanded by the Government, how can we think of attaining the maturity and preparation to scale the heights of efficiency and excellence in the field of governance? The privileges should not be absolute because abuse within non-profit organizations is rampant. Exemptions should not be considered as the rights. Non-profit organizations often operate for tax benefits and they may even go so far as freely engaging in fraud.

It is also essential to analyze the rationale behind granting them favourable legal treatment.The major assumption is that these exemptions from corporate compliances may attract more such non-profits to be registered as companies in India. In the light of the comments above, it is observed that these exemptions are hindrances to building good corporate governance on the part of the non-profit companies.

The Confederation of Indian Industry (CII) strongly suggested that the benefits extended to this class of non-profit companies in the 1956 Act be reinstated in the new Act of 2013 a s well. In addition, they should also be exempted from the rigorous compliance provisions introduced by the Companies Act, 2013 such as appointment of independent

directors and women directors; rotation of auditors; constitution of multiple committees including the very important Audit and Remuneration Committee; performance evaluation; taking minutes, etc. All these vital steps the CSITA need not take. This situation ought to change. In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013, the central Government can make amendments in the public interest by directing that certain provisions of the Companies Act 2013 shall not apply or shall apply with such exceptions, modifications and adaptations to a body to which licence is granted under the provisions of Section 8. The Government should reconsider placing the non-profits within the areas of excellence that they are exempted from and create ways for them to participate in the race along with listed companies for maintaining good corporate governance as the yearly turn overs, value of assets, net worth and income and profits are higher in the case of the CSITA than of a good number of for-profit companies.

Companies (Appointment and Qualifications of Secretary) Rules, 1988

A whole time company secretary is required to be employed by a listed company and any other public company if its paid-up capital is Rs. 10,00,00,000 (ten crores – 1.4 million USD) or more**.** The post is vital even for a p rivate company with a p aid-up share capital worth 5,00,00,000 (five crores – 0.7 million USD) or more which must also appoint a whole-time company secretary. On both counts the CSITA can justify its position not to consider having any qualified company secretary. The definition of Company Secretary as found in Sec. 2(24) does not have to be followed by a Section 8 company, and it may appoint any person as their secretary. This might be counted as a huge drawback which will have a negative impact on the quality of administration in a company like the CSITA. Part of the problem the Sec. 8 companies are currently undergoing has to do w ith the freedom to stick with not-so-

qualified personnel to guide them in matters of corporate governance. The nature and the size of the CSITA will definitely require a key managerial person like the Company Secretary to look into all the administrative affairs of over 2,000 institutions with over 20,000 employees. The advantage Sec. 2(24) brings with it is that a Company Secretary will have the necessary qualifications approved by the Institute of the Company Secretaries of India and his/her functions are clearly outlined in the Company Secretaries Act, 1980. Exempting a S ec. 8 company from appointing such a key person with necessary qualifications and unique abilities will weaken the administration of the company which has, according to self-estimation, 1,00,000 crore worth of assets.

CSITA is Free to Avoid Appointing a Well-Qualified Company Secretary under the Sec. 8 Tag

Taking advantage of the exemption, the CSITA does not need to have a person as qualified as below which denies the chance of coming out of illiteracy and lack of application of Company Law. Having a qualified company secretary will assist in maintaining good corporate governance. Let us see what the CSITA is losing!

Sec (4): No individual shall be appointed as secretary pursuant to sub-rule (3) unless he possesses any one or more of the following qualifications, namely: (i) membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980); (ii) pass in the Intermediate examination conducted either by the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (No. 56 of 1980), or by the earlier Institute of Company Secretaries of India incorporated on 4th October, 1968, under the Companies Act, 1956 (1 of 1956), and licensed under section 25 of that Act; (iii) Post-graduate degree in commerce or corporate secretaryship granted by any university in India; (iv) degree in law granted by any university; (v) membership of the Institute of Chartered Accountants

of India constituted under the Chartered Accountants Act, 1949 (38 of 1949); (vi) membership of the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 (23 of 1959); (vii) post-graduate degree or diploma in management sciences, granted by any university, or the Institutes of Management, Ahmedabad, Calcutta, Bangalore or Lucknow; (viii) post-graduate diploma in company secretaryship granted by the Institute of Commercial Practice under the Delhi Administration or Diploma in Corporate Laws and Management granted by the Indian Law Institute, New Delhi; (ix) post-graduate diploma in company law and secretarial practice granted by the University of Udaipur; or (x) membership of the Association of Secretaries and Managers, Calcutta, registered under the West Bengal Registration of Societies Act, 1961 (XXVI of 1961).

Someone guiding the CSITA with some or most of these qualifications will certainly make a difference in the quality of management and will contribute to good governance. There is a wrong notion that the non-profits do not need be governed to the level of reaching the professionalism of listed companies. Another disadvantage for Sec. 8 companies is that the Central Government also exempts them from observing secretarial standards in the conduct of meetings as it does not have to implement Sec. 118 which contains very important aspects for a transparent, efficient and systematic administration. Sec. 118 governs the manner of recording minutes as well as the maintenance of minutes. Such exemption will create a slight opportunity for the non-profits to do many wrongs and it opens up the possibility of being seriously affected by unprofessionalism and maladministration. But the AoA of the CSITA has a provision for maintaining minutes, and so the company is expected write and preserve minutes.

But there is a reason for demanding the appointment of a Company Secreatry to the CSITA because as per the amendment Notification no. 466(E) this exemption will be available only to those Section 8 compa-

nies which have not committed default in filing financial statements and annual returns with the RoC. Is it not clear from the January 2016 Report from the RoC that the CSITA has defaulted in submitting regular financial statement and annual returns? Will the SFIO spot fraudulent activities which might disqualify the CSITA to enjoy the privileges and exemptions? But at present the CSITA is making best use of the exemptions for excusing it from performing its corporate duties and liabilities.

It is worth considering what Henn & Boyd have observed, 'Nonprofit corporation statutes generally should resemble business corporation statutes inasmuch as they both govern the formation, financial and management structures, operation, regulation, and dissolution of corporations. The ideal nonprofit corporation statute, however, should be modified where appropriate to reflect the essential differences between nonprofit and profit organizations'.[219] The requirements for good corporate governance proposed for the profit sector should be allowed to be adopted and adapted by the non-profit sector as much as they are applicable and relevant to their purpose and methods and at the same time helping to maintain its special emphasis on non-profit objectives.

CSTA Is Set Free from the Stringent Accounting Standards of CARO [Companies (Auditor's Report) Order] 2016

Information for this section is gleaned from the websites listed in a footnote.[220]

Section 143(11) of the Companies Act, 2013 requires that the Auditor's report of a specified class of companies should include a statement

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[219] Henn & Boyd, "Statutory Trends in the Laws of Nonprofit Organizations", *Cornell Law Review,* vol. 66, August 1981, p. 1107.

[220] https://blog.saginfotech.com/companies-auditors-report-order-caro-2016; https://taxguru.in/company-law/caro-2016-applicability-reporting-requirements.html; https://cleartax.in/s/caro-2016-reporting-requirements.

on the prescribed matters. These reporting requirements have been prescribed under the Companies (Auditor's Report) Order, 2015 (CARO 2015) issued by the Ministry of Corporate Affairs (MCA) on 10th April 2015.[221] The problem is that the CARO requirements are not applicable to the Sec. 8 companies including the CSITA. This is another handicap for the Sec. 8s that they cannot be taught about stringent measures on accounting which is a must for companies like the CSITA which has considerable assets and resources. The CSITA can leave the Fixed Assets column unfilled. Actually, registering fixed assets and calculating their worth is one of the irregularities committed by the CSITA. Sec. 8 companies with huge turnovers, revenues and profits should be required to follow CARO specifications.

There are some new requirements introduced by CARO to provide information on the Balance Sheet which are as follows:

a) Fixed Assets: Whether title deeds of immovable properties are held in the name of company: if not, provide details thereof. This is important information for a company like the CSITA as it is skipping this responsibility in official documents submitted to the RoC. Until today, there is no register of fixed assets kept at the office of the CSITA. The CAD rules require the company to furnish the following data:

i. Whether the company maintains proper records showing full particulars including details of quantity and situation of the fixed assets;

ii. Whether physical verification of the fixed assets is conducted by the management at reasonable intervals;

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[221] For the text see http://icmai.in/upload/Students/Supplementary/CARO-2016.pdf.

iii. If any material discrepancies were noticed on physical verification, whether it has been accounted for in books of accounts;

This exercise is vital for good and clean corporate governance for a company like the CSITA. But the Government lets go of the noose on this very vital information which would definitely enable the tracing of fraudulent deals in the sale of the assets, if there were any.

b) The following matters should be included in the Auditor's report relating to the Inventory of the company:

Whether physical verification of the inventory has been made at regular intervals by the management, and during such verification if any material discrepancies were noticed whether the same have been properly accounted for in books of accounts. The CSITA is free to walk away from this!

c) Non-Cash Transactions: Whether the company has entered into any non-cash transactions with directors or persons connected with them and if so, whether provisions of section 192 of the 2013 Act have been complied with.

d) Whether any fraud by the company or any fraud on the company by its officers or employees has been noticed during the financial year. If yes, the amount and nature of such fraud should be stated.

e) If the company has defaulted in repayment of loans to banks, government, debenture-holders, etc., then the amount and period of default is to be reported.

f) Is there an adequate internal control system commensurate with the size of the company and the nature of its business for the purchase of its inventory and fixed assets and for the sale of goods and services? Whether there is a continuing failure to correct major weakness in internal control system.

g) Whether the company is required to be registered under the RTI Act and, if yes, then whether the registration is obtained or not.

Corporate Governance and the CSR

How does corporate governance serve or fail to serve the interests of the stakeholders? We have to create values of stewardship to humanity even though the CSITA is a non-profit organisation having a charity objective. Should the non-profits adopt Corporate Social Responsibility?

Sec. 135 (1) Every company having net worth of rupees five hundred crore or more, (the net worth of the CSITA is ₹ 24,385,622,281) or turnover of rupees one thousand crore (CSITA: through services of educational institutions alone ₹ 1,084,60,34,922) or more or a net profit of rupees five crore or more (CSITA: ₹ 1,737,435,085 after deduction of depreciation) during *any financial year* shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be *an independent director*.

The Financial Statement of 2015-16 reads, 'Details on policy development and implementation by company on corporate social responsibility initiatives taken during year – NIL'. The amount for CSR expenses is 0. This is due to the lack of understanding of corporate governance and it indicates failure to observe the its positive relationship with the CSR.

The Report of the Companies Law Committee, February 2016 reports, 'The High level CSR Committee had recommended for Section 8 companies to be exempted from the provisions on CSR. It had been noted by the said Committee that "*Section 8 companies are 'not for profit' companies registered under Section 8 of the Companies Act, 2013 (Section 25 of Companies Act, 1956) with the basic object of working in social and developmental sector. Their involvement in charitable*

and philanthropic activities is already 100 percent. These companies prepare income and expenditure statements which reflect the surplus/deficit of an organization and not the profit of the company. The surplus accrued to such company is not distributed amongst members, but is ploughed back to the expenditure of the company, that in-turn is spent on social welfare activities already included in Schedule VII. Therefore, it may be not necessary for these companies to undertake CSR activities outside the ambit of their normal course of business." The Committee, however, felt that it would not be appropriate to give differential treatment to Section 8 companies in the matter of providing exemptions from compliance of CSR provisions, as there are certain areas where examples could be found of Section 8 and other companies co-existing, for example, companies in microfinance business. Further, there should not be a difficulty in Section 8 companies using the prescribed percentage of its surplus for CSR activities. Thus, it was decided not to recommend for exemption of Section 8 companies from the CSR provisions of the Act.[222] (p. 45)

Sec. 2(91) "turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;

In the Companies Amendment Act 2017 important amendments are made. Section 37 reads:

In section 135 of the principal Act,— (i) in sub-section (1),— (a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted; (b) the following proviso shall be inserted, namely:— "Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."

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[222] *The Report of the Companies Law Committee*, February 2016, p. 45

The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (*o*) of sub-section (*3*) of section 134, specify the reasons for not spending the amount.

Activities Which May Be Included By Companies In Their Corporate Social Responsibility Policies (Schedule VII of CA 2013)

Activities relating to:

(*i*) eradicating extreme hunger and poverty;
(*ii*) promotion of education;
(*iii*) promoting gender equality and empowering women;
(*iv*) reducing child mortality and improving maternal health;
(*v*) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
(*vi*) ensuring environmental sustainability;
(*vii*) employment enhancing vocational skills;
(*viii*) social business projects;
(*ix*) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
(*x*) such other matters as may be prescribed.

In most of these areas the CSITA is using its resources, both financial and personnel, to effect changes. The question mark is that how professionally these activities are carried out and to what level, superficial or in-depth level, is not known. There needs to be an assessment and evaluation of social welfare activities in which the CSITA is said to be involved. *CSI Life*, the official magazine of the Church of South India carries articles and reports from time to time on issues of Dalits and Tribals, ecology, gender equality, transgender, differently abled persons, social service, etc. In fact as per the non-profit principles, the profit made by the company should be utilised to promote the objectives of the company and hence most of its surplus profit money is supposed to be channelled into these development projects.

Conclusion

The principles and practices of corporate governance are all about how the company is controlled and directed along the path of corporation law enacted in the Indian Companies Act 2013 and company constitutions written in the form of MoA and AoA. We have stressed the need for developing an attitude of good governance among the non-profits. We have considered various national and international codes and picked the useful ones for guiding and managing the CSITA towards fulfilling its mission.

As one of the non-profit lawyers, E. Carter, has observed, 'It is important to set a tone that encourages a free exchange of ideas, both good and bad. Open, vigorous discussions about key issues should be encouraged. A board that passes every resolution "unanimously" should evaluate whether it needs to do more to encourage a thoughtful and open

discussion.'[223] The Committee of Management of the CSITA is typically made up of the friends, relatives and political loyalists of the Moderator, and Board diversity is not allowed. 'If your organization is run by a group of "usual suspects," consider mixing it up by creating a matrix of skills, experiences, and backgrounds that would add valuable perspectives to the board.'[224]

A company and a trust are two different kinds of organization that have a specific set of attributes, procedures and requirements. 'A trust is a firm or an organization that is characterized by its trustees who carry out fiduciary duties, or act as administrators or agents of financial assets of another business or individual. A trust has a responsibility to supervise the management of a grantor or asset. A trust is usually formed when a grantor (the creator of the trust) feels that this organization can do a better job of managing an asset than an individual person.'[225]

The CSI is acting without being aware of the corporate character of the CSITA. It is still sticking to its old Trust concept inherited from the British and the American missionaries, and the corporation status is just an icing on the top. A trust is the 'classic' form under which charities generally have operated for many years, and is a type of unincorporated body governed by a document called a trust deed. The people who run the charity and are responsible for its finances are called the trustees. There was no Trust deed signed in the case of the CSITA. The CSI members is so used to the habit of seeing the CSITA as a Trust. In the UK, a company limited by guarantee is set up with special charitable

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[223] "Top 15 Non-profit Board Governance Mistakes", http://charitylawyerblog.com/2009/10/05/top-15-non-profit-board-governance-mistakes-from-a-legal-perspective/#ixzz5Oaea5rnB.

[224] E. Carter, "Top 15 Non-profit Board Governance Mistakes" http://charitylawyerblog.com/2009/10/05/top-15-non-profit-board-governance-mistakes-from-a-legal-perspective/#ixzz5Oannf6lV.

[225] http://www.differencebetween.net/business/difference-between-trust-and-company/#ixzz5DnCO7Xg2.

articles, and is registered both at Companies House (as a company) and with the Charity Commission as a charity in its own right. This is not the case in India. The CSITA did not have dual registration.

In the USA non-profit groups are organised as Trusts and in such case the preliminary governance document is the trust instrument which may be called a 'declaration of Trust'. The CSITA does not belong to this type. The trustee qualities may be additional characteristics to be exhibited by the CSITA. The non-profits, in the USA, can also be incorporated by application filed with the Secretary of State who would issue a 'ceritficate of incorporation' after accepting the MoA and the AoA. The CSITA belongs to a third group, i.e. non-profit incorporation, which, to use the language of the CA 2013, are called Section 8 companies. We are aiming to construct a corporate governance road map for the CSITA in line with the corporate legislation as found in the CA 2013 and other global codes relevant to non-profit companies. The CSITA has to update its original documents as the MoA and the AoA are outdated and inconsistent with the spirit and letter of corporation laws. Even the original documents are not followed, and the CSITA is run by the CSI hierarchy of four members and the bishops and Moderators behaving in the manner of a corporation sole acting as if they individually possess the ownership over the assets of the dioceses.

6

THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF THE CSITA: A CRITICAL ANALYSIS

Introduction: Proposals for a Re-construction of the MoA and AoA

Our study has so far dealt with the formation of the CSITA, the CSI's dominance over the CSITA as its alter ego, various aspects of the body corporate including the status of the CSITA as a separate legal entity, and the functioning of the CSITA as a section 8 company in accordance with the rules and regulations of the Indian Companies Act 2013. The binding and over-arching theme was corporate governance to be implanted in the minds of those who administer the CSITA and the CSI. Our task was to make the CSITA and its stakeholders aware of the character of a non-profit company and to develop a corporate governance code with help from various international codes, SEBI regulations and the Indian Companies Act 2013 in order to direct the affairs of the CSITA without the company falling prey to corporate fraud, violation and non-compliance to the company law. The concern was to make the CSITA to conduct itself always in a true and fair manner to the public and to the Central Government's regulatory agencies.

We now turn our attention to the question of sources of corporate governance, namely the two significant documents, the Memorandum and Articles of Association, in order to understand their roles within the

company structure and to study the contents of those constitutions in the spirit and letter of company law. The Memorandum and Articles are important components of a body corporate, and they are its foundations. Hence the CSITA must revisit the MoA and AoA: not only they are old documents inherited from the missionary churches of the early twentieth century, but also they ought to be in tune with the Indian Companies Act 2013.

In the case of *Deputy Commissioner of Income Tax vs. A.P. State Textiles Development on 31 October,* 1994 it was held that the character of the Company is to be determined only with reference to various clauses of the Memorandum of Association and Articles of Association.

Corporate governance is generally understood as the process by which the Board instructs management of the group to conduct its affairs with a view to ensuring that its objectives are met with transparency, probity and accountability. If corporate governance is a system by which the companies are directed and controlled, such a system of the corporate governance has to begin from the Memorandum and Articles of Association which are the true instruments of management. It is the Memorandum which has an objects clause, which in modern times is drawn very broadly so that it covers a wide range of activities by the company. Corporate governance is crucial to the running of a non-profit business based on the principles and procedures that are enshrined in the MoA and AoA. This is least recognised by experts in India, and the subject is, for example, hardly touched on by S. Chandra Das in his interesting book *Corporate Governance in India* (2012). Chandra Das places emphasis on reforming the company board, its necessary structure and methods of operation. Nevertheless, there escapes from his attention the need for constructing and implementing the Memorandum and Articles which is the first major step for achieving good corporate governance.

Renewal of Governance Framework: The Sources of Corporate Governance

We need to ask the question, 'What are the sources of corporate regulations that are a necessary part of corporate governance? What are the sources within the domain of law that a company should follow?' Answers to these questions form the first step of the journey of the CSITA to appreciate corporate governance. Gower's statements are worth noting here. He observed, 'As far as domestic companies are concerned, the immediate sources of the rules applicable to them, and the hierarchy of those sources are … primary legislation, secondary legislation, rule-making by legislatively recognised bodies, the common law of companies, and the company's own constitution (its memorandum and articles of association).'[226] Gower underlines the importance of the last source, the association's rule-book (MoA and AoA) as an important source of law particularly for its members who are the higher level stakeholders. It means that there are documents containing rules and codes to be followed by the CSI and the CSITA demanding faithful adherence to them in the day-to-day functioning of the CSITA.

Gower considers that the primary legislation is the Companies Act, and in our case it is the Indian Companies Act 2013. The secondary legislation refers to the rule-making power conferred on the Ministry of Corporate Affairs. Wherever the Companies Act 2013 makes reference to 'as prescribed', those clauses have to be explained and understood in terms of rules made to further illustrate and explicate the company laws. Under the Companies Act 2013, at around 300 places where the phrase 'as may be prescribed' is used, there lies the requirement of providing Rules and more rules. In the UK corporate tradition, the Memorandum is not taken as an indispensable document, and high importance is given to the Articles as they contain detailed rules and bye-laws for the Board of

[226] Gower, *Principles of Modern Company Law,* p. 45.

Directors, the Annual General Meeting, key managerial personnel, the auditing, and the winding up of the company. The CA 2013 treats the MoA and AoA as equally important, though the AoA is a secondary document standing very close to the MoA. Both documents have to be signed at the time of incorporation by all subscribers as prescribed in Rule 13 of the Companies (Incorporation) Rules, 2014.

In modern times, the SPICeMOA[227] form (INC 33) should be filled at the time of incorporation for outlining the objects and the matters which are necessary for the furtherance of the objects to be pursued by the company. For Articles of Association SPICeAOA should be filled. Both are valued equally for incorporation, and it is important that false or incorrect particulars of any information or suppression of material information in the documents submitted to the RoC should be avoided as it is a punishable offence.

B. Garratt argues, 'The *Memorandum and Articles of Association*, the outcome of the vital legal process that… define the legal limits of the company's ability to operate, as well as such procedures as voting at annual general and extraordinary general meetings, board selection and dismissal processes"[…, etc. If these processes are not followed, the board will find itself acting *ultra vires* (beyond the law) and will be held liable by the owners, and especially the regulators, mainly for civil wrongs. It is both the chairman and the company secretary's duty to ensure that due process, derived from the Memorandum and Articles of Association of the company, is followed around the boardroom table at all times.[228] Hence it is needless to emphasise the significant place occupied by the Memorandum and Articles in a corporation. A company needs to have well-constructed Memorandum and Articles that will ensure good governance in all areas, not only in indoor management of

[227] Simplified Proforma for Incorporating Company Electronically (SPICe)

[228] *Thin on Top: Why Corporate Governance Matters and How to Measure and Improve Board Performance,* London: Nicholas Brealey Publishing, 2003, p. 85.

the company but also in external compliance with the instruments of corporate law.

An Association of persons can register themselves as a legal corporate with the name of a Company. The CSI association has registered itself in the form of the CSITA, a legal entity. What is a 'company'? In the words of the Companies Act 2013, 'company means a company formed and registered under' the Companies Act 2013 or any previous Act. According to Sec. 2(20) "company" means a company incorporated under this Act or under any previous company law. The CSI does business under the corporate form of organisation, not how the missionaries and missionary society personnel managed the Church properties. Some members who later became part of the CSI formed the Trust Association of the CSI on 26 September 1947 with fifteen members drawn from the South India United Church, the Methodist Mission and the Anglican Church constituting the first members of the Association. The CSITA, one day older than the CSI, became a legal entity and an incorporated body responsible to the Government laws and the provisions of corporate law as soon as it was born on 26 September 1947.

The CSI Trust Association was registered under the then existing Indian Companies Act of 1913. The CSITA, its name adopted through incorporation, was henceforth legally subject to the provisions of the Companies Acts as long as it exists and operates. Sec. 9 of CA 2013 is very important to our understanding of what a body corporate is. It reads, 'From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, *capable of exercising all the functions of an incorporated company under this Act (2013)* and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and im-

movable, tangible and intangible, to contract and to sue and be sued, by the said name.'

The characteristic of body corporate is that it is capable of exercising all the functions of an incorporated company. The work of the CSITA cannot be identified with a Society or Trust though its name includes 'Trust'. We shall look more deeply at the nature and characteristics of the company CSITA and examine particularly whether they resonate with the CA 2013 by going through the clauses of the Memorandum and Articles.

The Centrality of Memorandum and Articles of Association

No company can function without reference to these two vital documents. MoA is a document that contains all the fundamental data including the situation of the company, its objects, scope of activities, and the basic framework of the management which are required for the company's life. The Memorandum is the charter, which outlays and limits the powers and constraints of an organization. It is a supreme document which cannot be easily altered. However, the memorandum cannot give the company power to do anything that is not in agreement with the provisions of the Indian Companies Act. The articles provide the regulations by which the objectives and powers are to be implemented and executed. The Articles too are constrained by the Act, but they are also subsidiary to the Memorandum and cannot exceed the powers contained therein. Further, the MoA and the AoA cannot contradict each other. Although the AoA is a secondary document to the MoA, both should cohere with each other and they must be subject to corporate legislation.

Non-profit organisations are looking for guidance from Company law, but specific provisions to assist the non-profits are very limited. The CA 2013 does not meet some of the exclusive needs of several types of the non-profit companies like the big public company CSITA.

The provisions that apply to a non-profit are not easily derivable from the shares-oriented and trading mercantile laws and regulations. It should be possible to search for and identify those parts of the Act which are likely to be most frequently relied on by a Sec. 8 company like the CSITA. The non-profit companies are pushed to the level of developing their own corporate governance principles, codes and best practice guidelines to ensure good functioning of the Board.

The Companies Act 2013 puts emphasis on the two important documents, namely the Memorandum and Articles of Association. They are regarded as a company's constitution. Gower considers, 'the memorandum of Association corresponding to statute or charter and the articles of association corresponding to the byelaws'.[229] It is to these that we are giving close consideration as they are the pillars of good corporate governance. The CSITA has 4 pages of Memorandum and 8 pages of Articles of Association. 90% of the contents of both documents are drawn from earlier documents of the South India United Church Trust Association (SIUCTA) formed in 1923. It is expected therefore that the contents are somewhat antiquated, coming from the turn of the twentieth century and originally emerging from a different context where corporate thought was not much developed. They were not revised after the inauguration of the CSI in any manner that would address and speak to the new situation of the united church. This is our main focus in this chapter.

There can also be a third category of source. Each company can have 'self-regulation rules' in order to manage the movable and immovable properties of the company that can work alongside the formal laws, both primary and secondary. The self-regulation rules cannot introduce a system which is totally different from or in contradiction to the charter and the bye-laws of the company. The company cannot issue its own rules requiring it not to do things that are not required by the formal law.

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[229] *Principles of Modern Company Law*, p. 57.

Anything forbidden by the primary law should not be included in the self-regulation rules. Where the regulations are not clear or where the primary laws have given freedom to the company to use its discretionary powers in interpreting and adopting the laws, then a set of company guidelines might be necessary to assist that process. This is to help the smooth functioning between the CSI and the CSITA. The self-regulation in the form of a document cannot distort or contradict what is laid-out in the constitutions of the company. The contents of the Guidelines between the CSI and the CSITA cannot be repugnant to the provisions of the Indian Companies Act 2013. The *Guidelines* of 1988 should be replaced by a code that regulates financial and property matters based on the above-mentioned primary and secondary sources of corporate law. A new instrument should be put in place to streamline the spending and the other financial transactions effected between the CSI and the CSITA.

We observed that the Memorandum and Articles of Association are the main sources of power for ensuring good corporate governance. The MoA is the document that sets up the company and AoA set out how the company is run, governed and owned. This is the starting point before we move on to consider other aspects of governance relating to matters of Board, the General Body etc. In the case of the CSITA, it is particularly important that its MoA and AoA are studied and studied thoroughly, for the simple reason that their contents are nearly 100 years old. They were approved under the Act of 1913 and survived through the period of the Companies Act of 1956, and now they have to be read in the light of the new Companies Act of 2013 to see if there are conflicts. Surely, there will have to be alterations, changes and modifications. The documents were prepared when the membership of the CSI was about 2 million. Now it is doubled, and the number of institutions have increased considerably. There is a huge task which will require expertise from various departments of corporate science. Our moderate aim is to high-

light the sections that might be in conflict with the basic characteristics of incorporation and particularly with the robust Act of 2013.

What Is the Memorandum?

The 'Memorandum' contains 'the fundamental conditions upon which alone the company is allowed to be incorporated'.[230] It lists out the purpose and objects of the Company and also outlines the (limited) liabilities of its members. According to CA 2013, '"memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act [2. (56)]'. The present Memorandum was framed and written under the Indian Companies Act of 1913. The question is: Has this been altered or amended in pursuance of CA 2013? Companies registered under previous Acts were given a one-year period for transition to make strict compliance with the provisions of the new CA 2013. Has the CSITA management board responded to this instruction? According to Sec. 15 (1) 'Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.'

How Did the Act 1913 View the MoA?

The Act 1913 states, 'The Memorandum of association of a company is its charter and defines the limitation of the powers of a company established under this Act. The objects of a company proposed to be incorporated under the Act, as stated in the Memorandum, cannot be departed from except so far as the Act permits of changes … The objects of a company are set out in the memorandum and must not contravene

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230 https://www.lawteacher.net/free-law-essays/business-law/memorandum-of-association-companies-act-1956-business-law-essay.php.

the general law or the Act itself.'[231] These two aspects, namely the MoA as the charter for the company's powers and the range of the objects that the company is working for draw our attention. Sec. 9(b) of the 1956 Act is quite emphatic that 'any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.' The Act gives freedom for companies to draw their own memorandum and they can choose their objects. They should follow the form in respective schedules in the Act and the form can be 'as near thereto as circumstances admit' (Sec. 9/1956). Table C of the 1956 Act relates to the memorandum and articles of association of a co mpany limited by guarantee and not having a share capital. This is the relevant form for the CSITA but it can expand to include other company characteristics.

The MoA is 'the basic and fundamental document which lays the foundation of a company'.[232] Its importance is further expounded by Ramaiya as he wrote, 'Memorandum controls the business field of the company and conduct of the business through the objects specified therein. Once it is registered it becomes a public document and therefore persons who have been dealing with the company are deemed to have notice of the contents of the memorandum. The persons dealing with the company are also bound by the memorandum in dealings with the company. Thus, this document has all pervasive effect on the life of the company both internally and externally.'[233] The memorandum of association is the formal, legal constitution governing a company, often the fountain source of corporate governance. It is the document that governs the relationship between the company and the outside as well as the inside.

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[231] *Indian Companies Act, 1913,* pp. 16-17.
[232] Ramaiya, *Guide to the Companies Act,* vol. 1, p. 352.
[233] Vol. 1, p. 353.

Sec. 13 of CA 1956: Requirements with Respect to Memorandum

(1) The memorandum of every company shall state—

(*a*) the name of the company with "Limited""as the last word of the name in the case of a public limited company, and with "Private Limited" as the last words of the name in the case of a private limited company;

(*b*) the State in which the registered office of the company is to be situate;

(*c*) in the case of a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965 (31 of 1965), the objects of the company;

(*d*) in the case of a company formed after such commencement,-

(*i*) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects;

(*ii*) other objects of the company not included in sub-clause (*i*); and

Comment: In the 1956 Act there are three categories of object: main objects, objects incidental thereto and other objects. The purpose of the Memorandum is to give clear and precise definitions of the main, subsidiary and other objects. These three distinctions make the objects as wide as possible. These three were converted into two (main objects and any matter considered necessary in furtherance of those objects) by the CA 2013. The question is whether the MoA and AoA of the CSITA follow these categories of objects. They support pecuniarily the objects of the CSI rather than having objects of their own.

(*e*) in the case of companies (other than trading corporations), with objects not confined to one State, the States to whose territories the objects extend.

Comment: This seems to be very important for the CSITA as its MoA and AoA do not provide the names of the States 'to whose territories the objects extend'. The Church of South India is found existing only in five states: Tamil Nadu, Kerala, Karnataka, Andhra and Telangana. The MoA states that the objects are extended to the Church of South India in India and the AoA refers to the churches by the names of missionary churches such as the Madras, Dornakal, Tinnevelly and Travancore and Cochin dioceses of the Church of India, Burma and Ceylon, the South India United Church, and the South India Province of the Methodist Church. The AoA further identifies the churches whose objects the CSITA supports as 'Church of South India after inauguration'. This description is also vague and it does not adequately name the various dioceses and the States they are in which make up the Church of South India.

(2) The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

Comment: The specified amount as of today is Rs. 15 (22 cents)!

Memorandum and the Companies Act 2013 Sec. 4

The current Act of 2013 gives greater emphasis to the MoA and the AoA than the previous Acts and it builds on the other two previous Acts. CA 2013 Sec. 2(56): '"Memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act'. It implies that the MoA has to be revised from time to time and brought to a stage of making sense under the Act currently in force. R. Viraraghavan rightly comments that this definition is not adequate to understand the role and function of MoA in a company and that the MoA needs to be understood in terms of its form and contents and in relation to the Companies Act 2013.[234] It determines the powers and purpose of the company beyond which the company cannot operate. This is the Lakshman Rekah as it were. To step over it will be *ultra vires* (beyond its legal power or authority). As far as a non-profit organisation goes, the MoA should contain: Name of the company, address of the registered head office, objects of the company, and liability of the members; there is no capital structure for the non-profits.

CA 2013 Sec 4. (1) The memorandum of a company shall state—

> (a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company:
> Provided that nothing in this clause shall apply to a company registered under section 8;
> (b) the State in which the registered office of the company is to be situated;
> (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

[234] *Guide to Memorandum, Articles and Incorporation of Companies,* 6th ed. Gurgaon: Lexix Nexis, 2016, p. 225.

(d) the liability of members of the company, whether limited or unlimited, and also state,—

(ii) in the case of a co mpany limited by guarantee, the amount up to which each member undertakes to contribute—

Comment: The objects are only two types (unlike the 1956 Act), namely main objects, and any matter considered necessary in furtherance thereof.

(2) The name stated in the memorandum shall not—

(*a*) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(*b*) be such that its use by the company—

(*i*) will constitute an offence under any law for the time being in force; or

(*ii*) is undesirable in the opinion of the Central Government.

(*6*) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

Comment: For the CSITA, the model is found in Table B.

(*7*) Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

The Form of the Memorandum of the CSITA in Relation to the Companies Act 2013

What does the MoA look like? There are several points of references for a construction of a MoA, some of which are listed below. They tell us about the form and the content of a MoA. The CSI members should

know about the MoA, both its form and structure. We begin with the specimen MoA (Table B, Schedule I) provided by the CA 2013. When the present MoA is redrawn, this should serve as a model to guide the CSITA.

Memorandum of Association of Company Limited by Guarantee and Not Having a Share Capital - Table B, Schedule I

Comment: This is more suitable for the CSITA, whose MoA should be reshaped in accordance with its mode.

1st The name of the company is ‘‘..... Limited/ Private Limited’’.

Comment: The name is: The Church of South India Trust Association’ without the addition of the word ‘Limited’ or ‘Private Limited’.

2nd The registered office of the company will be situated in the State of.....

Comment: In 1947 it was Madras, and it is now called Tamil Nadu.

3rd (a) The objects to be pursued by the company on its incorporation are:—

(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—…….

Comment: There are sections in MoA illustrating the objects of the company which will be discussed below. The objects are: 1) To act and allow its name to be used as Trustee or Agent for the Church of South India; 2) to aid and further the work of the Church of South India; 3) to promote the objects of such church

and to assist it pecuniarily; 4) to acquire sites for buildings and to build, alter, enlarge etc.; 5) to act as trustee for the maintenance of bishops etc.; to appoint managers, treasurers etc.; 6) to accept property to be held by the Association; 7) to nominate persons to act as trustees for the Association: 8) to appoint referees in relation to any disputes; 9) to appoint and employ and pay agents for any of the purpose of the Association; 10) to incorporate or register the Association or its title-deeds; 11) to enter into any arrangement with any Government or with authorities supreme, local, municipal or otherwise in pursuance of the objects of the Association; 12) to sell, mortgage, charge, lease, dispose of any property held by the Association; 13) to hand over to any corporation, persons or association of persons property vested in the Association; 14) to pay out of the funds of the Association to administer any special trust to carry out any of the foregoing objects including the payment of salaries to persons employed and finally to do all such other lawful acts and things as are incidental or conducive to the attainment of the above objects [MoA Sec. 3 (a-q)].

4th The liability of the member(s) is limited.

Comment: 'Limited Liability' means 'a situation in which the owners or other shareholders of a co mpany are not responsible for all of its debts if the company fails, except for their shares invested in the company.

5th Every member of the company undertakes to contribute:

(i) to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member; and

(ii) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves), such amount as may be required, not exceeding .....rupees.

Comment: A member contributes Rs. 15 (22 cents!) (MoA 7) in event of the company being wound up. It shows that the members do not have to bear the loss that occurs in the company.

6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

The names, addresses, and occupations of subscriber descriptions and the occupations of the witnesses of the subscribers.

Comment: There are at the moment 19 members in the CSITA General Body. It has over 4 million people as ordinary members who are stakeholders or beneficiaries. The membership is thus disproportionate to the populace of the CSI.

The above 6 clauses constitute a bare minimum requirement for a document of MoA and it is expected that this is read in conjunction with the Articles of Association in Schedule I. In addition, the official Forms are necessary to add to our knowledge of what a MoA is.

Reading Form INC-13

Rule 19(2) specifies that memorandum of association of a sec. 8 company shall be in Form no. INC 13. The following features are to be noted.

1. The name of the company is ".....".
2. The registered office of the company will be situated in the State of.....

3. The objects for which the company is established are: .....
.....the doing of all such other lawful things as considered necessary for the furtherance of the above objects:

Provided that the company shall not support with its funds, or endeavour to impose on, or procure to be observed by its members or others, any regulation or restriction which, as an object of the company, would make it a trade union.

4. The objects of the company extend to the ..... [Here enter the name of the State or States, and Country or Countries]

5. (i) The profits, if any, or other income and property of the company, whensoever derived, shall be applied, solely for the promotion of its objects as set forth in this memorandum.

(ii) No portion of the profits, other income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time are, or have been, members of the company or to any one or more of them or to any persons claiming through any one or more of them.

(iii) No remuneration or other benefit in money or money's worth shall be given by the company to any of its members, whether officers or members of the company or not, except payment of out-of-pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the company.

(iv) Nothing in this clause shall prevent the payment by the company in good faith of prudent remuneration to any of its officers or servants (not being members) or to any other person (not being member), in return for any services actually rendered to the company.

(v) Nothing in clauses (iii) and (iv) shall prevent the payment by the company in good faith of prudent remuneration to any of its members in return for any services (not being services of a kind which are required to be rendered by a member), actually rendered to the company;

6. No alteration shall be made to this memorandum of association or to the articles of association of the company which are for the time being in force, unless the alteration has been previously submitted to and approved by the Registrar.

7. The liability of the members is limited.

The following clauses are meant for Companies Limited by Guarantee (such as the CSITA).

8. Each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts or liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a sum of Rs.....

9. True accounts shall be kept of all sums of money received and expended by the company and the matters in respect of which such receipts and expenditure take place, and of the property, credits and liabilities of the company; and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the company for the time being in force, the accounts shall be open to the inspection of the members.

Once at least in every year, the accounts of the company shall be examined and the correctness of the balance-sheet and the in-

come and expenditure account ascertained by one or more properly qualified auditor or auditors.

10. If upon a winding up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the objects of this company, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269 of the Act.

11. The Company can be amalgamated only with another company registered under section 8 of the Act and having similar objects.

12. We, the several persons whose names, addresses, descriptions and occupations are hereunto subscribed are desirous of being formed into a company not for profit, in pursuance of this Memorandum of Association:

List of names, addresses, descriptions and occupations of subscribers with witnesses to their signatures:

Dated the..... day of.....20....

To further add to our knowledge of the Memorandum, we consider yet another form.

Form No. INC-14 & 15 Are the Declarations

This form *INC-14* certifying that the MoA and the AoA are formulated well in accordance with the CA 2013 is a must under the dispensation of the new Act.

Form No. *INC-14* is a declaration by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice [Pursuant

to section 7(1)(b) and rule 19 (3)(b) of the Companies (Incorporation) Rules, 2014]:

I do hereby declare that:

a) the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder; and

b) all the requirements of Companies Act, 2013 and the rules made thereunder relating to registration of the company under section 8 of the Act and matters precedent or incidental thereto have been complied with.

Date:……. Signature……..

Form No. INC-15 is also a Declaration [Pursuant to rule 19 (3)(d) of the Companies (Incorporation) Rules, 2014] made by each Subscriber to the MoA:

In connection with the application of …… [name of the proposed company] for a licence under section 8 of the Companies Act, 2013, I ……., [name of the person] do hereby declare that — (a) the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder; and (b) all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with; and I make this solemn declaration conscientiously believing the same to be true.

Place & Signature:…….

MoA Must Be in Compliance with the Indian Companies Act 2013

The above Forms INC 13, 14 & 15 including the Declarations indicate that the central concern is that the Memorandum and Articles are to be framed in compliance with the Companies Act 2013. The company declares at the time of incorporation on more than one occasion that the draft memorandum and articles of association have been drawn up in conformity with the provisions of Section 8 and the rules made thereunder. The CSITA did not have to go through this process when it registered itself under the 1913 Act, but the corporate notions have grown over the years so that these declarations have be taken seriously by the administrators of the CSITA.

The Objects Clause Is the Heart of the Memorandum and Articles for a Company

The objects clause is the single most important provision in the MoA. The objects of the company are classified in the Companies Act 1956 as:

> (a) The main objects of the company to be pursued by the company on its incorporation,
> (b) Objects incidental or ancillary to the attainment of the main object and
> (c) Other objects of the company not included in (a) and (b) above.
>
> The object expressed or implied in the memorandum determine what the company may accomplish. The objects make clear the purpose of the incorporation and will make the donors and monthly subscribers interested in the company's work. The objects clause defines the actual business in the form of the range of permissible activities in which the company is or proposes to be

engaged. The memorandum cannot contain unlawful objects which would make the entire memorandum void and unenforceable. How does the MoA of the CSITA handle this important aspect, 'objects'?

A Company Must Function within the Terms of the Company's Objects

The 'objects' as the most important principle is well illustrated in the following case. In *Ashbury Railway Carriage and Iron Co Ltd v Riche (1875)* the objects of the appellant railway company were to make and sell, or lend on hire, railway carriages, wagons and all kinds of railway plant, fitting machinery, plant and rolling stock; to carry business of mechanical engineers, etc. The director entered into a contract to give loan for the construction of a railway in Belgium which they assigned to Riche. The company's shareholders disapproved the deal and the company repudiated the assignment of contract with Riche. Riche suffered a loss and he brought an action against the company to recover damages for breach of contract. The House of Lords held that construction of a railway was not within the objects clause of the company and that the company did not have capacity to enter into contract to construct a railway line as it was not one of the objects of the Memorandum. The contract therefore was held to be *ultra vires* and void. Accordingly, Riche was not entitled to damages.

In this connection, Lord Cairns said, 'The memorandum of association of a company defines the limitation on the powers of the company […] it contains in it both that which is affirmative and that which is negative […] nothing shall be done beyond that ambit […]' [235]

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235 https://lawjugaad.com/memorandum-and-articles-of-association-meaningrelationship/

We must also note that the rigours of the doctrine of *ultra vires* were much diluted by the decision of the Court of Appeal in the case of Bell Houses Ltd v City Wall Properties Ltd (1966), where the objects authorized the company to carry on any other trade or business which in opinion of the directors might be carried on advantageously in connection with its main object of developing housing estates. The court declared that the directors' opinion that the new business would be advantageous was legitimate decision consistent with the objects and therefore *intra vires* (within the powers), provided such opinion was reached in good faith.

The trend now in companies is to register a lengthy objects clause consisting of activities ranging from real estate to running a nursery so that no company is acting *ultra vires* as far as the objects are concerned. The CSITA seems to have followed a similar path in describing its objects. It will do everything that can promote the objects of the Church of South India but does not state what those objects are. Whether the company has any control or say over the specification of objects by the CSI is not clear. The question arises whether an incorporated body can serve the objects of some other organization? The objects should be part of the Company agenda and cannot adopt objects of another association as its own.

The Memorandum of the Company Must State the Full Range of Its Objects

A major flaw in the MoA is that the objects of the CSITA are not spelt out in clear terms to be in agreement with the objects listed in Sec. 26 of the Companies Act of 1913. The company has to show the specified objects as part of its own. What are those specified objects? The objects in the MoA are not spelt out just as they are stated in the Companies Act 1913. The CA 1913 states, 'Where it is proved to the satisfaction of the Local Government that an association … formed for pro-

moting commerce, art, science, charity, or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, …' [sec. 26(1)]. Where are the objects of the company listed in the MoA and AoA? The objects are not specified in the manner in which they are described in the CA 1913 and subsequent Acts.

The MoA of the CSITA admits that it works for the objects of the Church of South India which is an unregistered body with its own constitution and rules. Even when the MoA says that the Association serves the objectives set out by the Church of South India, it does not explain clearly what those objectives are and will be. The objects of the company are decided by the CSI and not by the CSITA. The objectives are simply put as giving pecuniary support to the CSI and 'to aid and further the work of the Church of South India'. There is no exhaustive list of objects, but the MoA states that the company will do or carry or assist in doing or carrying out all such matters and things as are likely to promote the objects of such Church and in particular to assist 'pecuniarily …' [(Sec. 2(b)].

Sec. 13 of the CA 1956 states the 'Requirements with respect to Memorandum'. The first and foremost is that it must state 'the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects'. Other objects of the company which are not included can also be mentioned. The objects have to be laid out clearly in the case of companies (other than trading corporations), with objects not confined to one State, or the States in south India to whose territories the objects extend. The CSITA is expected to outline its objects in the above directions.

As R. Viraraghavan comments, 'The most significant clause in the Memorandum of Association is the objects clause. This clause defines the area beyond which the company cannot travel. It delimits the range of the company's activities. The objects clause is designed to enable …

all those who deal with the company to know what is permitted range of enterprise.'[236] He adds that 'No attempt will be made to use the corporate life for any purpose other than that which is so specified.'[237]

A New Object of 'Religion' Is Added in the Acts of 1956 and 2013

The MoA of the CSITA is almost the duplicate of the MoA of the South India United Church Trust Association which had existed prior to the union in 1947 since the year 1923, and it has no explicit reference to objects. The major difference one can notice is that the MoA of the CSITA was drawn under the Sec. 26 of the 1913 Act which had no reference to 'religion' as one of the objects of the Sec. 26 companies. When 'Religion' was not one of the objects for Sec. 26 companies, how could the CSITA could have included an object of serving the CSI to achieve religious goal? The assets and profits of the association are to be used for the objects of promoting religion by the CSI. The object 'Religion' is now introduced in the Acts of 1956 and 2013, thanks to the Central Government. Definitely forcible conversion from other religions is not meant. Christianity through the CSITA can do some sort of religious awakening and make religion work for bringing change in the lives of persons and in the society.

To Do Things Which Are Likely to Promote the Objects of the CSI Is the Sole Object of the CSITA

The objects as in MoA are outlined:

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[236] *Guide to Memorandum, Articles and Incorporation of Companies*, 6th ed., Haryana: LexixNexis, 2016, pp. 235ff.

[237] *Guide to Memorandum, Articles and Incorporation of Companies*, p. 236.

– To aid and further the work of the Church of South India … to do and carry out or assist in doing or carrying out all such matters and things as are likely to promote the objects of such Church and in particular to assist pecuniarily or otherwise all or any of the societies, clubs, trusts, organizations, schools, colleges, ashrams, hostels, boarding houses, hospitals, dispensaries, industries, homes, refugees, and other charities.

– To acquire by all lawful means immovable and movable property and apply both the capital and income thereof and the proceeds of the sale or mortgage thereof for or towards all or any of the objects hereinafter specified.

Comment: What is the work/objects of the Church of South India?

The Constitution of the Church of South India (2003) defines its objects, i.e. its mission, thus: 'The Church of South India affirms that the Church is the servant of God and is called to carry on the mission of God in the world.'[238] It is further elaborated as: 1) preaching the Good News of Jesus Christ; 2) nurturing the people of God through preaching, Christian education and pastoral care and to interpret its faith relevant to the contemporary world; 3) As Christ served the people with love and compassion, the Church seeks to engage itself in the service of the people. The CSI believes that service is rendered through its medical and educational institutions, children's homes, rural and developmental projects and other diaconal ministries. The Church extends its service to all people irrespective of caste or creed but with a preferential option for the poor and the neglected in the society; 4) Mission is striving to establish justice in society. This means to transform unjust structures, to denounce all forms of domination and exclusion. It also means renewing

[238] *The Constitution of the Church of South India,* Chennai: The Church of South India Synod, 2003, p. 24.

cultures and working for peace and reconciliation. The Church seeks to participate in the building up of the nation through involvement in political structures and people's movements. This will also mean that the Church needs to be prepared to work together with others; and 5) the Church seeks to create awareness among all people about environmental and ecological concerns and to encourage people to refrain from excessive exploitation of nature's resources.[239]

These objects of the church could have been included either in the MoA or in AoA either in full or in brief so that the all levels of stakeholders know what are the objects that the CSITA and what it supports.

Movable properties: 1. Property that can be moved or displaced, such as personal goods; a tangible or intangible thing in which an interest constitutes personal property; specifically, anything that is not so attached to land as to be regarded as a part of it as determined by local law.[240] Immovable Property: Property that cannot be moved; an object so firmly attached to land that it is regarded as part of the land.[241] The CSITA will 'apply both capital and income thereof and the sale and the mortgage thereof' for the growth and development of the church.

– To acquire sites for buildings and to build alter or enlarge such buildings and to main and endow churches, chapels, churchyards, burial grounds, schools, colleges, ashrams, hostels, boarding houses, hospitals, dispensaries church mission halls, prayer houses, residences for ministers, doctors, schoolmasters and schoolmistresses, and other workers, refugees, homes, industrial establishments and other buildings to be used in connection with the work of the said Church within the said area

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[239] *The Constitution of the Church of South India,* Chennai: The Church of South India Synod, 2003, pp. 26-28.

[240] *Black's Law Dictionary,* 8th ed., p. 3219.

[241] *Black's Law Dictionary of Law,* 8th ed., p. 2190.

- To act as trustee for the maintenance of bishops, presbyters, deacons, pastors, teachers, evangelists, catechists, doctors and nurses and other workers of the Church within the said area and for the relief, provident funds or pensions, for such persons and their widows and families
- To act as or to exercise any power which may be confided to the Association of appointing managers, treasurers, trustees, auditors, inspectors, examiners or other officials of any such societies, institutions, trusts, organizations, and charities
- To accept property to be held by the Association (1) for the general purpose of the Association or (2) on special trusts either as an original trustee or as a new trustee of a trust already existing or (3) as bare or passive trustee without undertaking the management or administration of such property.

The questions of 'Trust' and 'Trusteeship' have to be taken as central aspects of our inquiry and will be discussed at some length below.

The Doctrine of 'Ultra Vires': Every Company Is Subject to the Ultra Vires Rule

The objects clause of the Memorandum of the company contains a list of the objects for which the company was formed. The objects clause 'circumscribes the capacity, or power, of a company to act'. The company must not act beyond the object clause of its memorandum of association. If company acts beyond the objects clause then it is *ultra vires* (beyond the legal power of authority). If the CSITA does those things that are not objects or not connected to objects, then the CSITA has entered into an *ultra vires* contract which is void and cannot be ratified by any resolution of the General Body. This is known as the Doctrine of *Ultra Vires*.

A company can do everything which it is expressly authorised to do by its memorandum of association (Lawang Tahang vs. Goenka Commercial Bank Ltd. on 17 May, 1960). At the same time, it cannot override the Companies Act 2013. The company cannot do anything which is contrary to or inconsistent with the provisions of the Act. The judgement in S.S. Syal & Ors vs. Chelmsford Club Ltd on 17 January, 2011 observes, 'According to Section 9, the provisions of the Act over-ride the provisions of the Memorandum and Articles of Association in so far as the later are repugnant to the former.'

The doctrine of *ultra vires* is that a company is doing business repugnant (logically contradictory) to the provisions of the Companies Act. 'Thus the expression *ultra vires* means an act beyond the powers. Even if a special resolution is passed by members with a majority of votes, then also its ratification cannot happen. Where a company exceeds its power as conferred by objects clause, it is not bound by it because it lacks legal capacity to incur responsibility for the action.'[242] There are times when the internal management takes a decision which is beyond the scope of the Memorandum of Association; in such cases the particular action is termed as void as it is *ultra vires* the charter of the company.

The foundation of the company is the Memorandum which is the basic and fundamental document which actually is the company's constitution. The persons managing or owning the company are bound by the memorandum in all their dealings. As A. Ramaiya observes, 'Thus, this document has all the pervasive effect on the life of the company both internally and externally. The memorandum circumcises the powers of a company, and exercise of powers beyond the provisions of the Memorandum would be considered *ultra-vires* the memorandum and will have no validity.'[243] A company should therefore move within the

[242] http://kanoon.nearlaw.com/2018/01/08/doctrine-ultra-vires/

[243] *Guide to Companies Act,* vol. 1, p. 353.

boundaries of the memorandum. Any act that oversteps the objects boundary will be termed as *ultra vires* which deserves penal action. The Members enter into a Covenant with the Memorandum and Articles to observe all the Provisions of the MoA and AoA

Sec.4 CA 2013: Concerning the Memorandum

CA 2013 Sec. 4(7) Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Sec. 7(1)(a): The memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed

Sec. 7(1)c: an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

Sec. 10(1): Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

For the Alteration of the Memorandum and Articles Approval from the Central Government Regulatory Bodies Is Necessary

Sec, 7(4)(i): A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government

A Company Can Alter Its Memorandum Only By Complying With the Procedure

Sec. 13(1): Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

The Special Resolution (Which Requires 75% of the Members' Approval) to Alter the Memorandum Should Be Filed with the Registrar

Sec. 13(6): Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—(a) the special resolution passed by the company under sub-section (1)

The Alteration of Memorandum of a Guarantee Company without Shares Such As the CSITA Cannot Give a Non-member the Divisible Profits

Sec. 13(11): Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

The Alterations in MoA and AoA Should Be Found in every Copy of the MoA and AoA

Sec. 15(1): Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

Each Copy Issued without the Alteration the Company Will Have to Pay a Fine of Rs. 1000 for Every Copy

Sec. 15(2): If a company makes any default in complying with the provisions of sub-section (1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.

Copies of MoA and AoA Can Be Procured from the Company with a Payment of a Fee

Sec. 17(1): A company shall, on being so requested by a member, send to him within seven days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:—(a) the memorandum; (b) the articles.

The Procedure for Alteration of Memorandum – Change of Objects Clause

The following procedural steps are required:

- Board Resolution for approval of change clause;
- Special resolution (with 75% of the members agreeing) from the Annual General Body; and
- eForm MGT-14 for filing the Resolution within 30 da ys of passing the Resolution with the RoC attaching the documents a)

special resolution, b) Notice & Explanatory Statement, c) Altered MoA and AoA Affidavit from the directors.

The Articles of Association

The 'articles' of a Company contain the regulations for the management of the company. By 'articles', the current Act means 'the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act' [Sec 2 (5)]. Section 2 of the Articles of Association of the Church of South India Trust Association 1947 clearly states: 'These Articles shall be construed with reference to the provisions of the Indian Companies Act, 1913, and terms used in these articles shall have the same respective meanings as they have when used in that Act.' It clearly shows how these articles will make sense when the Companies Act has been revised *in toto* at least twice since 1913. Each time it was revised, the old one was replaced by the new.

One should begin with the question: 'What do the provisions of the Companies Act 2013 say about the AoA of a company?' It should be borne in mind by the CSITA members and administrators that they make the contents have more bearing on the operations of the CSITA. Do the CSITA's Articles guide and influence the activities of the CSITA? A director who served on the Committee of Management of the CSITA quipped, 'I was a director for six years and I never knew there were Memorandum and Articles of Association.' A former Hon. Secretary of the CSITA who was administering it for two years said that he did not have to deal with the RoC during his tenure. Another former Hon. Secretary after 4 years of experience admitted that he regarded the CSITA as one of the committees of the CSI. What does the Act 2013 say about the Articles?

Sec.5 CA 2013: Concerning the Articles

Articles of Association (AOA) is a document containing all the rules and regulations that govern and control the company. It is like the bye-laws of the company. According to CA 1956, sec. 2(2), "articles" means 'the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply to the company, the regulations contained, as the case may be. The Table B of Schedule I of CA 2013 will form a template for creating a memorandum by a company limited by guarantee and not having a share capital.

Sec. 5(1): The articles of a company shall contain the regulations for management of the company.

(2) The articles shall also contain such matters, as may be prescribed:

Provided that nothing prescribed in this sub-section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management.

> *Comment*: Additional matters – i.e. other than those found in the Rules if they are considered necessary for management.

(3) The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) The provisions for entrenchment referred to in sub-section (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(5) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to

the Registrar of such provisions in such form and manner as may be prescribed.

> *Comment*: The 'entrenchment' articles are a new feature of the CA 2013. AoA is not law nor does it have any application as law. The members can alter them as they think fit by passing a special resolution (75% in agreement) in the General Body. In order to protect the minority members from the dominance of the majority in decision-making, the CA 2013 has introduced a system that certain articles will require a super majority if they have to be changed or modified or deleted or newly introduced. If a special resolution requires the support of 75% of the members, certain articles will require 100% or 90% of the members supporting for adopting, adding, deleting, amending, substituting articles. This is to protect the interest of minority members. An Entrenchment clause of a basic law or constitution is a provision which makes certain amendments either more difficult or impossible. When a company decides to consider certain provisions in AoA as 'entrenchment clauses', the company should give notice to the Registrar regarding such provisions. When the number of members of the CSITA is increased to, say 100, the clauses for the sale and mortgage of lands should be regarded 'entrenchment' provisions so that a mere majority cannot decide to force any change in such articles of selling and mortgaging to suit their interests but an approval from all members is essential. The number of members 19 in the CSITA is a small number to manipulate and comparatively easier to suppress opposition.

(6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

Comment: The Model Articles of a company limited by Guarantee and not having a share capital (e.g., the CSITA) are found in Table H of Schedule I in CA 2013.

(7) A company may adopt all or any of the regulations contained in the model articles applicable to such company.

Comment: This offers flexibility to the company and in its formulation of Articles. It does not mean that the model is unimportant and can be meddled with. Once the model is followed to construct AoA, it will become as if they were contained in the duly registered articles of the company.

(8) In case of any company which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

(9) Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act.

Comment: This should be read in combination with Rule 11 of the Companies (Incorporation) Rules 2014 which says that the Model in the Schedule I can be adopted by a company either in totality or otherwise. Ramaiya's statement is worth noting here. He commented, 'The impact of s. 5(9) of the 2013 Act is that the companies are at liberty to retain their existing articles and it need not be altered to fall in line with the new model articles given under Schedule I to the 2013 Act. However, the companies are at liberty to modify their articles in accordance with the 2013 Act to fall in line with the requirements of the 2013 Act.'[244]

[244] *Guide to the Companies Act*, vol. 1, p. 396.

Just as there is a model Memorandum, there also is a model Articles for a co mpany like the CSITA limited by guarantee and not having a share.

Articles of Association of a Company Limited by Guarantee and Not Having Share Capital, CA 2013

'Articles' is a manual which regulates the operations of a Company and a rule book for running a company. It contains internal regulations of the company on which the company carries on its functions through the directors, Board and AGM. Rule no. 11 in the Companies (Incorporation) Rules, 2014 states, 'The model articles as prescribed in Tables F, G, H, I and J may be adopted by a company as may be applicable to the case of the company, either in totality or otherwise.' We shall go through it by comparing it with the AoA of the CSITA and hint at some points that are not in line with the CA 2013.

TABLE - H

Interpretation

I. (*1*) In these regulations—

(*a*) "the Act" means the Companies Act, 2013;

(*b*) "the seal" means the common seal of the company.

Comment: These two clauses or the corresponding clauses are missing in the CSITA document.

(*2*) Unless the context otherwise requires, words or expressions contained in these regulations shall have the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

CSITA Article 2: *These Articles shall be construed with reference to the provisions of the Indian Companies Act 1913 and terms used in these articles shall have the same respective meanings as they have when used in that Act.*

> *Comment*: The Companies Acts have been revised twice (1956 & 2013) since 1913. The CSITA still maintains the old way of reading and understanding the Articles in the light of the 1913 Act. It is doubtful whether such a reading is practical when the company now has a new set of Act 2013 and Rules.

Members

II. 1. The number of members with which the company proposes to be registered is one hundred, but the Board of Directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

CSITA Article 1: *For the purpose of registration the number of members is declared as not exceeding fifteen. The committee of management register an increase of members whenever they consider it necessary*

2. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

> *Comment*: This system is not followed in the CSITA. It has now 19 members. The CSITA refers to the members of the General Body and the Directors as 'members' which means only 19 persons (10 of them are directors) among the 4 million CSI members can be considered to be called CSITA members. The revised CSITA Articles should consider following a 'stakeholder' approach by including representatives of the contributories, donors, subscribers, employees and religious workers and leaders as 'members'. This number of high level membership can be in-

creased to 100 as per the model Articles of the CA 2013. It is proposed that the CSI Executive committee is given a dual role of being the General Body of the CSITA with experts in company law, organisational management and church workers and leaders. The membership should be balanced between members who have technical knowledge on corporate law, education, management, banking, auditing and the church officials and workers.

General Meetings

3. All general meetings other than annual general meeting shall be called extraordinary general meeting.

CSITA AoA Sec. 21: *The above-mentioned general meetings shall be called ordinary meetings; all others shall be called extra-ordinary meetings.*

CSITA AoA Sec. 20: Subsequent general meetings shall be held once in every year and not more than 15 months after holding the last preceding general meeting at such place and date as the Committee may determine.

Comment: It is the other way round for the CSITA as General meetings shall be called ordinary meetings and all others will be called extra-ordinary meetings. The company should take approval from the RoC if it has to convene the meeting between 12-15 months. The AGM met on 28 September 2016 and there is no prospect of it meeting by next month as it is the custom to meet before 30 September each year. According to the Master Data available in MCA website, the date of the last AGM was 28 September 2016. It is learnt that the AGM was held in September 2017 and it is unlikely that it will meet in September 2018 due to certain important court cases pending which are affecting the leadership and the management of the CSI/CSITA

4. (*i*) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(*ii*) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

CSITA AoA sec. 22: *The Committee may, wherever they think fit, and they shall, if required in writing by not less than one-third of the members of the Association, convene, an extra ordinary meeting. Every such requisition shall express the object of the meeting proposed to be called, and shall be left with the Secretary and thereupon an extra-ordinary meeting shall be convened by the Committee to be held within thirty-one days from the date of the receipt of such requisition. If the Committee shall neglect to convene such meeting the requisitionists may themselves do so.*

> *Comment:* The CSITA's ruling on convening extra-ordinary meeting seems extra-ordinary indeed! Such a situation has never arisen in the history of the CSITA. To be precise, such a situation of one third of the members having to request for a General Body has never arisen as the ex-officio members controlled everything.

Proceedings at General Meetings

5. (*i*) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(*ii*) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.

CSITA AoA sec. 23: *The quorum at a general meeting shall be six.*

CSITA AoA sec. 34: *No business shall be transacted unless the prescribed quorum is present. If at a general meeting there is not a quorum, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to a time and place to be fixed by the Committee but if such adjourned meeting, a quorum of members shall not be present, the members present shall for a quorum.*

> *Comment:* The quorum number *six* was subsequently altered without the approval from the Central Government.

6. The Chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.

7. If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as Chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.

8. If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.

CSITA AoA sec. 33: *The Moderator shall be Chairman of the general meeting and meetings of the Committee. In the absence of the Moderator, CSI, the Deputy Moderator, CSI will act as Chairman. But in case of the absence of the Moderator, CSI and Deputy Moderator, CSI, the Members present at the meeting shall choose any one of the present members to be the Chairman of the meeting.*

> *Comment:* It is not clear and, in fact, it makes one to wonder whether it is acceptable for the Chairman to be chairing the meeting on his capacity as the Moderator, CSI and the Deputy Moderator, CSI. The regulatory bodies should observe this practice and offer a s uitable guidance, or if it is a wrong doing punish the company.

Adjournment of Meeting

9. (*i*) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(*ii*) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(*iii*) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(*iv*) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

CSITA sec. 35: *Every meeting, with the consent of the majority of the persons present and entitled to vote, may be adjourned from time to time, and from place to place, but only the business left unfinished shall be transacted at any adjourned meeting.*

Voting Rights

10. Every member shall have one vote.

11. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

12. No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.

13. (*i*) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to

is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(*ii*) Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

14. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

15. A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.

16. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

CSITA AoA sec. 36: *Every member, Committee member or Subcommittee member shall have one vote only, and any objection in the validity of a vote shall only be made at the meeting at which it is tendered. Every vote then and there disallowed shall be deemed valid for all purposes.*

CSITA AoA sec. 37: *Subject to the provisions of the Statute and of these presents, the Chairman of general meetings and meetings of the Committee shall be the sole and absolute judge of the validity of any vote tendered.*

> *Comment:* The CSITA rhymes with the provisions of the Model AoA. In the CSITA meetings either in AGM or in the Committee of Management, polling is rarely done as free-thinking persons

and persons with critical outlook are not chosen as members or directors.

Board of Directors

17. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

Comment: Art. 6 reads, 'The business affairs of the Association shall be manged by a committee of management … which shall be not less than five and not more than ten in number until otherwise determined by a general meeting and who shall be elected annually by the Association in General meeting.' There are currently 19 members and 10 directors in the list of data maintained by the MCA on the CSITA.

18. (*i*) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.

(*ii*) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—

(*a*) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or

(*b*) in connection with the business of the company.

Comment: In CSITA, there is no remuneration paid to the directors (as per the MoA sec. 4) for duties rendered by them to the company. By the Ex-officio members of the Committee of Management receive salaries through their appointment in the CSI which by law means that they are financially maintained by the CSITA as its employees.

Proceedings of the Board

19. (*i*) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(*ii*) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

Comment: The Board (i.e. the Committee of Management) of the CSITA does not meet regularly. It is one of the reasons for its ineffectiveness.

20. (*i*) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(*ii*) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.

> *Comment:* The Moderator and his CSI Synod colleagues see that every decision is made with no opposition while others accept their proposals in the name of consensus.

21. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

> *Comment:* Quorum is not a problem for the CSITA as it requires only 6 members to be present at the AGM (AoA. 23).

22. (*i*) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.

(*ii*) If no such chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for

holding the meeting, the directors present may choose one of their members to be Chairperson of the meeting.

> *Comment:* According to the CSITA Articles sec. 33, the Moderator of the CSI will be the Chairman and in his absence the Deputy Moderator will act as Chairman. There is no provision for others to act as Chairman at the meeting.

23. (*i*) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(*ii*) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

CSITA AoA sec. 17 (g): *To appoint or remove and delegate any of their power to a manager or an Attorney or sub-committee or sub-committees consisting of one or more members of the Committee, and to fix quorum for such committees.*

> *Comment:* This is a major problem with the CSITA. The CSITA delegates powers that are invested on the Board to individuals and committees consisting of non-members who are non-subscribers to the MoA and AoA. There are bishops functioning as Attorneys and Executive Committee, Working Committee and the CSI Synod members who have taken the powers of the Board on to themselves treat the Board of directors as a dummy committee. They are given freedom to initiate and decide on property and financial matters by getting the approval from the CSITA at the very end just for a formality. The power delegation does not function under the control of the Board of Directors. The Attorney and the other committees of the Synod and each diocesan unit work quite independent of the Board and finally manage to obtain a nod from the CSITA committee.

In the light of the orders dated 28 November 2016 from the National Company Law Tribunal (NCLT), there is no legally recognised CSITA Committee of Management, and members and directors running the company affairs at the moment. But that part of the order is held by the High Court in Chennai. We are waiting for the outcome. If the Chennai HC upholds the NCLT order that the management committee is dissolved, one can then imagine the status of the Power of Attorneys and other committees which are purported to be holding powers delegated to them by the Committee of Management. Against the order of the NCLT which ordered no sale/mortgage transactions of the properties, property sale/mortgage deals are going on as usual and matters which are within the purview of the CSITA are freely and openly attended to by various local diocesan committees.

So the entire CSI/CSITA are rolling in a mess, and the leaders keep it away from the attention of the ordinary members of the Church of South India. The churches are blissfully unaware of the developments, and if some get to know the seriousness of the situation, they do not bother themselves with it or they turn optimistic that the leaders are sufficiently clever and have the necessary know-how for all occasions to sail through the mess. The mess will least affect the church because it is presumed that God is on their side. It is high time that what is going on behind the veil will have to be revealed. The Corporate Veil cannot give the members and directors protection any longer, and they will have to be liable for all corporate failures.

24. (*i*) A committee may elect a Chairperson of its meetings.

(*ii*) If no such Chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.

> *Comment:* The Chairman of the General Body and the Board get elected in the CSITA. The CSITA has appointed the Chairman as

ex-officio Chairman, the Moderator of the CSI and also the person who should chair the meeting in the absence of the Chairman, i.e. Deputy Moderator of the Church of South India.

25. (*i*) A committee may meet and adjourn as it thinks proper.

(*ii*) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

26. All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

27. Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer

28. Subject to the provisions of the Act,—

(*i*) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board.

(*ii*) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

29. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

> *Comment:* There is no system of appointing Key Managerial Persons in the CSITA as it has zero paid up share capital which is the indicator for not appointing Managing Director, CEO, CFO, Company Secretary etc. This unfortunate situation is the cause for unprofessionalism in the CSITA which makes it ineffective and inefficient. The Government should introduce other indicators such as the annual turnover, profit, income and revenue etc for the appointment of the KMPs.

The Seal

30. (*i*) The Board shall provide for the safe custody of the seal.

(*ii*) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Note: The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address.

Since the model is for a Company limited by guarantee not having a share capital, the financial side of affairs is not found in the model.

The Directors are Bound by the Memorandum and Articles

Those who have ulterior motives for being on a board and act in a self-serving way do not want a focus on sources of governance, namely MoA and AoA. The importance of the MoA and AoA are underlined in several sections throughout the Indian Companies Act 2013. There are some key areas of compliance:

The Provisions of the Act do not Count in the Memorandum and Articles Low in Authority

In Secs. 103 & 104 of CA 2013, the Articles can say additional things to what has been upheld by the Act. It should not say things inconsistent with the Act, but the Articles are not undermined by the Act.

Sec. 179(1): The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

Sec. 242(5): Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

Any Breach of the MoA and AoA Will Be Termed 'Ultra Vires', and the Tribunal Has Power to Restrain the Company from Committing an Act Transgressing the MoA and AoA which Represent the Interests of the Company.

Sec. 245(2): '… if members (of the company) are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company …, [they may] file an application before the Tribunal … for seeking all or any of the following orders, namely:—

(a) to restrain the company from committing an act which is *ultra vires* the articles or memorandum of the company;

(b) to restrain the company from committing breach of any provision of the company's memorandum or articles;

(c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;

The Act Permits any Person to Inspect the MoA and AoA, Register, Index, Balance-sheet Return and any Other Particulars or Document Maintained in Electronic Form.

Sec. 398(1)d: The Memorandum and Articles should be submitted in electronic form to the Central Government and the documents may be inspected by *anyone* in such manner as may be prescribed by the rule 14].

Rule 14 of the Companies (Registration Offices and Fees) Rules 2014: 'Inspection, production and evidence of documents kept by Registrar – The inspection of the documents maintained in the electronic registry so set up … shall be made by *any person* in electronic form.'

Interpretation of and Understanding the Words in the Memorandum

When interpreting the MoA, the words of the text do count, and plain words are to be taken in ordinary meaning. If the word 'Trust' is used it should be taken to mean Trust and not any differently. Based on case laws Ramaiya argues, 'As a general rule, where the language is quite clear, no clause in the Memorandum or provision in the Articles can be construed other than its plain meaning even though it may not be in accord with the intention of the parties … The only course is to alter them in accordance with, and within the limits permitted by the Act.'[245]

'Trust' Language Dominates the CSITA's MoA

One thing we should remember and acknowledge is that the CSITA is not a Trust though the name has the word 'Trust' in it. If it were formed as a Trust, it should have been registered under the Indian Trust Act 1882 and must function on the basis of that Act and other Government provisions related to Trust management like the United Church of North India Trust Association (UCNITA) which was Registered under Companies Act (Regd. No. 2912/1938-39) and Bombay Public Trust Act (Regd. No. D-97/1955).

It cannot be denied that there are certain Trust-like characters in the way the CSITA is structured and managed. For example, the Board of Directors of the CSITA have a fiduciary duty to work to create confidence and trust among the beneficiaries in protecting the properties of the church. The Directors can act like the Trustees according to the MoA and AoA. But the CSITA is basically a Company, a non-profit organisation having to contribute to the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any other such objects. The magnitude of our problem

[245] *Guide to the Companies Act*,18th ed., vol. 1, p. 16.

is that the CSITA is working towards contributing to almost all these areas through the CSI.

It is our observation that the Memorandum of the Association which is the charter or the Constitution of the CSITA is embedded in a language of Trust body which cannot be sustained by Indian Company law. Corporate formalities are to be closely observed by the CSITA rather than being true to a Trust ideology. According to Indian Companies Act, a company cannot function as a Trust though its management may have certain duties Trustees would have. The MoA and the AoA of the CSITA describe its nature and function in terms of a Trust body and this makes us to suspect whether the CSITA is camouflaged as a company while in its true nature it is a Trust. The following statements in the MoA and the AoA suggest clearly the character of a Trust. The Trust concept dominates the MoA as can be seen in every sub-section clause.

Sec. 3(a) of the MoA describes that the main object of the Association is 'to act and allow its name to be used a Trustee or Agent whether alone or jointly with any person or persons for the Church of South India'. The CSITA is not a self-contained and independent company. It is prepared to lose its self-identity and opens up opportunities for a person or persons to join the incorporated body without being specific about what sort of person/persons they are. Can a company straightway accept someone or a group as partners at the cost of its self-existence? Incorporation gives protection mechanism to the company as a separate legal entity. Incorporation of a company means officially registering your company with the Registrar of Companies (RoC). The process of legally declaring a corporate entity as separate from its owners is the actual definition. If a person or persons enter into partnership with the CSITA, what happens to its incorporated status?

A company can be a partner in a partnership firm. But it is highly questionable whether a juristic person such as the CSITA can be a joint-company in association with ANY person/persons. It is not clear what

would be the place of those persons in the corporate structure and how much stake they will have over the affairs of the CSITA. If this clause is hinting about amalgamation with other companies, then it should say that the cooperation or amalgamation will take place as per the provisions of Companies Act in force. This clause puts in danger the self-reliance and self-existence of the CSITA which is not an unincorporated body without a designed legal corporate structure.

So the clause for joining with others who are not members is not permissible under corporate law. The company will have to be restructured in accordance with the Rules and provisions of the Act rather than functioning like a partnership firm.

CSITA Is Registered as a Company not as a Trust or Society

We already pointed out in previous chapters that a non-profit organisation has three options before it for registration. It can be registered in three ways: Trust, Society, or Section 8 as per the new Companies Act, 2013. A concise and simple definition of a Trust is: 'A trust is created by a settlor, who transfers title to some or all of his or her property to a trustee, who then holds title to that property in trust for the benefit of the beneficiaries.'[246] A Trust committee owns the assets that are placed by the grantors in a trust. As we have already seen, the control was with the grantors, the Synod of the CSI and it is this working principle operating behind the Synod of the CSI giving instructions and directions in the matters of financial and property management. The principle of corporate personality of the CSITA and its separate identity from the members are thus strangled and violated.

That the Trust concept and language have influenced the contents of the MoA and AoA is a cause for concern as they seem to cloud over the corporate nature of the CSITA and its operation as a 'body corporate'.

[246] https://en.wikipedia.org/wiki/Trust_law

The word 'trustee' appears more than 10 times and the word 'Trust' occurs more than 5 times. Whereas there is only a single reference to Companies Act 1913 in the MoA (Sec. 5), and only in three places in the AoA. Acting like a Trust, the CSITA will 'acquire by lawful means immovable and movable property and to apply both capital and income thereof and the proceeds of the sale and the mortgage thereof for towards all or any of the objects hereinafter specified' [MoA Sec. 3(a)]. The following statements are noted: The CSITA will 'act and allow its name to be used as Trustee' [MoA Sec. 3(a)]; 'to act as trustee for the maintenance of bishops etc'; it appoints trustees and officials to trusts [MoA sec 3 (e)]; 'to nominate persons to act as trustees for the CSITA for any of its purposes [MoA Sec. 3 (g)]: these are the statements one can find in the MoA of an incorporated Association. But the classic expression of the Trust concept is found in MoA Sec. 3(f) and AoA 12 & 16. These have to be looked into in some detail.

How do the MoA and AoA project the image and function of the CSITA? Here are the sections where the CSITA as Trust is so explicit:

MoA Sec. 3(f): To accept property held by the Association (1) for the general purposes of the Association or (2) on special Trusts, either original trustee or as new trustee of a trust already existing, or (3) bare or passive trustee without undertaking the management or administration of such property.

AoA Sec. 12: The Association may accept property to be held

- Upon trusts for the general objects of the Association;
- Upon special trust for any of the objects mentioned in the Memorandum of Association to be declared by the donor;
- Upon special trusts already in existence for any of such objects in cases where a corporation may lawfully be trustees thereof;

As the bare depository of the legal or other ownership of the property devoted to any of the objects mentioned in the Memorandum of Asso-

ciation special trusts of which are to be carried out and administered by another body of trustees.

AoA sec. 16: Where property is accepted by the Association as bare trustees they shall from time to time apply such property according to the lawful directions of the trustees or other Committee to whom the management or administration of it may have been confided, by the instrument or document creating the trust or by the Synod of the Church.

> *Comment:* A company can act as a trustee for people in English law. 'Special Trust' is an Active trust which means, 'a trust in which the trustee has some affirmative duty of management or administration besides the obligation to transfer the property to the beneficiary. — Also termed to express active trust; special trust; operative trust.'[247] A special trust, is not, as in the case of a simple trust, a mere passive depositary of the estate, but is required to exert himself actively in the execution of the settler's intention; as, where a conveyance is made to trustees upon trust to re-convey, or to sell for the payment of debts. Passive trust is a trust in which the trustee has no duty other than to transfer the property to the beneficiary.'[248] Bare Trust: 'A trustee of a passive trust - A bare trustee has no duty other than to transfer the property to the beneficiary.'[249] Certainly in the form an existence of a Trust and operation of a trustee as the name itself suggests that it is a Trust Association. Is Trust identity sustainable under the corporate culture?

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[247] *Black's Law Dictionary*, 8th ed. p. 4700.
[248] *Black's Law Dictionary*, 8th ed. p. 4707.
[249] *Black's Law Dictionary*, 8th ed. p. 4714.

More Sections on Matters of 'Trust' and 'Trusteeship' in MoA and AoA

MoA Sec. 2 (g) To nominate persons to act as trustees for the Association for any of its purposes.

> *Comment:* If the CSITA nominates persons to be trustees to accomplish any of its purposes, who will appoint them? This may only be necessary if the company is operating with a small number of members and directors.

(h) To appoint referees in relation to any disputes affecting any such societies, institutions, trusts, organisations, and charities are referred to in paragraph (b).

> *Comment:* This is contradictory to the history of the formation of the CSITA which became the supreme corporate body in whose name all the properties were vested. A centralising effort was going on throughout the 70-year period, and the separate existence of Trusts and Societies owned by mission boards and the constituent churches was discouraged. The CSITA acts as an arbiter to settle disputes in or between Societies and Trusts which means that the Societies and Trusts can remain as they are and they can seek the help from the CSITA when there were disputes. It is not clear whether the referees are from the Board of Directors or any non-subscriber or outsider.

(i) To appoint and employ and pay agents for any of the purposes of the Association

> *Comment:* A 'pay agent' is an institution, usually a bank or a person that accept funds from the issuer of a security and distributes them to that security's holders. This role and function can now be handled by Key Managerial Personnel under the new system of financial disbursement endorsed by Companies Act 2013.

(j) To incorporate or register the Association or its title deeds, if necessary, in any other part of India or in any Indian State in which the Association may from time to time acquire or hold or contemplate acquiring or holding property and to obtain for it a legal domicile in any part of the said area.

> *Comment:* The CSITA is meant to follow a decentralising system! It can allow properties in each state to be domiciled, i.e. registered under the existing registering facility available in each of the five states in south India.

(k) To enter into any arrangement with any Government or with authorities supreme, local, municipal or otherwise in pursuance of the objects of the Association and to obtain from any such Government or authority all rights, concessions and privileges that may seem conducive to the objects of the Association or any of them.

> *Comment:* This shows that the CSITA does not and will not have an exclusive religious character to serve its objects. It seems a very liberal and flexible system that the CSITA will enter into any contract with any body or agency only for the sake of fulfilling its objects by earning privileges and concessions from Government. It sounds an unwise and opportunistic act considering the fact that the objects of the CSITA are those of the CSI. According to the MoA, the CSITA does not have its own objects in the fashion in which they are listed in Sec. 8 of CA 2013, and nowhere are they spelt out in that manner.

(l) To sell, mortgage, charge lease, dispose of, exchange and otherwise deal with any property of or held by the Association in any manner authorised by law with such consent (if any) as may be by law required and in accordance with such rules and regulations as may from time to time be laid down by the Synod of the Church of South India.

Comment: Here is the only occurrence of the phrase 'the Synod of the Church' in the MoA whereas AoA uses it 13 times. This is one of the discrepancies found between the MoA and AoA. Not that the AoA uses 'CSI Synod' more, but the reference is found in a position of authority at all important stages of corporate administration. The peripheral reference made to Synod in the MoA occupies the centre place in the AoA. If we read carefully the single occurrence of the phrase in MoA, it comes in the context of property sale and mortgage. Before engaging in any type of dealings with regard to properties, the company has to obtain the consent of the CSI if required by law, and if the CSI's rules would permit giving such a consent.

(m) To hand over to any corporation, persons or association of persons, property vested in the Association either for its general purpose or on special trusts which permit of such handing over, if in the opinion of the Association, it will benefit any objects of the Association or of any such special trust as aforesaid.

Comment: Another liberal action from the CSITA! The CSITA can break into separate Associations and operate as such in various parts of south India. The readiness to hand over properties to other trusts and persons is based on unauthorised premises and unsubstantiated assumptions that other persons and groups of persons will safeguard the property of the CSITA better and will not make illegal use of them. Being an organisation that works for charity does not mean that the assets of the company are ready to be given away as donations and gifts. This makes the company susceptible for anyone connected to the CSI to exploit and make the company transfer the properties under one pretext or another to their own association or family trust. A trustee is merely an agent upon whom the law has conferred the duty of administration of property. That trust laid on the trustees cannot

be betrayed by them by handing over the company properties to others thus evading to fulfil the responsibility given to them.

(n) In case for any part of the said area a separate Association shall at any time be formed for the purpose of holding property in that part of the said area to transfer and vest in such separate Association any property relating to trusts administered in that part of the said areas may be considered suitable.

(p) To pay out of the funds of the Association or out of any particular part of such funds all expenses of, or incidental to the formation and management of the Association of administering any special trust or otherwise carrying out any of the foregoing objects, including the payment of salaries to persons employed.

(q) To do sell such other lawful acts and things as are incidental or conducive to the attainment of the above objects.

Comment: In the last 70 years The Madurai-Ramnad Diocesan Management Association (Regd 8/1962) in Madurai, the Krishna-Godavari Diocesan Educational Society in Machilipatnam, started and run by Dyvasirvadam (a former Chairman of CSITA), his wife and relatives which manages the schools and colleges in Krishna-Godavari diocese, and the 'Medak Diocesan Education Society of Church of South India Trust Association', founded by Sugandhar (a former Chairman of CSITA) and his family, which procured hundreds of acres of lands through a 'Gift Deed' from the CSITA, may find some justification from the above provisions for holding the CSITA properties and earning through them. This is to a few illustrations! Through proper inquiry, we might discover other societies/trusts formed in the name of the dioceses which are already part of the CSITA. Who are managing them and what about the financial dealings undertaken by those diocesan societies/trusts?

Corporation and Trust

'Corporation' is 'a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it.'[250] It is also termed 'corporation aggregate' in contradistinction from 'corporation sole'. In the British context, the 'constitution' usually refers to Articles of Association, whereas in India we take the MoA seriously as containing the constitutional status of a company, and the Articles are its byelaws. By 'corporate entity' it means the corporation's status as an organization existing independently of its shareholders (members). As a separate entity, a corporation can, in its own name, sue and be sued, lend and borrow money, and buy, sell, lease, and mortgage property. It is wrong if the CSITA governs itself on a faulty assumption that its corporate status itself makes it a Trust.

'Trust' in Anglo-American law, a relationship between persons in which one has the power to manage property and the other has the privilege of receiving the benefits from that property. Here is a case law for us to note: 'When we speak of a trust, we speak merely of the requisite obligation which is annexed to the ownership of a property. This obligation is not a legal entity in any sense; as for example, the trust cannot own any property – the property is owned by the trustee who is an entity by himself different from the trust; a trust cannot sue and a trust cannot be sued; it is only a trustee who can sue and who can be sued. It is only a trustee who can hold properties. A 'trust' cannot be a landlord since the trust properties vest in the legal ownership of the trustees. It is the trus-

[250] *Black's Law Dictionary*, 8th ed., p. 1032.

tee alone who can be a landlord. Since the trust is not a legal entity …'.[251]

'A trust is not a legal entity as such … It is the trustees who are the legal entities'.[252]

'… the trust is not a legal entity and … the trust is merely an obligation attached to the property settled on trust and … the suit has to be filed against all the trustees of the trust …'.[253]

Some case law has expressed opposite views, such as: 'The Trust being a legal entity/juristic present will never die … Trustees may go on changing but Trust will be there until and unless, it is dissolved according to law/trust deed'.[254]

'It is well known that a Trust is not a legal entity as such … If a number of trustees exist, they are joint owners of the property. It is not like a Corporation which has a legal existence of its own and therefore can appoint an agent. A Trust is not in this sense a legal entity. It is the trustees who are the legal entities'.[255]

The fact that CSITA is not a Trust but an incorporated body should wake us up to put the structure in order so that it is serving corporate principles and formalities. Gorak's words sum up our contention. He wrote, 'The purpose of trusteeship is to protect the rights and interests of persons who for any reason are unable effectively to protect them for themselves. The law vests those rights and interests for safe custody, as

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[251] At the Gujarat High Court, Kanasara Abdulrehman Sadruddin vs. Trustees of the Maniar Jamat ... on 4 July, 1967.

[252] At the Madras High Court V. Chandrasekaran vs. Venkatanaicker Trust, 2016.

[253] At the Bombay High Court, Venkatesh Iyer vs. Bombay Hospital Trust & Others on 23 April, 1998.

[254] Guru Nanak Public School Trust and others (Respondents), 2008.

[255] At the Karnataka High Court, Shivalingaiah vs. Ananda Social and Educational ... on 28 March, 1985.

it were, in some other person who is capable of guarding them and dealing with them, and who is placed under a legal obligation to use them for the benefit of him to whom they in truth (the rights and interests) belong.'[256] This 'Trust' concept does not apply to the CSITA and the Committee of Management which cannot see itself as 'absolute owners' of the properties handed over to the CSITA. In legal parlance, the members of the Committee of Management may be spoken of as the owners but they are not real owners or absolute owners. A Trust is a 'legal arrangement' where a trustee or group of trustees hold and manage assets for the benefit of one or more beneficiaries. Unlike companies, trusts are not separate legal entities. This perception is very essential to the protection of the assets of the CSITA from being exploited and squandered away by the CSI hierarchy and the ex-officio members of the Board and the General Body. The MoA of the CSITA is shaped according to English Law Trust.

A Trust is not a legal entity, but the trustees are. It is generally argued that as a Trust is not a legal entity and has no juristic personality according to case law, though there are exceptions, a Trust cannot issue or accept legal proceedings. Hence the trustee is the party with standing to sue and defend for and on behalf of the Trust:[257] *'It is trite law that a trust lacks legal capacity … a trust is an arrangement, not an entity'.* A Trust is a separate entity under the income-tax law.[258] The trust is not a legal entity itself, but a kind of contractual relationship.[259]

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[256] " 'Trust' and 'Body Corporate' ", *Corporate Law Corpus,* 2010, http://corporatelawcorpus.blogspot.com/2010/03/can-trust-under-indian-trusts-act-1882.html.

[257] Arya Vaidya Sala … Plaintiff v. Shri K.C. Vijai Kumar, 1969). *Tenesheles Trust & Ors v BDO Mann Judd* (Supreme Court of the Bahamas, 16 November 2009.

[258] Agarwal Shiksha Samiti Trust v. Commissioner of Income Tax, 1967.

[259] Hasmukh I. Gandhi, Mumbai vs. Dcit Cen Cir 1, Mumbai on 15 November, 2017.

The cases above show the basic difference between a co rporation and a Trust, and that should help us to appreciate the corporate character of the CSITA as opposed to a Trust.

'Trust' in British Law

Totalserve, a r enowned global service provider who specialises in corporate and Trust matters, sees 'Trust' as an English concept. *Black's Law Dictionary* mentions more than 160 types in the 8th edition (2004) and categories of trusts, most of which can be found in English law alone. It explains the concept of Trust in simple terms thus: 'The various types of trust vary in complexity but they have one common fundamental feature. A "person" being either an individual or a co mpany ("the trustee") agrees to hold certain assets ("the trust fund") in its name for the benefit of another person ("the beneficiary") on certain terms and with certain powers (which are usually set out in the trust Deed). The assets comprising the trust fund are legally held and registered as owned by the trustee and the trustee is under a duty, enforceable in the Courts, to hold those assets and the income arising from them for the benefit of the beneficiary(ies).' [260]

'Trust' refers to the legal relationship created by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose. The CSITA is doing exactly this contractual act of providing pecuniary aid to the all institutions and charity work of the Church of South India. MoA Sec. 3(d): The CSITA sees itself as a r ecipient of power from another entity and it leaves the impressions that it fulfils the objects of some other, namely the CSI. It is 'to exercise any power which may be confided to the Association (CSITA) of appointing managers treasurers, trustees, auditors,

[260] "Trusts", http://www.totalserve.eu/Assets/Images/uploadedContent/CMS/documentsImages/informationsheetno36a1460443228.pdf.

inspectors, examiners or other officials of any such societies, institutions, trusts, organisations and charities' [sec. 3(e)].

The Trust element predominates the property enrolment by the church. There are two forms of the Trust which we need to briefly look whether the CSITA can readily be called one of them or both of them. They are Corporate Trustee or Trust Company. The questions then arise: Is the CSITA a Trust with a corporate structure and vice versa? If the CSITA is couched in a company framework, will the Indian Companies Act 2013 make sense of it? Does the Trust turned company make sense with the Companies Act? Can such a Trust-Company be conceivably function under the provisions of Company law in India?

Is CSITA a 'Trust Company'?

The question naturally arises, Is the CSITA a 'Trust Company'? There is a category called 'Trust Company' and we should check whether the CSITA will fit into that mould. A trust company (probably an Americanism going back to the mid-nineteenth century) is a corporation authorized to act as trustee for a group or organization. The advantage of a trust company structure is that it allows an entity to legally conduct business for another entity. The *Investopedia* defines a Trust Company as follows: 'A trust company is a legal entity that acts as a fiduciary, agent or trustee on behalf of a person or business for the purpose of administration, management and the eventual transfer of assets to a beneficial party. The trust company acts as a custodian for trusts, estates, custodial arrangements, asset management, stock transfer, beneficial ownership registration and other related arrangements.'[261] A similar definition is found in *Encyclopaedia Britannica:* 'In the concept of Trust company, a corporation is legally authorized to serve as executor, guardian and as trustee as well as to act in many circumstances as an agent.

[261] https://www.investopedia.com/terms/t/trustcompany.asp#ixzz5Huh7y.

Trust companies serve as trustees for non-profit institutions. In serving as trustee, the company usually takes legal title to property conveyed to it and manages it a ccording to the instructions of the creator of the trust.'[262]

The origins of a trust corporation can be found in section 68(18) of the Trustee Act 1925 and section 4(3) of the Public Trustee Act 1906 the UK. England's Christian charitable assets belonged to trusts, rather than to corporations. The first entities to be used in big businesses were corporations. The corporations appeared in the organization of for-profit business enterprises in the mid-1500s, few centuries after they began to be used in the organization of charities. In the earliest companies, 'The director was a trustee in full technical sense … Later, it is suggested, this practice persisted, even when, as a result of general incorporation, property was owned by the company in its own right; and also by analogy, it is said, the directors of chartered and statutory corporations were deemed to be trustees.'[263]

In the UK and the USA, the trustee analogy was borrowed from unincorporated company sources in the nineteenth century. Two strands developed out of this. One considers directors as not trustees and the other holding the view that the directors are trustees. Gower maintains, 'With directors of incorporated companies the description "trustees" was less apposite, because the assets were now held by the company, a separate legal person, rather than being vested in trustees. However, it was not unnatural that the courts should extend it (trustee) to them (directors) by analogy.'[264] The description of the directors as trustees still has the validity because of the fiduciary duties imposed on trustees can be applicable to any persons into whose hands the assets of the company are

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[262] "Trust company", *Encyclopaedia Britannica*.

[263] L. S. Sealy, "The Director as Trustee", *Cambridge Law Journal,* April 1967, p. 83.

[264] *Principles of Modern Company Law*, p. 380.

committed. It is in this sense, the CSITA may be seen as a trustee as it has some unwavering commitment to the safeguard the properties entrusted to it for the sake of the CSI. But a company like the CSITA can give an extra level of asset protection over that of a Trust.

The United States pioneered the development of 'incorporated trust' institutions. The Trust companies serve as trustees in a number of institutions including non-profit associations. A trust in its simple form has a settlor, a trustee, and beneficiaries. The settlor sets up the trust. The trustee manages the trust property (investments, assets, etc.) and pays out any net income for the benefit of the beneficiaries. In a living trust it is common for the grantor to be both a trustee and beneficiary, and in many circumstances also an agent. This may be done for tax reasons or to control the property and its benefits if the settlor (the western missionaries) is absent. While the trustee is given legal title to the trust property, in accepting the property title, the trustee owes a number of fiduciary duties to the beneficiaries. The MoA is based on an assumption that there is a co ntractual relationship between the CSI and the CSITA. The latter is to help and support the former which hints at a trustee relationship. But it is far from being considered as a 'Trust Company' or 'Trust Corporation'. The CSITA's MoA and AoA are probably worked on this model due to the connection with the English and American missionaries of the former churches, and therefore they need now to undergo substantial changes to reflect the corporate values of India enshrined in the CA 2013.

Is the CSITA a Trust with Corporate Personality?

If the CSITA cannot be fitted into a 'Trust Company'. If so, is it a 'Corporate Trustee', another form which combines the corporation and trusteeship? Corporate trustee means 'a corporation that is empowered

by its charter to act as a trustee, such as a bank or trust company.'[265] With a corporate trustee, the company is a trustee, and the members of the trust are directors. The Trust reasoning, however, does not apply to corporation. A corporation is an entity (usu. a business) having authority under law to act as a … group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it.'[266]

We have already emphasised that the CSI is the church community and the CSITA is its legal persona. The CSITA is an independent entity from the church, and the properties and financial management are in its jurisdiction and control. What is the effect of CSITA as an incorporated body? Section 9 of the Companies Act 2013 states, 'From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.'

'A Corporate Trustee's role is to act in the interests of investors by being an independent supervisor of the security and a custodian of assets. The prime responsibility is that of a prudential supervisor, and not a hands-on manager.'[267] Another name for 'corporate trustee' is 'Trust Company' whose employees can help build, manage and protect wealth when one's assets are put into a trust. A corporate trustee or a Trust

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[265] *Black's Law Dictionary*, 8th ed. p. 4714.

[266] *Black's Law Dictionary*, 8th ed. p. 1032.

[267] https://www.publictrust.co.nz/business/cts/what-is-a-corporate-trustee.

company is a supervisory body holding the properties on behalf of someone or the benefit of someone. Trust company means 'a company that acts as a trustee for people and entities and that sometimes also operates as a commercial bank. — Also termed (if incorporated) trust corporation.'[268]

According to the MoA, the CSITA takes the property as a Trustee and applies the capital and the income from it for the objects mentioned in the Memorandum. But there is an 'except' clause there in Art. 13. It reads, 'Where property is accepted by the Association (i.e. CSITA) for the general objects of the Association … or towards any of the objects mentioned in the Memorandum of Association *except* in so far as they may be restricted by any resolution of the Synod of the Church or they may accumulate such income until the same can in their opinion be usefully applied for all or any of such objects'. The existence of a company managed by another body would be against the provisions of the Companies Act itself. The corporate character is utilized to the advantage of the CSI Synod leadership to meet their own ends. The CSITA functions at times like a club, an unincorporated body, an association of individuals with a common objective placing the Moderator of the CSI and the office-bearers of the CSI at the centre of decision-making and control.

MoA Sec. 2(f): "To accept property held by the Association (1) for the general purposes of the Association or (2) on special Trusts, either original trustee or as new trustee of a trust already existing, or (3) bare or passive trustee without undertaking the management or administration of such property." A 'Trust' is defined thus: 'A trust is an obligation annexed to the ownership of property, whether movable, immovable, or money, and arising out of a confidence reposed in and accepted by the

[268] *Black's Law Dictionary*, 8th ed. p. 848.

owner, or declared and accepted by the owner for the benefit of another or for the benefit of another and the owner.'[269]

Clause (2) of Sec. 2 emphasises the notion of 'Special Trust' and 'original trustee' and 'new trustee' very strongly. CSITA is a special Trust. According to the *Legal Dictionary*, 'Special Trust' means one where a trustee is interposed for the execution of some purpose particularly pointed out, and is not, as in the case of the simple trust, a mere passive depository of the estate, but is required to exert himself actively in the execution of the settler's intention […]'.[270] 'Special trusts are used to take care of people who are not able to manage their own finances.'[271] 'Trustee' means, 'One who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary […] to protect and preserve the trust property, and to ensure that it is employed solely for the beneficiary, in accordance with the directions contained in the trust instrument.'[272]

Much of emphasis is placed by the members of the CSITA on the phrase 'Bare Trust'. In England a distinction is made between 'bare trust' and 'active trust'. 'Bare Trusts' are those Trusts in which the trustee has no active duties to perform and merely holds the legal title for the beneficiary, and 'active Trusts' are those in which the trustee has active duties to carry out under the terms of the trust. A 'bare trustee' is a trustee of a passive trust. 'A bare trustee has no duty other than to transfer the property to the beneficiary'.[273]

According to *Black's Law Dictionary*, 'passive trust' is 'a trust in which the trustee has no duty other than to transfer the property to the

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[269] Jai Lal, 'Interpretation of Law of "Trusts"', p. 735.

[270] https://legal-dictionary.thefreedictionary.com/Special+trust.

[271] https://www.fanews.co.za/article/life-insurance/9/general/1202/why-special-trusts-are-so-special/11684.

[272] *Black's Law Dictionary*, p. 4713.

[273] *Black's Law Dictionary*, p. 4714.

beneficiary.'[274] It is also called dry trust; general trust; nominal trust; simple trust; naked trust; ministerial trust; technical trust. An Active Trust is in 'control or management of the trust, collection of rent, profits, and sale proceeds; in other words the administration of the trust property.'[275] An active trust is in contrast to a passive trust in which the trustee performs no active duties.

Sir Jai Lal observes, 'In a bare trust, the instrument imposes on the trustee only such duty as is implied by law from the mere relation of trustee and beneficiary; as for instance, when by an instrument of trust land is vested in A in trust for B, without any further directions, A is deemed to have performed the trust by conveying the land to B. He has to exercise no discretion in the matter. This is an instance of a 'bare trustee', and a person who is merely capable of holding property can act as a trustee, even if he is not competent to contract. In the case of an active trust, however, the trustee is expected to perform duties of some special nature requiring independent judgement, as for instance, to sell, lease, or to otherwise manage the trust property, or to apply the trust funds in a particular manner. In order to be able to execute a trust of this nature the trustee must be competent to contract.'[276] Trust is an ideal set up for maintenance of exclusively charitable with religious objects. But the CSITA which has formally charity and Religion as one of its many objects is not fully identified fully either with one or both of them despite public perception.

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[274] 8th edition, 2004, p. 4707.

[275] "Active Trust", https://www.investopedia.com/terms/a/active-trust.asp#ixzz5ICp6lvNX.

[276] 'Interpretation of Law of "Trusts"', in S. Krishnamurthi Aiyar, *Commentary on the Indian Trusts Act,* Rev. by S. K. Sarvaria, 9th ed., Gurgaon: Universal Law Publishing, 2017, p. 738.

Is the CSITA a Religious and Charitable Trust?

Let us look further into the MoA and AoA which bear the strong imprints of a Trust serving the interests of its settlor, the CSI. The Indian Trusts Act 1882 reads, 'Every person capable of holding property may be a trustee' (ITA, Sec. 10). In the case of religious Trusts, generally speaking, the creation of religious charitable trusts is governed by the personal laws of the religion. In the case Hindu religion, its temples are placed under the Madras Hindu Religious and Charitable Endowment Act, 1951. There is no counterpart to this Act in Christian religion. The administration of these Hindu religious trusts can either be left to the trustees as per the dictates of the religious names or it can be regulated to a greater or lesser degree by statute such as the Bombay Public Trusts Act, 1950 or the Endowment mentioned above.

The CSITA, a Christian religious Trust Association, was not registered under Indian Trusts Act 1882 or any other State Trust Acts. The High Courts have ordered that the plan and programmes of public Hindu religious festivals such as the Punguni Uthram, a charity meal served during the time of the god Kallalgar passing through the Vaigai river in Madurai, etc., should be framed under the Tamil Nadu Hindu Religious and Charitable Endowments Act (HR&CE), 1959. The CSITA, technically speaking, is not a religious Trust like the Hindu Trust but it has religion as one of its objects by virtue of the Sec. 8 status it enjoys in accordance with Indian Companies Act 2013. Christian celebrations need not be confined to and regulated by a HR&CE Act.

As Krishnamurthi Aiyar commented, 'The preamble of the Indian Trusts Act, 1882 makes it evident that the Trusts Act has application only to private Trusts and has no application to the Public Trusts.'[277] A public charitable trust is governed by the Public Trust Act of that state, and The Indian Trusts Act, 1882 of the country. As charity has been

[277] *Commentary on Indian Trusts Act*, p. 89.

placed in the Concurrent list of the Constitution, both the centre and the state have the right to legislate over public charitable trusts. In List III of the Concurrent List of Constitution, Section 28 deals with 'Charities and charitable institutions, charitable and religious endowments and religious institutions'.

'Freedom of religion' is guaranteed by the Constitution of India as a group right in the following ways: 'Every religious denomination or any section thereof has the right to manage its religious affairs; establish and maintain institutions for religious and charitable purposes; and own, acquire and administer properties of all kinds' - Article 26. Under Article 246 of the Constitution, read with Schedule VIII, various religious matters such as 'Charities, charitable institutions & endowments' fall within the jurisdiction of the State – and both Parliament and the state legislatures, or either of them, can legislate on such matters.[278] The CSITA was not formed in this manner.

Hence it may be concluded that the CSITA is not a formal Trust subject to the provisions of the Indian Trusts Act or any State Endowment Act. But those Acts might come to the rescue of the CSITA when it is the company's right to exist and render some religious services. But the CSITA's formation and its operation have to be under the purview of the corporate law of the country.

When Affairs Are Conducted Prejudicial to the Interests of the Company against the MoA and AoA

We now take a little diversion, and see what the Companies Act 2013 says on the activities of the Company which are *ultra vires* of the MoA and AoA under the heading 'Oppression and Mismanagement'.

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[278] See, http://shodhganga.inflibnet.ac.in/bitstream/10603/1936/8/08_chapter%203.pdf.

Violation of the MoA and AoA can be considered as instances which can be termed as Mismanagement by the company.

We shall look at sections which are penal provisions for 'oppression and mismanagement'. This we do as most types of mismanagement may be spotted in the CSITA. Those defaults arise out of the breach of the MoA and AoA.

> *241.* (*1*) Any member of a company who complains that—
>
> (*a*) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; may apply to the Tribunal …
>
> *242.* (*1*) If, on any application made under section 241, the Tribunal is of the opinion—
>
> (*a*) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.
>
> (*b*) removal of the managing director, manager or any of the directors of the company;

Oppression and mismanagement: The word 'oppression' is defined by the Act. Based on case law, it is defined, 'The essence of the matter seems to be that the conduct complained of should, at the lowest, involve a visible departure from the standards of their dealing, and a violation of the conditions of fair play …'[279] The persons connected with the

[279] G.K. Kapoor and S. Damija, *Company Law,* 20th ed., Taxman's Publications, 2017, p. 506.

management must be guilty of fraud, misfeasance or misconduct to the company. The *Black's Dictionary of Law* defines oppression: 1. The act or an instance of unjustly exercising authority or power. 2. An offense consisting in the abuse of discretionary authority by a public officer who has an improper motive, as a result of which a person is injured.'[280]

The Acts Held to Be Oppressive either in the Past or Now Continuing for the Court to Interfere

Case law has taught us the following as oppressive acts:[281]

(a) Not calling a general meeting [Hindustan Co-operative Insurance Society Ltd. (1961) Company Case, 193 Calcutta]

In the matter of Punjab State Industrial Development Corpn. Ltd. Vs. M/s Noor Papers Limited (CLB Delhi, 2000)[282], it is cited thus: 'It was held in the case of Hindustan Cooperative Insurance Society Limited (1961) 31 Com. Case 193 (Cal) that where the shareholders were left completely in the dark because no annual general meeting was called, with no information regarding the manner in which the affairs of the company were being conducted, while those who purported to act as directors dealt with the companies money in any fashion they liked and to the prejudicial interest of the company, it amounted to oppression by them of the minority shareholders in the conduct of the affairs of the company. Similarly, in the case of Bhaji Rao G. Ghatke Vs. Bombay Docking Co. (P) Ltd. (1984) 56 Com. Case 428 (Bom) it was held that non maintenance of statutory records and not conducting the affairs of the company in accordance with the Companies Act and where

[280] *Black Dictionary of Law*, 8th ed. p. 3470). Prejudice is defined: 'Damage or detriment to one's legal rights or claims'(p. 3738).
[281] Kapoor and Damija, *Company Law*, 20th ed. pp. 509ff.
[282] http://www.watchoutinvestors.com/Press_Release/clb/CLB-227.PDF.

no meetings of the Board of Directors were being held and the petitioners who were directors but kept out of management, amounted to mismanagement of the company.'

(b) Non-maintenance of statutory records and not conducting the affairs of the company in accordance with the Companies Act amounts to an act of oppression.[283]

This is a petition under Secs. 397 and 398 of the Companies Act, 1956, filed by six petitioners against the first respondent company and respondents Nos. 2 and 3 who claim to be in the management and control of the company. In the petition, the petitioners have set out various acts of gross mismanagement of the company. It has been alleged that the company is not at all functioning and that the company is not holding annual general meetings or any other meetings. The court ordered, 'I direct that the official liquidator be appointed as the administrator of the company for a period of three years. At the end of the period of three years the administrator will hand over charge of the company to a new and properly constituted board of directors of the first respondent company.'[284]

(c) Countermanding decisions of Board by a director who holds majority voting power and not allowing Board to perform its functions is oppressive.[285]

The Judge said, 'The mere subordination of the wishes of the minority by the exercise of the voting power of the majority is not of itself oppressive … If a person, relying on majority control in a point of voting power dispenses with the proper procedure for producing the result he desires to achieve, and simply insists on this or

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[283] Bhajirao G. Ghatke v. Bombay Docking co. (P)] Ltd (1984) comp. cas. 428 (Bom).

[284] https://indiankanoon.org/doc/1709862/.

[285] H. R. Harmer Ltd (1959), Comp. cas, 305.

that being done or omitted, his conduct is oppressive because it deprived the minority of shareholders of their right as members of the company to have its affairs conducted in accordance with its articles of association'.[286]

(d) An attempt by the persons managing a co mpany to sell immovable property of the company at under-price for their personal gain was held to be oppressive and prejudicial conduct detrimental to interest of all stakeholders.[287]

The CLB stayed the sale of immovable property as Respondents sought to sell the company's property for under-price for personal gains.[288]

(e) Sale of property to a related entity at throwaway price was held to be an act of oppression.[289]

(f) Illegal and *ultra vires* action by the board controlled by CMD and his group constituting majority is an act of as a consequence of mismanagement.[290]

The term 'mismanagement' refers to the process or practice of managing ineptly, incompetently, or dishonestly.[291] These definitions are worked out on the basis of court declarations as these terms are not defined by the Act.

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[286] https://swarb.co.uk/in-re-h-r-harmer-ltd-ca-1958/.

[287] CLB, Mumbai, Pravin N. Nahar v. Nahar Textiles 2014.

[288] https://pt.slideshare.net/csrajivbajaj/newsletter-rajiv-bajaj-4th-july-2014?smtNoRedir=1.

[289] [CLB, Mumbai cases Bina Chawda vs. Rezcom Realty (P) Ltd. 2014].

[290] Birla Education Trust v. Birla corporation Ltd, 2012 (CLB) https://indiankanoon.org/doc/58559855/.

[291] https://taxguru.in/company-law/oppression-mismanagement-companies-act-2013.html.

The following acts have been held as amounting to mismanagement:[292]

(i) Where the Board of Directors is not legal and the illegality is being continued, it will amount to mismanagement prejudicial to public interest:[293]

The court said, 'Therefore, under the specific statutory provisions they may be deemed to have vacated the office of the managing directors and, consequently, the respondent-company is without any valid board as admittedly no meeting of the respondent-company has been held to elect the directors of the company and constitute a valid board. This is an illegality which is on the face of it is being continued and, in the facts and circumstances of this case, will amount to mismanagement and prejudicial to public interest and, therefore, comes within the purview of Sections 397-398 of the Companies Article 1956.'[294]

(ii) Gross neglect of interest in the company and total inattention therefore to the affairs of the company:[295]

The Order said, 'It is clear that certainly there was oppression and mismanagement as envisaged under sections 397 (Application to [the Tribunal] for Relief in Cases of Oppression) and 398 (Application [to the Tribunal] in Cases of Mismanagement) of the Act 1956 … The gross neglect of the interest of the company by the sale of its only assets and the total inattention

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[292] Kapoor and Damija, *Company Law*, 20th ed. pp.

[293] Shisu Ranjan Dutta v. Bholanath Paper House Ltd. (1988) Comp. Cas. 888 (Cal).

[294] https://indiankanoon.org/doc/1038148/.

[295] M. Moorthy v. Drivers and Conductors Bus Service (P) Ltd. (1991) Comp. Cas. 136 (Mad).

thereafter to the affairs of the company clearly justify affording of the relief under sections 397 and 398 of the Act.'[296]

(iii) Where a bank account was operated by unauthorised persons:[297]

The Punjab-Haryana High Court held the Director's meeting 'invalid on the ground that the quorum for the meeting was incomplete as some of the directors present there ceased to be so. But, in the facts and circumstances of this case, the section does not give protection to the resolutions passed in such meetings. The reason is that the resolutions in the present case have not been passed bona fide by the directors, as out of the six beneficiaries, five were directors of the company and the sixth was the wife of one of them. The sole object of the directors in passing the resolution was to promote their self-interest … It is further noteworthy that some of the resolutions were oppressive to the minority shareholders.'[298]

(iv) Where the Directors take no serious action to recover amounts embezzled:[299]

'The company operated the accounts on the basis of that resolution (as mentioned supra) and advanced loans to the persons in the names of some fictitious persons and thus misappropriated the amounts. Huge amount of money was embezzled but no effective step was taken to recover the amount.'[300]

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[296] https://indiankanoon.org/doc/388605/.

[297] Col. Kuldip Singh Dhillon v. Paragaon Utility Financiers (P) Ltd, Camp. Cas. Punjab-Haryana.

[298] https://indiankanoon.org/doc/34523/.

[299] Col. Kuldip Singh Dhillon v. Paragaon Utility Financiers (P) Ltd, Camp. Cas. Punjab-Haryana.

[300] https://indiankanoon.org/doc/34523/.

(v) Where the managing directors of a company continued in office after their term had expired, without a meeting being held to reappoint them, the continuation in office was held to be mismanagement:[301]

The court stated that 'it is admitted that the term has expired and, therefore, they are no longer managing directors and the appointment as managing directors of the said four persons shall cease to have any effect after the date of expiry, Mr. Sen submitted that assuming they have ceased to become any longer the managing directors in view of non-approval after the expiry of their terms by the Central Govt. they continue as directors of the company …'[302]

(vi) Violations of statutory provisions and those of articles:[303]

The court observed, '[…] the respondents have purportedly convened and held six extraordinary general meetings. These meetings are illegal and records have been got up and/or fabricated to show the holding of meetings. The notices and explanatory statements indicate not only violations of company law and also self-contradictory. An examination of the register of contracts showed various omissions and commissions. The entire entries in the register relate to renting out the company's premises at cheaper rates to the respondents' own parties and charging exorbitant rent and deposit from the company for use of the premises of the respondents. All these acts are in violation of Sections 299 to 303 of the Companies Act […] no notice was given for attending meetings, and shares were transferred without being offered to the other members of the company, in violation of the articles.'[304]

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[301] Sishu Ranjan Dutta v. Bholanath Paper House Ltd (1988) Comp. Cas. (Cal).
[302] https://indiankanoon.org/doc/1038148/.
[303] Akbarali A. Kalvert v. Konkan Chemicals P. Ltd. (1994) (CLB).
[304] https://indiankanoon.org/doc/1001559/.

(vii) Violation of Memorandum: [305]

A petition can be filed with the NCLT if the charitable objects of the sec. 8 company are not carried out as narrated in the memorandum.

Bringing the MoA and AoA in Tune with the Companies Act 2013

Sec. 6 CA 2013: Save as otherwise expressly provided in this Act—

(*a*) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(*b*) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

The constitutions of the company can be drawn by the companies as they choose them but they cannot contradict the Companies Act, and if and when they do they will be considered as void *per se.* As Ramaiya affirms, 'The Companies Act 2013 Act is supreme and every company incorporated either under the 2013 Act or under any previous company law has to function within the framework of the 2013 Act.' [306]

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[305] S. M. Ramakrishna Raov. Bangalore Race Club Ltd (1970) Comp. Cas (Mys).
[306] Vol. 1, p. 408.

It is not only the MoA and the AoA that should be in tune with the Companies Act 2013, but any agreement executed by the company and any resolution passed by it cannot be inconsistent with the provisions of the Act. Even when conflict arises between the MoA and AoA and the Act, the courts have upheld the authority of the Act over against the MoA and AoA. Ramaiya concludes his comments on Sec. 6 of the CA 2013 by saying, 'The Act will override the provisions of the memorandum and articles of association only when the same are inconsistent with the Act. Any two instruments would be deemed inconsistent only when they cannot be reconciled with each other. There would be nothing wrong in the articles enhancing the requirements of the Act, or laying down conditions that are either not there in the Act or more stringent than those in the Act. A conflict would be said to arise only where the articles contain stipulations contrary to the Act.'[307] Any provision contained in the MoA and the AoA or any agreement made or resolution passed in General meeting or Board meeting are in conflict with the provisions of the CA 2013, it will become void. However, this does not affect the position where the Act itself gives freedom to companies to include or decide any matter, be it by way of including matter in its Memorandum or Articles or by any agreement or by passing any resolution to that effect, either at general or Board meeting.

The CSITA is a Trustee and Agent of the CSI: Are they Tenable under Company Law?

The term 'agent' comes from a relationship between 'Parties'. What is a 'Party'? The Business Dictionary defines it thus: 'Party that has express (oral or written) or implied authority to act for another (the principal) so as to bring the principal into contractual relationships with other parties. An agent is under the control (is obligated to) of the prin-

[307] *Guide to the Companies Act*, vol. 1, pp. 410-11.

cipal, and (when acting within the scope of authority delegated by the principal) binds the principal with his or her acts.'[308]

Who is an 'agent'? This definition is derived from Section 182 of the Indian Contract Act, 1872 where it says, 'An "agent" is a person employed to do any act for another, or to represent another in dealing with the third persons. The person for whom such act is done, or who is represented, is called the "principal".' According to this definition, the CSTA is meant to do 'agential' work for the 'principal' namely the Church of South India. A concept of "agency" defines the relationship between the CSI and the CSITA as per the MoA of the CSITA.

The MoA sec. 3 (a) says, "The CSITA is 'to act and allow its name to be used as Trustee or Agent'. The main function of the Registered Agent is to receive and forward important legal and tax correspondence on behalf of the corporation. An association incorporated under the Indian Companies Act cannot be termed an 'agent'. It is a body Corporate bound by the provisions of the Indian Companies Act 2013 and its rules. Its corporate characteristics which we have already discussed in several places cannot allow the company function as agent for other persons or association of persons.

The characteristics of incorporation are best summed up in Sec. 23(2) of the Act 1913 which states, 'From the date of the incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability of the part of the members'.

The philosophy of 'body corporate' is interpreted thus by the 1913Act: 'The body corporate is a l egal *persona,* just as much as an individual; a corporation is … a different thing from the individuals who

[308] www.businessdictionary.com/definition/agent.html.

compose it […] a mere abstraction of law. A member of the corporation for the purposes of a suit against it is as distinct from the corporate body as any third person, and sale by a person to a corporation of which he is a member is not, either in form or in substance, a sale by a person to himself.'[309]

The company can have an agent to do the duties and fulfil its objectives. The Act 1913 further adds, 'From the date of incorporation of the company is capable forthwith of exercising all the functions of an incorporated company. This implies a power to act by agents, for the company itself cannot act in its own person, for it has no persons, and accordingly provisions for the appointment of directors, managers, managing agents or other persons to act as agents on behalf of the company are generally contained in the articles of the association. The scope and extent of the powers and duties of the agents of the company are limited and defined by the memorandum and articles of association. The principles of the law of agency are applicable, notwithstanding that the principal is a corporation and companies are liable for the torts and negligence of their agents, "for a body corporate never can either take care or neglect to take care except through its servants".'[310]

It simply means that the company being an artificial person need agents and servants to work for it. In other words, the company will have agents and the incorporated body like the CSITA cannot be an agent by itself. The directors act as agents of the corporation and are responsible for managing the overall operations of the corporation. The Key Managerial Personnel are also agents of the corporation delegated with the authority to act on the corporation's behalf as stated in the corporation's byelaws (Articles of Association) or as required by the board of directors. The MoA uses a language which is uncharacteristic of the

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[309] P. L. Buckland, *The Indian Companies Act VII of 1913,* Calcutta: Thacker, Spink & Co., 1916, pp. 28-29.

[310] Buckland, *The Indian Companies Act VII of 1913,* pp. 29-30.

body corporate. The proper understanding that the role of the CSITA will alter the perceptions of the CSI community and its leaders and teach them that the CSI has to subject itself to the separate corporate entity rather than attempting to control it as one of its many committees.

The CSITA as an Incorporated Body Cannot Be an Agent of the CSI

Sec. 4.3 (2) of the Indian Companies Act of 1882 has the title 'Incorporated Company, not a trustee or agent for the members'. Though it is plain in meaning, it is explained by the Act 1882 thus: "An incorporated Company is not in law, the agent of the subscribers or trustees for them" though it is the same persons continue to do business as before the incorporation."[311] The words of Lord Macnaghten declared in the classic case of *Salomon vs. Salomon* (1897) which said, "The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them"[312] are worth considering here.

The business belonged to the company not to Salomon. In the same way, the business belongs to the CSITA and not to the CSI. It may be very hard to take it for the church of 4 million members. In practice over the last 70 years, it seems the other way round. CSI thinks that the CSITA is a committee under its wings and it is the agent working for the CSI. This is contrary to corporate personality. Gower wrote, 'Hence the business belonged to the company and not to Salomon, and Salomon

[311] *The Indian Companies Act, 1882,* pub. by T.A. Venkaswamy Row, Madras: Law Printing House, 1910, p. 29.

[312] https://www.lawteacher.net/free-law-essays/company-law/the-company-is-at-law-law-essays.php.

was *its* agent.'[313] And so, the CSI ought to consider itself as an agent of the CSITA carrying out the CSITA's objectives. Gower quotes the words of Lord Halsbury, 'Either a limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr. Salomon. If it was not, there was no person and no thing to be an agent at all […]'[314]

The Act 1882 explains the difference between Trustee and Incorporation, yet from another angle of distinguishing between a trustee and a director. "A trustee deals with the trust property as principal, as owner, and as master, subject only to the obligation to account to the *cestui que trust,* whereas a director enters into contract not for himself, but for the company, and can neither sue nor be sued on them, unless he exceeds his authority.'[315] The company and its directors may use agents but the company itself cannot be an agent of some other association of persons. The company is the association of persons joined in a common adventure.

In the case of the CSITA, the company cannot be considered as the agent of the CSI and it should be the other way round, i.e. the CSI ought to function as the agent of the CSITA. The non-profit registration belongs to the CSITA and not to the CSI. Hence the charitable activities belong to the company and the CSI is an instrument to carry out the charity enterprise through welfare, education, Religious service etc. It is the work of the incorporated company to educate, to provide health care, to maintain the employees and financially support all the activities of the Church of South India. A corporation is a distinct person with its own personality separate from and independent of the persons who formed it and only it will direct and manage its operations.

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[313] P. L. Davies, *Gower and Davies' Principles of Modern Company Law,* 7th ed., London: Sweet & Maxwell, 2003, p. 28.

[314] Davies, *Gower and Davies' Principles of Modern Company Law,* p. 28.

[315] *The Indian Companies Act, 1882,* p. 24.

The landmark case of *Salomon v A. Salomon & Co. Ltd.* established that a company is not a Trust or Agent. It is the directors who are agents or trustees to the company. Avtar Singh has rightly observed, 'Another reason why directors have been described as trustees is the popular nature of their office … It is an office of Trust … Some of their duties to the company are of the same nature as those of a trustee. For example, they, like trustees occupy a fiduciary position. Moreover, almost all the powers of directors are powers in trust … which have to be exercised in good faith for the benefit of the company as a whole. Yet directors are not trustees in the real sense of the word.'[316] Corporation law is not a branch of the law of Trusts.

The Trust is a means by which the property of the Association can be said to be owned by a few of the members who will manage the property on behalf of the other members called beneficiaries. For charity organisations there are three options for its registration. It can be registered as a society, trust and a company. All three forms can accept charity and education as objects to be promoted by the organisation. Trust can be created by execution of a trust between settlor and the trustee by a trust deed.

It is high time that the CSITA's MoA and AoA ought to be revised, reflecting the new features of the CA 2013, and obtain approval from the Ministry of Corporate Affairs. It is highly crucial that the elements in the MoA and AoA that are not in tune with the present Act are spotted out for making suitable alteration, modification or change. For Sec. 8 companies, the power for approving any change in Memorandum has been delegated to the Registrar of Companies, and application for alteration should be sent in the correct form, i.e. e-form GNL-1.

[316] *Company Law,* Lucknow: Eastern Book Company, 2016, p. 251.

An Analysis of the AoA in Relation to the MoA

The Articles should be subordinate to the provisions of the Memorandum. Any things done by the company which are beyond the scope of the MoA are void and illegal. The Memorandum is subsidiary to the Companies Act, and the Articles are subject to the MoA and to CA 2013. The Memorandum cannot be over-ridden by the Articles. Ramaiya comments, 'The memorandum and articles being contemporaneous documents, the ordinary rule of the construction applies, according to which an ambiguity in one document may be explained by the other or an inconsistency may be explained by taking the two together.' He adds, 'Any provision in a company's articles will be ineffective if it is in conflict with the memorandum, the Companies Act or any other law time being in force.'[317] Articles cannot enlarge the memorandum and should avoid conflict with the memorandum. No new meaning can be imported into it rather than reading it together with what is in the memorandum. The Memorandum cannot be overridden by the Articles.

R. Viraraghavan in his book *Guide to Memorandum, Articles and Incorporation of Companies* (2016) comments, 'The Memorandum of Association covers the company's external dealings as distinct from the Articles of Association which spell out the company's internal rules. The Memorandum is as it were the area beyond which the company cannot go … The Articles are subordinate to, and controlled by, the Memorandum of Association. In the event of conflict between the two, the provisions of the Memorandum of Association will prevail … a reference in the Memorandum to the Articles and an ambiguity said to arise from the construction of the articles should not be used to depart

[317] *Guide to Companies Act,* vol. 1, p. 398.

from the clear meaning of the memorandum so as to diminish those rights.'[318]

The Act is to Override Memorandum, Articles, etc.

Sec. 6. Save as otherwise expressly provided in this Act— (b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

The CSITA is subject to the instruments of corporate law, namely the Indian Companies Act 2013, and arising out of it are the Memorandum and the Articles of Association. The MoA ought to comply with the requirements of the Companies Act. The Memorandum outlines the purpose and objectives of the Association and the AoA contains the rules and regulations by which the Association functions. There is a close relationship between the two and they act as a binding forces on the Association. The Articles cannot be inconsistent with the objectives of the MoA. The MoA and AoA of the CSITA, drawn in the year 1947, are already documents approved by the Indian Government and they are registered with the Registrar of Companies in Chennai as the registered office of the CSITA is situated in that province. Yet, there is no reference to any of them in the CSI Constitution!

Here lies the major flaw that the Church's constitution has existed and operated for the past 70 years without any reference to the essential character of the administration of the CSITA as specified in the Association's legal apparatus, the Companies Act 2013, MoA and the AoA. Section 10 of the CA 2013 states, 'Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had

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[318] *Guide to Memorandum, Articles and Incorporation of Companies,* Lexis Nexis, 2016, p. 227.

been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.' It means that that each subscribing member of the Association makes a covenant with the MoA and AoA by signing them.

Sec. 5. (1): "The articles of a company shall contain the regulations for management of the company." The Articles of Association also confirm this point as it is clear in several places that the CSI Synod maintains the CSITA under its control and direction. The AoA, which contains regulations for the management of the company, has inserted 'Synod of the Church' in several sections of its rules so that it appears that ultimately it is the CSI Synod which directly or indirectly manages the Trust Association (see AoA 4, 5a, 13, 16, 17).

References to the Synod of the CSI in the AoA of the CSITA

The major discrepancy between the MoA and AoA is the place accorded to the Synod of the Church of South India by both of them. The MoA uses the phrase 'the Synod of the CSI' only twice not in any corporate capacity [MoA 3(l)], the AoA uses the phrase 13 times taking the Synod of the CSI to the centre stage of the corporate governance. It should be kept in mind that any matter in the Articles of Association which is not within the scope of the Memorandum of Association of the company is void. The MoA allows [3 (l)] the CSITA 'to take the consent of the Synod of the CSI' on matter relating the sale/mortgage of property if the law permits, and secondly in the case of dissolution of the CSITA, the final approval is taken from the CSI Synod (MoA 8). Apart from these two occasions, there is no involvement of the CSI Synod as far as the MoA is concerned. The AoA plants the Synod at the very centre of the corporate structure. This is the over-extension of the MoA

committed by AoA which is not approved by the CA 2013. According to the AoA,

a) it is the Synod of the CSI which elects the members of the CSITA and this has been continual practice since the inception of the CSITA;

b) the Synod office-bearers elected by the Synod become automatically the ex-officio members of the Association (AoA 4);

c) the office-bearers of the CSI thus elected will automatically become the office-bearers of the company, the Moderator becomes the Chairman of the CSITA and the Secretary and Treasurer of the CSI take up automatically the posts of Secretary and Treasurer of the CSITA respectively (AoA 4);

d) The powers of the Committee of Management (Board of Directors) are 'subject to the rules and regulations which may be time to time laid down by the Synod of the Church' (AoA 17);

e) 'Where property is accepted by the Association as bare trustees they shall from time to time apply such property according to the lawful directions of the trustees or other committee to whom the management or the administration of it may have been confided […] or by the Synod of the Church' (AoA 16);

Comment: If members are elected by the CSI Synod, the question is: Is the CSI Synod the Company Council? Or the General Body? The MoA does not explain the relationship of the CSITA with the CSI Synod. It also does not explain the qualifications for membership, nor the basis on which the members are chosen by the Synod. There is no indication in the AoA that it is following the Companies Act in this matter. Of course, it is a non-profit company and there is no shareholding business being undertaken and so how does the CSITA find its members?

The confusion the AoA brings with it is that it states that one third of the members will be retiring at each meeting of the Synod of the Church. There are at present 19 members as per the master data of company found in the MCA website. This means that 6 members must be retiring each year and this has not been followed either by the Synod or by the CSITA. The Synod meets once in two years and we are told that the CSI Constitution has made Amendments to the Constitution which has extended the meeting of the Synod by one more year which means the Synod meets triennially.

The CSITA's Financial Statement 2015-2016 reports:

'In view of the above, amendments were made in the Constitution of Synod of the Church of South India:-

'The term of members of the Synod has been changed and the term of the Office bearers namely the Moderator, Deputy Moderator, General Secretary and the Treasurer of the Synod of the Church has been changed from two years to three years. The above amendments shall have a corresponding effect in CSITA as the Office Bearers of the Synod of the Church shall be the Ex-officio members of the Company pursuant to Clause 4 of the Articles of the Association of the Company which reads as below:- "The Moderator of the Synod of the Church of South India, Ex-officio is also the Ex-officio Chairman of the Association, the General Secretary of the Synod of the Church of South India, Ex-officio is also the Ex-officio Secretary of the Association and the Treasurer of the Synod, Church of South India, Ex-officio is also the Ex-officio Treasurer of the Association."

'Consequently, the term of the present Ex-officio Officers of CSITA as well as that of the members which was about to expire on 14th January, 2016 has been extended by one year from 14th January, 2016 to 14th January, 2017. In the Extra-ordinary General Meeting of the Company held on 8th January, 2016 a resolution was passed to take cognizance of the extension of the term of Office Bearers as well as Members.

Necessary resolution was filed with the Registrar of Companies' (p. 8). This is not the proper way of doing it. Suitable and appropriate changes must have been carried out in the MoA and AoA before taking decision on such matters and before proceeding to implement it. Robert Bruce, the Treasurer wrote on 7 September 2016 to the RoC, Chennai, informing that the membership number was increased to 19 and that therefore the MCA should correct its Master data and mark the members of the CSITA as 19. This was faithfully carried out by the RoC and the MCA.

The Synod even has powers to alter the purpose of Section 8 of the CA 2013 or power to curb the CSITA, restricting it to spend the income towards fulfilling the company's objects. AoA 13: 'Where property is accepted by the Association for the general objects of the Association they may apply both capital and income in or towards any of the objects mentioned in the Memorandum of Association except in so far as they may be restricted by any resolution of the Synod of the Church or they may accumulated (sic) such income until the same can in their opinion be usefully applied for all or any of such objects'. The CSI Synod meddles with the choice of objects and decides on how much money can spent towards any of those objects.

According to section 152(6)(a) of 2013 Act, every subsequent annual general meeting after the first AGM, one-third of rotational directors for the time being as are liable to retire by rotation. If their total number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. In the case of the CSITA, it should be three directors who should be changed by rotation every year in the Annual General Meeting. The Synod of CSI meets once in two years whereas the rotation has to happen annually at the AGM of the company. The AGM of the CSITA meets in the last week of September each year whereas the Synod of the CSI meets in the month of January bi-annually. No procedure has been worked to administer this rotation without someone taking advantage of the situation. The list of 19 mem-

bers show that there is a person who has been continuing as director and member since 2009 and another one from 2011 without going through rotation. Four directors have been appointed in the year 2014 when only three can rotate. Only two were appointed as directors in the years 2017 and one 2012. The rotation policy does not seem to have been observed by the CSITA.

The Articles have to be amended in the first place if membership is to be increased. According to the AoA the membership should not exceed fifteen. But there are 19 of them at present.

We adopt here the stakeholder policy and approach, and not the shareholders pattern of corporate organisation. The CSITA as a non-profit organisation does not have shareholders as there are no owners or sharers for the assets of the company. CSITA is a company limited by guarantee without shares. The company as a company limited by guarantee with 27 units should operate on a broad-based structure in which stakeholders of all levels participate. All, from the CEO or the Chairman of the General Body down to the donor/subscriber in the congregation, have roles to play in the corporate order of things. This is the key principle of corporate governance. It is true that the first level stakeholders consisting of the leaders of the church and the experts in corporate matters will have the responsibility for the management. They will monitor the activities of the Board. Other cadres of stakeholders also have a stake in the company as they contribute financially to the well-being and the growth of the CSITA because they affect and are affected by the financial condition of the company. The company has duties to its members, employees, donors, subscribers and to the Government. The MoA and AoA should be modified in order to uphold the societal perspective in an effort to maintain corporate governance. The stakeholder theory recognizes the interests of all those affected by the companies' decisions including the leaders, white-collar professionals, employees and members of local community.

The election of members would be acceptable if the Synod or the Executive committee of the CSI had a dual identity and role of being the representative body of the community of faith (the CSI) as well as the corporation stakeholders of the CSITA. In the corporate structure of the CSITA, the Executive committee is comprised of the stakeholders of all types beginning from the bishops and the supporters, donors, subscribers, and employees. It would be difficult and cumbersome to elect a separate body as the stakeholders General Body from among the 4 million members of the CSI. It is better to allow the Synod or the Executive to have the dual authority of serving both for the church as well as for the company. The stakeholders General Body should function under Company laws and rules, and not be guided by any other instruments of the CSI Guidelines.

The Description of the Church of South India in the AoA Needs to be Revised

The area of the activity is confined to certain limits and it cannot extend beyond what is mentioned in the Memorandum unless the MoA makes changes. Should an expansion of work fields the MoA and AoA would need to be altered first. The identified CSI churches which the CSITA supports are not presented in detail. Who are the subsidiaries/units and branch offices if the CSITA caters to the needs of Church of South India 'within the territories of India'? [MoA sec. 3(a)]

The AoA describes the areas of the work as 'the Church of South India after inauguration'. But what are the segments of the Church after union? The Church had 14 dioceses at the time of union, and now it has 24 dioceses plus three institution units which are under the control of the CSITA. Should not the MoA and AoA revised to give the actual portrayal of the existence of the CSI after inauguration? The AoA should break down into its essential component parts of the CSI in India and the CSI after inauguration.

AoA sec. 3: The Association is established for the purposes expressed in the Memorandum of Association. The expression 'The Church of South India' (hereinafter referred to as 'the church') as used in the Memorandum and in all or any Articles of the Association or other regulation of the Association for the time being in force shall be deemed to mean and include the Madras, Dornakal, Tinnevelly and Travancore and Cochin Dioceses of the Church of India, Burma and Ceylon, the South India United Church and the South India Province of the Methodist Church uniting to form the Church of South India after inauguration.

The Various Units of the Church of South India Trust Association

CSITA members should be a larger body than just the 19 members we have at present. It does not even provide membership to the 27 units that CSITA have. The units of the CSITA are:

1. CSI Diocese of Dornakal
2. CSI Karimnagar Diocese
3. CSI Krishna Godavari Diocese
4. CSI Medak Diocese
5. CSI Diocese of Nandyal
6. CSI Rayalaseema Diocese
7. CSI Karnataka Northern Diocese
8. CSI Karnataka Southern Diocese
9. CSI Karnataka Central Diocese
10. CSI Cochin Diocese (North Kerala)
11. CSI Malabar Diocese
12. CSI South Kerala Diocese
13. CSI Kollam Kottarakkara Diocese
14. CSI Madhya Kerala Diocese

15. CSI East Kerala Diocese
16. CSI Coimbatore Diocese
17. CSI Kanyakumari Diocese
18. CSI Diocese of Madras
19. CSI Diocese of Madurai-Ramnad
20. CSI Tirunelveli Diocese
21. CSI Tiruchirapalli - Thanjavur Diocese
22. CSI ThoothukudiNazareth Diocese
23. CSI Vellore Diocese
24. Church of South India Synod
25. Church of South India Trust Association HQ
26. CSI KID Administrative, Finance and Property Board
27. CSI Women's House – Vishranthi Nillayam

There is no central auditor who looks at the account books of all the 27 units. The 27 units arrange their own auditors to look into their financial accounts. Whereas the Articles of the CSITA never recommend auditing to be done by various dioceses and institutions. The auditing is a centralised exercise which should happen at the Head office of the CSITA. The matters of finance and auditing will be discussed in the Part II of this book.

Only where it can be proved that the corporate structure is being used to conceal or avoid a liability will the protection ordinarily provided by the corporate veil be at risk.

Duties to Acceptance of Property

AoA sec. 12: The Association may accept property to be held

e) Upon trusts for the general objects of the Association;

f) Upon special trust for any of the objects mentioned in the Memorandum of Association to be declared by the donor;

g) Upon special trusts already in existence for any of such objects in cases where a corporation may lawfully be trustees thereof;

h) As the bare depository of the legal or other ownership of the property devoted to any of the objects mentioned in the Memorandum of Association special trusts of which are to be carried out and administered by another body of trustees.

Provided that the Association shall not be bound to accept property the acceptance of which they may deem expedient.

AoA sec. 13: Where property is accepted by the Association for the general objects of the Association they may apply both capital and income in or towards any of the objects mentioned in the Memorandum of Association except in so far as they may be restricted by any resolution of the Synod of the Church or they may accumulate such income until the same can in their opinion be usually applied for all or any of such objects.

AoA sec. 14: Where property is accepted by the Association upon special trusts to be declared by the donors all the powers and provisions of these presents shall be deemed to be incorporated in the instrument declaring the special trust except in so far as the same shall be expressly excluded or modified or be inconsistent with such special trusts.

AoA sec. 15: Where property is accepted by the Association upon trusts already in existence the Association shall administer such trusts according to law and the general powers hereby conferred on the Association shall not apply.

AoA sec. 16: Where property is accepted by the Association as bare trustees they shall from time to time apply such property according to the lawful directions of the trustees or other Committee to whom the management or administration of it may have been confided, by the instrument or document creating the trust or by the Synod of the Church.

The understanding of the CSI in relation to the CSITA is associated with a very broad trust concept and it seems to be one prime reason for the confusion between 'company' and 'trust'. A defunct Trust notion is preventing the corporate obligation to take root in the entire system in operation in the CSITA which should be revaluated and reconstructed. If the power of the trustees *were* absolute; the trustees could do as they pleased; they could perhaps trade with themselves and could, perhaps, sell the trust assets at an unfairly low price.

Conclusion

In conclusion, the CSITA is not constituted under different statutes and Acts so as to perform separate duties, one for the Trust Act and the other for the Companies Act.

The major drawback in the MoA is that some of the clauses in the original document of 1947 are irrelevant to the present time and they are still preserved. It should be cast in a company framework and not in Trust form. The contents of the MoA of the CSITA are about 100 years old as it is replica of a document which had been used by the one of the constituent churches of the CSI since 1923. It should be remembered that the 1947 MoA and AoA documents reflected the conditions existed before Union as they are largely documents copied extensively from the previous documents drawn up and used. When the MoA and AoA were registered on 26 September 1947 the Church of South India was not yet formed though its birth was a just day away. There were certain clauses written in the 26th September 1947 draft, approved by the Government, which were meant to help facilitate in future the union of different Trusts and Societies which were holding church properties [MoA 3 (m, n)]. Accordingly, such events of handing over the properties to the CSITA in different periods of time took place at different stages of its 70-year history. The MoA was set to act from the instant of registration for the separate constituent churches which were awaiting the union the

next day [sec. 3 (o)]. All these clauses have still found places in the amended draft of MoA, 2005. It clearly shows that no in-depth, careful and meticulous revision process was ever undertaken since the union that would make the MoA and AoA far more relevant to the CSI of the 21st century and also to be in tune with the Indian Companies Act of 1956 and 2013.

The Memorandum and Articles of Association are the vital instruments for the registration of a company under the Indian Companies Act. It contains the fundamental conditions upon which alone the company is allowed to be incorporated. Once it is registered, it becomes a public document and the contents of which are open to the reading of the public and the members of the public are bound to the MoA in their dealing with the company. But in the case of the CSITA only a small fraction of people know that there is a MoA, and still a smaller fraction who have read it fully and further a tiny number understand what the contents are all about. Education is necessary to make the MoA intelligible to the all sections of the stakeholders of the company, and the administrators cannot have it locked in their office. The culture of secrecy should be broken and a culture of accountability and transparency practised. The culture of questioning and critical reasoning is also a desirable element here.

Our analysis so far has shown that the self-understanding of the members of the CSITA was saturated with ideas of a Trust organisation and not with the thoughts of company identity given to it by the corporate laws of India. The CSITA is not operating in a corporate ethos because the 'trust' concept predominates in its outlook and practice. The Trust concept and Trustee method are overshadowing the body corporate and thereby obscuring the corporate character of the CSITA which should be exhibited in all its operations. History has cemented Trust philosophy firmly into the system of CSI administration. It is not realised that the life-cycle of the CSITA from its registration to winding-up

must be under the provisions of the Companies Act. There are obviously differences between a Trust and a Company, which is not fully appreciated by the leaders of the CSI.

A trust is a relationship where the trustor gives another person, the trustee, the right to hold title to a property or assets for a beneficiary. The "trust" name refers to the ability of the institution's trust department to act as a trustee – someone who administers financial assets on behalf of another. The assets are typically held in the form of a trust, a legal instrument that spells out who the beneficiaries are and what the money can be spent for.[319]

Corporate veil: 'The legal assumption that the acts of a corporation are not the actions of its shareholders, so that the shareholders are exempt from liability for the corporation's actions.'[320]

Piercing the corporate veil: The judicial act of imposing personal liability on otherwise immune corporate officers, directors, and shareholders for the corporation's wrongful acts. — Also termed disregarding the corporate entity; veil-piercing. "Courts sometimes apply common law principles to 'pierce the corporate veil' and hold shareholders personally liable for corporate debts or obligations. Unfortunately, despite the enormous volume of litigation in this area, the case law fails to articulate any sensible rationale or policy that explains when corporate existence should be disregarded. Indeed, courts are remarkably prone to rely on labels or characterizations of relationships (such as 'alter ego,' 'instrumentality,' or 'sham') and the decisions offer little in the way of predictability or rational explanation of why enumerated factors should be decisive." Barry R. Furrow et al., Health Law §5-4, at 182 (2d ed. 2000).[321]

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[319] "Trust Company" Wikipedia. https://en.wikipedia.org/wiki/Trust_company

[320] *Black's Law Dictionary*, p. 1032.

[321] *Black's Law Dictionary*, p. 3641.

7

EPILOGUE

7.1 The CSITA is under the Control and Influence of the Church of South India – A Case for the Doctrine of 'Alter Ego' to Pierce the Corporate Veil

We have critically examined the ways in which the CSITA functioned and was made to function by the Church of South India for a period of over 70 years, and have analysed some of the important external links that the body Corporate CSITA has with the corporate legislation of the country. The CSITA can be called "body corporate", "corporate body", "corporation", "company", etc., as all have more or less identical meanings. We argued that the CSITA is not a Trust although it has the 'Trust' in its name. It is implied therefore that the board of directors may function like trustees but are not trustees in the strict sense.

An Association limited by guarantee registered under the Companies Acts of 1913, 1956 and 2013 without the word 'Limited' and without its dividends distributed to its members is a corporation which means it is a juristic person with a distinct legal identity. The *Business Dictionary* defines legal entity thus: "An association, corporation, partnership, proprietorship, trust, or individual that has legal standing in the eyes of law. A legal entity has legal capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own

right, and to be held responsible for its actions."[322] Unlike the Trust and Society, the rights and liabilities of the CSITA have to be derived from the Company Law sources such as the Companies Act 2013, the Rules and Notifications from the Central Government. From the time of registration and until the time of winding-up, the CSITA Company has to operate in accordance with the provisions of the Corporate norms and regulations. It is the essence of the argument in this book.

The Memorandum and the Articles of the CSITA are making it to act as a Trust and its members as Trustees but it is incorporated under the sec. 8 of CA 2013 which is meant for companies with charitable objects, etc. CSITA is not a religious and charitable Trust and, if it were so, it should have been registered under the Public Trusts Act. Trusts do not operate on a centralised Act like the Companies.

The CSITA is not a Society either, simply because it is a non-profit charitable organisation. A non-profit organisation registered under the Societies Registration Act, 1860 cannot be regarded as a distinct legal entity and it is not a juristic person within the meaning and purview of the Indian Companies Act 2013. Society Acts differ from State to State. All aspects of the internal management of the Society do not come under the authority of the civil court whereas, in the case of company, its activities can be brought under several law-enforcing agencies of the Government such as the Ministry of Corporate Affairs, Regional Director, Registrar of Companies, National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) and National Financial Reporting Authority (NFRA). A company has better monitoring and enforcement authorities.

Despite the fact that the CSITA is managed by a minority community called Christians, this does not mean that Corporate Law can place it in a position of favour and privilege. Since the CSITA has been projecting itself as a Charitable and a religious minority institution, Govern-

[322] http://www.businessdictionary.com/definition/legal-entity.html.

ment officials tend to show respect which in most occasions results in special treatment. The leaders of the Church of South India are using the minority card to their benefit to delay or prevent Government investigations over the performance of the company. The CSITA has always enjoyed Income Tax exemption. It should be kept in mind that a Company with a charity object cannot automatically claim Income Tax exemption. As C.R. Datta has observed, 'An Association only by virtue of being registered under s. 25 of the 1956 Act (now Sec. 8 of the 2013 Act) is not exempted from income-tax. Although, in view of its objects it shall generally qualify for exemption under s. 11 read with s. 2(15) of the Income-Tax Act, 1961 (s. 43 of 1961).'[323] 'Charity' under sec. 8 of the CA 2013 does not nedessarily have the same meaning as 'charity' within the meaning of s. 2(15) of the Income Tax Act. It is reported by individuals that the Income Tax Department is also currently probing into the proceedings of the CSITA suspecting fraudulent activities.

The CSI is not the CSITA and vice versa. The CSITA has a pecuniary relationship with the CSI. It holds the purse to spend for all the needs and wants of the CSI. Both ought to be run by different structures of management though not unrelated to each other. The Synod and its various committees/councils of the CSI should not have control over the structural composition of the CSITA. The CSITA is treated as one of the many committees under the administrative wings of the CSI which acts as a big brother giving instructions to the members of the CSITA. Since the ex-officio members of the CSITA are also the leaders of the church they consider the CSITA and the CSI as one and the same. The CSI has therefore created its own norms and regulations in the form of a *Guidelines* document to conduct the affairs of the CSITA to suit the wishes of its power-holders at the top. The appointment and the functioning of bishops as attorneys in each diocese are not in line with the Companies Act. The notion that the members of the management committee of the

[323] *Company Law,* 7th ed. vol. 1, Gurgaon: Lexis Nexis, 2017, p. 564.

CSITA are the absolute owners of CSITA's properties and the bishops handling the properties as attorneys are open doors for corruption and fraudulent dealings. The properties and finances of the church are utilised through illegal sales to maintain a corrupt system of politics and the race for power within the church. Individuals and groups aspiring for higher positions in the church have tapped through the dubious sale of properties the money necessary to spend on making them win in elections. All these created a network of power-mongers who have preyed on the valuable assets of the church. This sorry plight indicates that there was governance but no corporate governance. There was no governance of the resources of the CSITA subject to the corporate norms and standards. The aim of this book is to make the leaders of the CSI to realise this and allow changes and re-formations in the principles and procedures of corporate governance in managing its properties and finances.

We are deeply concerned about the current crisis in the CSITA as it is subjected to investigation after investigation by regulatory bodies such as the Serious Fraud Investigation Office (SFIO), and we were seeking a remedy in the form of the piercing of its corporate veil to see the real face of the CSITA and to assess the state of its affairs. We have observed that there are very strong grounds for the court to disregard the corporate veil that hangs between the company and its members. Our aim is that the CSITA, which holds and administers the finances and properties of the Church of South India having 4.5 million members and assets worth of billions of US dollars, should be revamped structurally and re-oriented into the liabilities of corporate management. The CSITA is incorporated under the Indian Companies Act of 1913 and is required to make sense under the regime of the new Indian Companies Act enacted in 2013.

The Utmost Necessity of Corporate Governance for Non-Profit Companies

Non-Profit companies do not receive the attention they require from the Government's law machinery. The momentum is mostly towards the profit-making enterprises with a drive for maximisation of the income for the shareholders. It is all about business, commerce, profits, shares, debentures, markets, stocks, etc., that are given importance by the corporate law-making agencies in the country. Non-profit, charity, religion, gifts, donors, offerings, subscriptions, etc., are terms which do not make good sense to the corporate world, although non-profit companies are welcome to incorporate themselves under sec. 8 of the CA 2013.

What was sec. 26 under the 1882 Act, sec. 26 under the 1913 Act and sec. 25 under the 1956 Act has now been expanded with more helpful provisions including penal provisions in sec. 8 of the 2013 Act. But it looks to be more of a pigeon-holing attempt that non-profits and charitable organisations are placed under sec. 8. Those companies, numbering about 6,000, are treated paternalistically by offering privileges and exemptions so that they can be attracted to join the corporate sector. Although, at the outset, these concessions ought to be welcomed, they, in our opinion, might have a negative effect on the establishment of good corporate governance. Corporate professionals pay scant attention to the non-profits in analysis and review. It is not recognised that the presence of the non-profit companies in the corporate structure of the nation might bring new dimensions to corporate governance and promote corporate social responsibility. Recognition does not mean offering privileges to the sec. 8 companies and exempting them from meeting stringent regulations.

As C. Ingley and L. Karoui have observed, 'The concept of corporate governance is now widely applied, not just to large corporations and publicly-listed firms, as well as to small and medium-sized private companies, but also to non-profit organisations that likewise vary in type,

scale and context.'[324] We must lead people to a new perception of company that is non-profit. Our major interest and concern is how the CSITA can function within corporate legislation. The aim of this book is to change the way in which we think about the CSITA and its governance processes. We seek to understand every function of the CSITA as a corporate activity in accordance with the provisions of the corporate laws rather than being a Managing Committee that carries out the orders of the Executive Committee or the Synod of the Church of South India. We have to look at the issues of the CSITA through the lens of a corporate legal framework rather than treating it as an ecclesiastical authority. The directors of the CSITA should learn to use corporate legal rationale for the decisions they make and the powers they might exercise each time. They should enforce and monitor compliance with the corporate governance standards specified for the companies. These are found in the Indian Companies Act of 2013, Rules, SEBI and international codes for good corporate governance.

The Exemptions the Sec. 8 Companies will Undercut the Improvement of Corporate Governance

For example, i) A section 8 company need not comply with the requirements stipulated under sec. 118 of the CA 2013 dealing with the minuting of proceedings of general meetings and meetings of the Board of Directors and the resolutions passed, except where the AoA of such a company contains a provision for confirmation of minutes by circulation. Luckily, the AoA of the CSITA have a provision for writing and for minutes of the meetings to be confirmed (no. 39). Can we imagine that the CSITA which has thousands of employees and institutions is run

[324] C. Ingley and L. Karoui, "Corporate Governance and the Smaller Firm", *Handbook on Emerging Issues in Corporate Governance,* ed. Alireza Tourani-Rad and C. Ingley, Singapore: World Scientific, 2011, p. 132.

without writing and confirming minutes? It is even harder to imagine that the CSITA is exempted from observing the secretarial standards specified by the Institute of Company Secretaries of India with respect to general and Board meetings [Sec. 118(10)]. The CSITA is also exempted from punishment for tampering with the minutes of the proceedings of the meetings.

ii) A sec. 8 company need not appoint a Company Secretary with necessary qualifications. Most company secretaries gain chartered status with the ICSI (Institute of Company Secretaries in India) by completing the ICSA Chartered Secretaries Qualifying Scheme (CSQS), which equips them with expertise in the following fields: financial reporting and analysis, corporate law, and corporate governance. Today, a secretary occupies a very important position in the administrative setup of the company. He/she is an officer of the company with extensive duties and responsibilities and he/she is not a mere clerk. If the CSITA can opt out of this and appoint anyone who is not fully qualified or semi-qualified as Secretary on an honorary basis or part-time, this will have a negative impact on the quality of corporate governance.

iii) A Section 8 company need not appoint independent directors [sub-sections (4), (5), (6), (7), (8), (9), (10), 12(i) and (13) of section 149 and section 150 of the CA 2013 will not apply]. An independent director is a non-executive director of a company not related to the company but helps the company in improving corporate credibility by following governance standards. If the CSITA does not need to have independent directors, the corporation will be fully in the control of the insiders, and there will be no space for input and criticism from directors who can see matters independently and objectively.

iv) The CSITA can have an Audit Committee without independent directors [sec. 177(2)]. That will minimise the efficiency of the Audit committee.

v) The CSITA does not need to comply with requirements of section 178 of the CA 2013 with respect to constituting a Nomination and Remuneration Committee and Stakeholders relationship committee. The importance of all these for maintaining corporate governance cannot be exaggerated. The Nomination committee helps the management to identify potential directors as increased diversity and changes in the skill are needed at board level. The nomination committee will enable the CSITA to identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down and also carry out an evaluation of every director's performance. The CSITA cannot be exempted from doing this and Paid up Capital does not need to be the criterion to judge whether public companies should have a nomination committee or not. When the Paid up Capital determines which companies can have nomination committees, the CSITA easily slips out as it has no paid up share capital.

vi) For borrowing money a resolution can be passed simply by circulation in the CSITA, not necessarily in a meeting. This package of exemptions provides an escape route to avoid challenges for pursuing good corporate governance.

Paid up Capital Should Not Be the Criterion for Exemptions

The Paid up capital for the CSITA, a sec. 8 company, is nil. This saves it from some quality-oriented measures and performance-related activities stipulated in the Companies Act 2013. The CSITA, for example, is not required to appoint a Company Secretary as its Paid-up share capital is lower than Rs 10 crores. Making Paid-up share capital as a criterion, the CSITA can opt out of having a Nomination Committee and Independent directors, though the latter have a turn-over of 300 crores or more (about 14 million USD) which would set another criterion. The CSITA will certainly come under the turnover criterion if rules were

tightly followed. Companies (Auditor's Report) Order, 2016 (CARO 2016), a highly standardised auditing procedure which would probe the financial categories such as assets hitherto unassessed and unrevealed, is not applicable to the sec. 8 companies. The applicability for Corporate Social Responsibilities (CSR) is judged by any one of the three criteria (net worth, turnover, profit) which may be recommended for the above exemptions rather than making Paid-up share capital as the sole criterion for deselecting the most important aspects of corporate governance.

Let us look at the positives. It is all right to have relaxations in the Annual General Meeting Requirement for the Section 8 Company, small change in the notice period for General Meeting, and extension of the time period for sending Financial Statements. A Section 8 Company can now appoint any number of directors. Also, a special resolution is not needed for appointing more than 15 directors. The CSITA is able to grab this opportunity to increase the number of directors representing a vast number of dioceses and institutions.

The Members/Directors Show Conflict of Interest

It is all too easy for the directors of a company to neglect corporate formalities due to conflict of interest, but this may result in unfortunate consequences for the company. We have attempted to produce a combined code of corporate governance for a non-profit company of the magnitude of CSTA. The need has arisen to develop corporate governance codes and standards by framing from time-to-time the materials based on several committee recommendations both locally and globally. The Administrator of the CSITA in 2012 gave an excuse before the Company Law Board by saying that 'being a Sec. 25 company the directors are otherwise engaged in their personal engagements', and that they are only honorary persons. This could be seen as an issue which along with other defaults might lead to lifting the corporate veil.

The CSITA Neglects Corporate Social Responsibility

The board of every company will ensure that the company spends, in every financial year, at least 2 per cent of the average net profit of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy under the Indian Companies Act 2013. The CSITA should therefore contribute at least 5 crores for the year 2015-16 which the company has evaded by stating that they are exempted from it.

Corporate Governance is about the system: how it is governed and controlled. According to P.K. Sharma, the four pillars of corporate governance ought to be considered – transparency, fairness, accountability, and equal treatment to all.[325] The Sarbanes-Oxley Act of 2002 ushered in a new attitude toward corporate governance for all companies. Both the government and the public expect non-profits to maintain pristine standards of corporate governance. The OECD Codes promote a stakeholder approach which we ought to consider. It means that the Stakeholders should participate in the corporate governance process.

The CSITA has MoA and AoA which are the official recognition of the corporation's existence, and they are governing documents which set forth the basic terms of a corporation's policies and procedures. So we have prioritised the study of these documents for upholding the values of corporate governance for a non-profit organisation like the CSITA.

The CSITA Management Is a Victim of CSI Politics and it Obstructs a Vision for Good Corporate Governance

The Churches in the contemporary world are consciously trying to turn their members into servile and conformist beings who have lost the ability, desire and will to question and dissent. The theological institu-

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[325] P.K. Sharma, *Corporate Governance Practices in India: A Synthesis of Theories, Practices, and Cases,* NY: Palgrave Macmillan, 2015, p. 26.

tions are plagued by mediocrity and docility. Anyone who puts the higher level authorities in question is considered an enemy of the church. Dissent is often met by ulterior motives being imputed to the dissenter as if those in power have no ulterior motive in the acts of buying positions of power. The college of bishops have emerged as a "corrupt elite", interested only in enriching themselves and their well-to-do supporters illicitly and the marginalisation of those who might pose threats to themselves and to their loyalists.

For us, the point is that the assets under the care of the body corporate of the church are caught up in the whirlpool of corrupt and fraudulent ways of management which they call life in the service of Christ. Corporate funds are diverted for personal use, or rather misuse, of public office and accounting fraud as various Government investigations might suggest. Let us not make empty sounds and populist spiritual discourses, but take concrete steps to cleanse the CSTIA management by educating the directors and members in every aspect of corporate governance. All important information about the company must be published in the company's website. In one click, people should be able to have access to the financial statement and balance sheet. There should be transparency of showing the assets register to the public. There are many who drum for eradicating corruption and ushering in reformation but have no intention of tackling the problem at the deeper level. Some initial enthusiasts go all out and dive into the system, encounter opposition and finally end up worshipping it as if there were no way out of the vicious cycle.

The CSITA Is Neither a Trust (Bare or Special) Nor a Religious and Charitable Trust, it Is an Incorporation, a Body Corporate or a Company

The notion of Trust element predominates over the property enrolment by the church, and from this is developed a trusteeship notion which would constitute the members of the Committee of Management

as "absolute owners" of the property of the CSITA [AoA 17(a)]. On principles of incorporation, however, the corporate property belongs to the company, and members have no direct propriety rights to it.

The language of the Articles of the CSITA hints at playing the role of a 'corporate trustee' or a 'Trust Company'. There are about 160 types of Trusts listed in the *Black's Law Dictionary* (8th ed.) which are quite common in the USA and the UK which left their imprint on the churches founded by the USA/UK missionaries in South India. We ought to re-orient the CSITA into its truly Indian and global corporate character in which there might be a place for Trust elements as analogies to explain the fiduciary duties (responsibilities of confidence and trust) imposed on the director/members. But the CSITA is a corporate body and not a Trust. There is no place for a "Bare Trust" in incorporation.

The Supreme Court of India again, in *S.P. Mittal v. Union of India*, AIR 1983 SC 1, summed up the essential elements in the legal concept of a corporation, which are: "(1) a continuous identity, i.e., the original member or members or his or their successors are one; (2) the persons to be incorporated, (3) the name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. A corporation aggregate can express its will by deed under a common seal."[326] "A Church is an unincorporated body, and a suit against them is not maintainable without getting permission under Order I Rule 8 of CPC." [In the Madras High Court *N.P. Thangaraj vs. Church of South India* on 21 January, 2014]

'The doctrine of a corporation … is a succession or collection of persons having at law an existence, rights and duties, separate and distinct from those of the persons who are from time to time its members. It has a corporate legal personality of its own that is quite separate and distinct

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[326] G. Balram, "'Trust' and 'Body Corporate'" http://corporatelawcorpus.blogspot.com/2010/03/can-trust-under-indian-trusts-act-1882.html.

from those persons associated with it; the shareholders, managers, employees, creditors, debtors and government agencies.'[327] In the case of non-profits, it is a question of stakeholders as there is no share capital in the CSITA. The members may come and go but the company will remain the same as it has perpetual succession. It has a c ommon seal which cannot be duplicated by anyone or group of persons, and it can sue and be sued. In a company, the location of managerial power resides with the board of directors and the key managerial personnel such as the Managing Director, CEO, CFO, etc., and that managerial power is defined in the company's constitution which is known as the Articles of Association (the Articles). The directors will be in breach of their duty if they simply follow another's instruction without considering and deciding whether what is proposed is in the interest of the company. No one having such fiduciary duties shall be allowed to enter into engagement in which his personal interest conflicts with those of his company. This is basically the problem with the directors of the CSITA who have often excused themselves from fulfilling corporate formalities by saying that they are busy with religious duties and other commitments and they need more time to understand the corporate duties.

The Outmoded MoA and AoA under CA 1913 Are not Instruments Favouring Good Corporate Governance in the Modern Context

There were articles of association which provided the methods and procedures for conducting the business. A separate legal entity is to separate the actions of the entity from those of the individuals or other company. Church elections, Church property, Church management, and Church leadership are crucial issues within the CSI/CSITA around

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[327] https://www.lawteacher.net/free-law-essays/company-law/the-legal-nature-of-corporate-groups-company-law-essay.php.

which corruption revolves. The CSITA resources fall prey to them. Its assets are exploited, and the money from illegal or dubious sales are pumped into the individuals or parties to win elections and keep them in power in the church as long as they want. This mainly is due to the malfunctioning of the CSITA which manages the property and finances of the church. Mere appealing to biblical ethics and spiritual renewal homilies will have little impact as the greed for money and positions of power are deep-rooted in the system of governance which the members of the church both consciously and unconsciously have yielded to. It is a challenge to move people from the place they are comfortable with. It is difficult to make CSI Christians think rationally and act in a purposeful manner to cleanse the system. Efforts to change are loathed by many Christians as they disturb the happy slumber. Hence the spiritualists have purposely kept themselves far away from touching on matters of fraud and corruption. An ego-centred spirituality even revolts against any thought of having to admit systemic corruption. There is institutionalised cowardice in the Church of South India. The members aspire for and often attain positions of power through the back-door to give the appearance of legitimacy. They produce embellished reports and false information about their work. The CSI seems to prefer an anti-governance agenda so that the worst corporate behaviour can remain hidden.

The MoA and AoA Were Born out of the Anglo-American Tradition of "Trusts"

Austin Scott, the Dean at Harvard University, wrote in 1939, 'The greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence is the development from century to century of

the trust idea.'[328] Trusts are of many different types with different purposes as they were originally formed by practical men and not by jurists. The German historian Gierke once said that he could not understand the English Trusts. The Europeans found it difficult to insert Trusts into their jurisdictional system.[329] It is therefore difficult to streamline the Trust ideas embedded in the MoA and AoA of the CSITA and to actually place them on the map of the history and development of the Trust ideologies. What is clear is that we are meeting in the MoA and AoA Anglo-American notions of Trust and trusteeship.

The CSITA was hurriedly formed by rushing to the Secretary to the Indian Government a day before the formation of the Church of South India. We are thankful that the pioneers at least accomplished that for us so that properties were not left stranded without proper guard and legal protection. It was decided to form a Trust Association for the new CSI under the Indian Companies Act in the last Joint Committee meeting of the Church Union held in June 1947 in Bangalore and within three months the drafts of MoA and AoA were made ready for formal registration. Two options were considered under which Incorporation should take place: a) The Charitable Endowment Act, and b) The Indian Companies Act. The pioneers chose the latter and the rest is history, but a history we cannot be very much proud of.

The contents of the MoA and AoA reveal the nature and function of the CSITA. These we should consider rather than what its administrators over the years might wish us to think with their own weird ideas about Trusts and their mechanisms. We believed what the CSI told us about the CSITA. Official records of the CSI often referred to the CSITA as a

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[328] A. Scott, "Importance of the Trust". https://heinonline.org/HOL/LandingPage?handle=hein.journals/ucollr39&div=16&id=&page=, p. 177.
[329] Scott, "Importance of the Trust", p. 177.

Bare Trust'[330] and they stressed this over and over again so that the CSI leadership could operate as the "alter ego" of the CSITA. We have already seen that a bare trust would be a depository of the legal titles for properties, and that this is a system which does not fit with the incorporation legislation in India. The CSITA should end up being branded as a shell-corporation which means a corporation that has no active business and usually exists only in name as a vehicle for another company's business operations.[331]

A Director of CSITA for Almost Six Years Did Not Know There Were MoA and AoA

The texts of MoA and AoA of the CSITA were kept hidden from the sight of its members and they were not in circulation among the dioceses. Practically no one among the 4.5 million CSITA members (except a handful) had any knowledge of those instruments which ought to be the guiding documents if the Association was truly registered under the Indian Companies Act 1913.

The CSI Synod itself had no awareness of these important documents with which every member ought to have had a covenantal relationship. There are no explanatory notes written on the MoA and AoA by earlier generations, and no committee ever discussed and debated over the meaning and interpretation of those documents to enlighten the members, directors and ordinary members of the church. Since 1947 only two changes were made to the MoA, and that too without the approval of the Central Government. One relates to the quorum at the General Body meeting, and the other to the introduction of the Deputy Moderator into ex-officio membership of the CSITA. The latter was

[330] See, *Church of South India: Minutes of the Proceedings of the Second Synod,* 1950, p. 38; *The CSI Fifth Synod,* p. 135; *Proceedings of the Eighth Synod,* 1962, p.139.

[331] *Black's Law Dictionary*, p. 1038.

purely a political move made by the then Deputy Moderator who wished to sit on the Committee of Management, controlling proceedings. There is only one person in the history of the CSI who changed constitutions and bye-laws to suit his authoritative character and ambitions for power. History can never forgive him.

Incorporation had no effect on the construction of the MoA and AoA. The major question is whether the CSITA is capable of exercising all the functions of an incorporated company under the Act 2013. With power to acquire, does the CSITA hold and dispose of property, both movable and immovable, tangible and intangible by virtue of its incorporation? With separate legal personality the company would be able to hold property in its own name, and it would not be necessary to use the device of Trust. 'The veil of incorporation', is said to hang between the company and its members with protection of law. But that can be set aside if individuals abuse the corporate front.

MoA and AoA were born out of totally a different climate in the evolution of corporate thought in the twentieth century. The old Trust concepts and analogies have influenced the language of the CSITA's instruments. According to the MoA, sec. 3(f), the CSITA accepts properties from the missionary societies in the form of three types of Trusts. First, the property is held by the Association for the purposes of the Association. That is simple and straightforward. Second, the properties are held in the form of "Special Trusts" by either retaining the status of the original trust or becoming a "new Trustee" of a Trust already existing. It means that the original form and structure of the Trusts under which the properties are held will not change and the incorporated body will behave like the original Trust or act like a new Trust with new trustees. Third, the Association acts like an inactive "bare" Trust or "passive" Trust, accepting to do a thing uncharacteristic of an incorporated company. That is that the CSITA would not undertake the management or administration of such properties. How can the second and the third

arrangements find support from the Indian Companies Act 2013? This arrangement of a co rporate body acting and becoming like "special", "bare" and "Passive" Trusts are against the corporate character. This is a breach of corporate ethics side-stepping the Companies Act.

How to Make the CSITA Follow and Maintain the Highest Norms & Standards in Corporate Governance?

A new administrative committee, a new and relevant MoA and AoA and a new enlarged Board and General Body can accomplish this. There should be the equitable remedy of piercing the corporate veil available in the non-profit sector as it is in the profit sector. Our study recommends changes in the regulations to attach greater liability to officers of non-profit organizations, and to increase responsibility while reducing abuse. The argument that minorities' non-profit organizations should be given deference to govern themselves does not hold water as they are more susceptible to fraudulent activities. No activity of the CSITA should fall outside the jurisdiction of the Indian Companies Act. Non-profit organizations should not be granted favourable treatment; it would be beneficial to them to abide by stricter government controls. The Government should determine how much deference should be given to the Christian organisation, the CSITA. No preferential treatment! The rationale ought to be, business first and last, and no concessions on essentials!!

Can the very essence of the one Church be conceived in Company terms? The CSI has a murky understanding of the characteristics of company management. To re-model the MoA and AoA in line with the latest developments and innovations in corporate law and governance, thus redeeming it from the antiquated colonial past, is an urgent task. We must assist people, and the system must be redeemed from the feudal and colonial relationship projected by the western missionary culture

in making the CSITA as a Trust. The CSITA train should run on corporation tracks.

First of all, one must understand the words 'company' 'incorporation' and 'body-corporate', and should be able to comfortably relate them to the word 'church' without being too much elated either to injuring 'church' or shunning 'company'. For many, 'company' is a secular term and therefore profane, and one should avoid allowing it to characterise the sacred institution 'church'. Some derive great pleasure in substituting the word 'company' for 'church' so that church may look subdued and its religious authority undermined. The identity of the CSI as the CSI Trust Association is kept away from the reach of the members of the church so that it can operate as a committee of a private club set up by the Moderator and the CSI synod office-bearers. The directors are appointed at the behest of the Moderator and his relatives, and their true disciples find a place on the managing committee. The 10-member managing committee of the CSITA which is conducting business on behalf of 4 million CSI Christians is well controlled by the Moderator and his three colleagues who found place on the Committee of Management automatically in an ex-officio capacity. The experts in corporate law should view this and adjudge whether it permissible for the Synod to appoint ex-officio members to the General Body and Board of Directors to a company. The Moderators knew well that any amount of knowledge on matters of the CSITA will breed resentment and possibly rebellion among rank-and-file. One way to keep the people obedient is to keep them ignorant over the operational matters of the church so that the larger issues linked to its finances and properties remain secret.

The Corporate Face of the Church Is Hidden from the Eyes of the Worshippers of the Church

The Memorandum of the Association (MoA) and Articles of the Association (AoA) of the CSITA are not kept within the reach of the com-

mon members of the CSI. They are kept away from the knowledge of the members of the CSI who pay monthly subscriptions to the CSITA and in addition give offerings every Sunday. The fact that the CSITA is a registered company within the orbit of corporate legislation has remained hidden, and its legal documents are made inaccessible to the worshippers of the CSI. So the bishops and their party-men and women use at times brute force and threat to bring the people under control and subjugation. Such control mechanism creates the belief among the people that any criticism is useless for effecting real change. The administrators throw money to buy individuals who are able to challenge them in the court. When cases are filed against them, money is spent from the church funds to hire lawyers and senior counsel with high payment of fees. They know the legal world very well and have agents who may promise to bend the law and justice for them. Many corrupt actions are not taken to the attention of the Courts as the ordinary stakeholders do not have the resources to match the sums of money that the authorities in the church could throw in a legal battle.

The congregations feel helpless, and they begin to speak and act pretentiously, thus hiding their moral cowardice to fight against corruption and fraud in finance and property matters. The authorities attempt to keep the people's minds not to be focused on issues that directly concern them. This is the service ably done by the CSI official monthly magazine *The CSI Life* which never informs or discusses about the Government actions and measures taken against the CSITA. Rather, it carries write-ups on carbon emission, climate change, ecology, etc. This way one can be sure that the stakeholders will never figure out the real issues. The leaders and their supporters use guilt, fear, threat and intimidation to manipulate members in order to keep the members from dissenting. Propositions gleaned from the Bible are applied to ensure absolute authority of the leadership. In the name of 'church discipline' the members who take a critical stance towards the CSITA are either isolated and

pushed to the periphery or even punished. All the decisions in the key committees are used as instruments to demand loyalty from the critical voices. This is the plight of the CSITA. How do we establish corporate governance in this ignominious context?

Recently, there has been some awakening among the people of the CSI to know about what the MoA and AoA say with regard to the corporate face of the CSI. It has stirred up serious questions in the minds of the members of the church, and they are desperately seeking answers. The bishops do not and cannot supply any answer as they themselves do not clearly know about them. People, therefore, are turning to members who attract them by using anti-clerical rhetoric in the name of reforming the church. The so-called Reformers' knowledge of Company Acts and MoA/AoA are scrappy, rudimentary and at most times misleading. The NCLT order of 11 November 2016 (CP 2/2016) to appoint a new Administrator to the CSI is under captivity in the form of a case filed at the Chennai High Court (CRP 3739/2016). For the last three months, the case appears every working day in the cause list for hearing but it does not reach the Court's attention. Nothing has happened in the last two years, even though there are seven impleaders to the case. If that case can see the day and if a favourable verdict is obtained, we may expect some changes. But there are many in the church who are either secretly or openly against a new Administrator being appointed by the court.

The CSITA is lacking in Ethical and Professional Standards. Corruption with its subtle nuances has become a matter of course or a comfortable system to work with in the Church. It has become particularly a standard operating procedure in the management of properties, appointment of bishops and institutional employees, the selection of Synod office-bearers and at all levels of church administration where the selling or purchasing of power or privilege are involved. There are different forms of corruption such as bribery, extortion, cronyism, nepotism, patronage, craft and embezzlement. There is also another important

type. Political corruption which is practised 'for private and group enrichment, and for power preservation purposes', and it indicates 'the corrupt motive for the preservation of power'. In the CSI and CSITA, church resources held by the CSITA are used by the hierarchy to retain power for themselves and 'to maintain or strengthen their hold on power'. It is also this form of corruption that needs to be challenged so that the CSITA should be saved.

The Provision in the MoA for the Formation of the State Level CSITAs Will Impair the Unity of the Church

There are more flexible and liberal activities by the CSITA as it has authority to create legal domicile for the properties in a given area of the country or State [MoA 3(j)]. In other words, properties in Kerala can be allowed to be registered in the State of Kerala, Tamil Nadu in Tamil Nadu and so on.

Adopting a Stake-holder Approach in Re-constructing the MoA and AoA

"Guidance on Good Practices in Corporate Governance Disclosure" is a document produced by the United Nations (2006) has no reference to the non-profits. A document on Corporate Governance has to contain all aspects of the governance obligations of organisations, covering not only legal duties, but also applicable and recommended standards of best practice to the benefit of the all stakeholders.

In a stake-holder approach, the entire CSI Christians are to be counted as part of the Association, not just the 19 members and 15 directors of the managerial committee and the attorneys. The point is that 'company law' should prevail and rule in organisational matters relating to finance and property management. There is no control by the CSITA over the sale of property and other irregularities committed by the Power

of Attorneys. For all these, we need to develop the stake-holders approach which will include members chosen from all levels, from bishops right down to the newly confirmed young men and women who joined as full members of the church.

The CSITA Transgresses the Centralised Auditing

Pursuant to section 177(4)(vi) of the Act, 2013, the undertaking and assets of a company need to be valued by the audit committee, wherever it is necessary. But each CSI diocese appoints its own auditors, and the CSITA Head Office has not conducted the auditing for each diocese. This is against the AoA of the CSITA which stipulates centralised auditing. Matters relating to 'accounts' will be dealt in the second part of this book. However, brief comments can be made here. The section on 'Accounts' in the AOA clearly has no reference to dioceses taking care of the auditing themselves. In fact, all money transactions will be in the name of the Association. Article 41 states, "The banking account shall be kept in the name of the Association as such bank as the committee shall from time to time appoint.' It is the Committee of Management, i.e. the Board of Directors, that selects the banks where the Associations funds are kept and for regular transactions. Cheques will be signed by persons appointed by the Committee, and it does say 'a person' not an Attorney or bishop or Treasurer of the diocese (AoA 42). (iii) No payment shall be made without the order of the Committee, and even the petty cash will be at the disposal of Secretary and Treasurer of the CSITA. (iv) Article 44: 'All monies and subscriptions (offerings and donations) are to be received by the Treasurer or such officer of the Association as the Committee shall appoint.' Again, it implies that such officer need not be the bishop of each diocese. (v) Such officers appointed by the committee presumably from each diocese 'shall forthwith pay them into the banking account' (Article 44) of the CSITA, and the

Treasurer or the officer will issue a receipt for the discharge. (vi) Article 45: 'The Association, (i.e. the CSITA) shall cause true accounts to be kept in such a manner as it thinks fit of all the receipts, credits, payments, and liabilities of the Association.' It is important to note that the Association keeps and maintains under its control all the receipts and expenses of any officer who might be appointed from time to time. (vii) The officer may be a bishop, though not necessarily, and it is his job to keep all the financial bills, vouchers, etc., under his control, and he must be ready to show them for inspection at any time in any manner imposed by the Committee (Article 45). Our financial management is a centralised system, and the dioceses can only play a supportive role; each diocese is not autonomous and independent. (viii) It is the Committee which prepares and submits the balance sheet and the Financial Report, and copies of the same will be sent to the secretary of the Synod of the Church (Article 46). There is no direct role for the Synod of the Church in Accounts maintenance and the financial management of the Association. (ix) The Balance sheet is audited by the company and is approved at a general meeting.

In practice, financial dealings are not done in accordance with the AoA but by following *The Guidelines* of 1988. Even these guidelines are overstepped, and the bishops, the Attorneys are in full control of the finance. The CSITA's MoA and AoA do not recognise diocesan divisions, and those divisions are made and administered by the ecclesiastical system of the CSI. It is even incorrect to consider each diocese as the unit of the CSITA. The MoA sees the CSITA as one single unit. The AoA however uses the phrase 'the Synod of the Church' about 15 times; it has no reference to dioceses. Each diocese is given a high level of autonomy and independence to the extent that a bishop who was not even appointed as an Attorney of the CSITA is in full charge of the financial management. Items of expenses are decided by him and he takes the lead in spending which includes spending on heavy personal

and family luxury budgets. Such bishops do fund-raising without the approval of the CSITA Committee of Management and the generous giving by the people does not go into the CSITA bank accounts. The names of the bishop of Madras and that of Medak diocese are at the top of the list. Almost every bishop's name past and present is found in the list. The 'Auditing' section (Articles 48-51) in the AoA also stresses centralised auditing and makes no reference to diocesan auditing.

The AoA Contradicts the MoA

Some vital differences and contradictions were noted between the provisions of the MoA and AoA which the new Companies Act does not approve of.

According to the AoA, the Synod restricts and determines how much should be spent on the objects mentioned in the MoA (AoA 13).

The CSITA shall not be bound to accept properties that are not suitable. The MoA does not make such restrictions (AoA 12).

The Trusts have to be ruled in accordance with its own laws under the CSITA. This is totally against the spirit of incorporation and quite repugnant to the Companies Act (AoA 14).

The AoA states that the trusts having the properties will be administered by the Trust rules, not by the law and general powers conferred on the Association. This is squarely against the corporate law (15& 16).

A New Memorandum and Articles of Association: Very Urgent!

The MoA is a document containing the charter of a company and the fundamental objectives which the company seeks to achieve. The Articles of Association, on the other hand, contain guidelines and other rules and regulations to regulate the internal management of the company. The major flaw as we noticed in the construction of the MoA and AoA

is that both these vital documents supposed to guide the affairs of the company are hopelessly outdated, and they speak to a context different from the situation of the modern united church which is drastically changed. Ramaiya asserts that 'the Companies Act, 2013 is supreme and every company incorporated either under the 2013 Act or under any previous company law has to function within the framework of the 2013 Act'.[332] Sec. 5(9) of the 2013 Act accepts the articles registered under the previous company laws *unless they are amended under the 2013 Act.* Ramaiya further rightly observes, '… when the Companies Act is amended requiring all the existing companies to modify their memorandum and articles to the requirements of the new Act. If they do not do so the inconsistent provisions in their memorandum and articles will automatically stand nullified.'[333] Most of our arguments in this book have pointed either directly or indirectly to the total inadequacy of the MoA and AoA as corporate instruments acceptable to the Indian Companies Act 2013. They contain stipulations contrary to the Act. There are several disqualifications for the MoA and AoA to suggest that they are out of tune with the context and the content of the CA 2013.

The relationship between the CSITA's new MoA and AoA and the CSI Constitutions should be worked together, if it can be, and there has to be a document prepared to link the three, and more policies and procedures can be worked out in that document to aid the CSITA administration serving better its objects in and through the CSI. The Association could be a church community which promotes religion and does charity work and educational service and various humanitarian activities. The Indian Companies Act 2013 does not define 'religion', but it allows that the objects of a religion can be promoted without the interference of the Government. This should mean that we, the members of the church, can worship freely in this country, practise our faith openly

[332] *Guide to the Companies Act,* vol. 1, p. 408.
[333] *Guide to the Companies Act,* vol. 1, p. 410.

and spread the good news of Christ both in word and action. The main purpose of the CSITA is the well-being and maintenance of the Church of South India by being faithful to corporate obligations. The CSI and the CSITA have to coordinate professionally with each other acknowledging each other's positions.

Secondly, the Sec. 8 company intends to prohibit the payment of any dividend to its members. 'Dividend' means 'a share of the after-tax profit of a company, distributed to its shareholders'. The law says that no dividend should be shared among shareholders in the case of sec. 8 companies. The profit should be ploughed into promotional work for religion, charity and such other objects. Since the Corporate rules of the country are modernised in the form of the CA 2013, so also the CSITA must make efforts to update its methodology and the approach of its management in line with the mandates of Company law. Accordingly, the CSI constitution must give due place to the role and functioning of the CSITA by not over-powering and subjugating it.

Keeping the Privileges and Exemptions Away from the CSITA for the Sake of Good Corporate Governance

The Government should keep the privileges and exemptions away from companies like the CSITA which has a total revenue of Rs. 21,004,671,902 (a little more than 250 million USD) and Excess of Income over Expenditure of Rs. 1,737,435,085 (about 24 million USD). We must note that the income over the expenditure in the year 1948-49 was Rs. 890 (120 USD). The company has definitely grown and is still enjoying privileges and exemptions. No one knows the values of the CSITA's assets, and they are estimated at between 3 and 10 billion USD. These are not fairy-tale figures! The CSITA should not take full advantage of the exemption and should be prepared to go through the stringent financial measures and strict administrative standards applicable to for-profit companies.

If and when you see a crime committed by the CSITA, agitate and protest in peaceful manner without taking the law into your hands. Those who fight the evil standing at the forefront and risking their lives must know this rule.

Can a CSI Member Sue the CSITA?

Sec. 241(1) of CA 2013 reads: 'Any member of a company who complains that—(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company … may apply to the Tribunal …' i.e. the national Company Law Tribunal (CA 2013, Sec. 408). Here 'member' and 'subscriber' refer to the 19 members of the CSITA General Body only. Can the 19 adequately represent the 4.5 million? Can 10 directors who are honorary and do not serve full-time manage the vast number of schools, colleges and other institutions? The four dominant ex-officio members, the office-bearers of the CSI can easily subdue any opposition that is sufficiently strong to go to the Tribunal as the total number is small. Hence an ordinary CSI member or subscriber does not enjoy the right to take the company to the tribunal on account of the any violations in those three areas. But the Tribunal can waive those disqualifications for others not included in the 19 members and accept the case for hearing. Sec. 244 says that the Tribunal can waive all or any of the membership requirements so as to enable the members to apply under section 241. The definition of 'member' in sec. 2(55) fits well with for-profit companies, but not for non-profits. So the non-profits will have to depend on the waiver. The waiving and the maintainability of petitions will be hard to achieve unless argued from the floor in a convincing manner. As I mentioned already, two cases against the CSITA filed by members who were not among the 19 were taken up for hearing, and verdicts were passed, although their member-

ships were questioned. This should encourage us to approach the Tribunal seeking redress and justice.

We aim to situate ecclesiology in an inter-disciplinary framework in conjunction with corporate law. We need to gain basic knowledge if not expertise in the laws that govern the body corporate of the church. This book does not seek to cover the entire life-cycle of a corporation. We deal with some key aspects of corporate law from a theoretical perspective with minimal support from case law. The important corporate topics are chosen and they are aligned with the management of church properties and finance. We have to examine the important changes that are taking place in the field of corporate law and bring the administration of the CSITA into conformity with them. Our concern is to see the manner in which section 8 companies ought to function. Also we plead for not awarding rights and privileges which will undermine the efficiency and transparency of companies like the CSITA which has incalculable assets and a high percentage of net worth, turnover and profit. We shall analyse the rest of the features of the Company Act 2013 in the ensuing volume which seeks to bring reform in maintaining managerial accountability.

We began by saying that for the Church's witness and well-being, the Church of South India and the CSI Trust Association are to be kept very closely related although they seem different. For the effective expression of Christian citizenship in India, both are to be made two parts of the same thing though they may seem unrelated. There is a yawning gap between the two, both in theory and practice. To measure the distance between the two, does one have to get a view looking from each side? Bridges are certainly needed so that corporate statutes and provisions seep into the structure of the CSI.

'What do CSI and CSITA think of each other?' we asked. The latter question has more importance as in the last year or so there has been a proliferation of wild thoughts and at times weird interpretations on what

the CSITA is and what the CSI is. Some see the CSITA as a legal body, and the CSI as an illegal body. The former is all that matters, and the latter does not matter! I come across people who even proudly say that there is no CSI and they think that I, as a cassock-man (the most pejorative term for anti-clerical reformers) am an illiterate to believe in the CSI. Most CSI members are kept in total ignorance of the legal side of the CSI's existence and functioning. They are used to holding the Bible, liturgy and hymn books. Now their eyes are opened to see documents like the Memorandum of the Association and Articles of the Association called the CSITA. But they are very small in number!

We live in a corporate world, and corporations feature in all aspects of social, political and economic life both in private and public, businesses of profit and non-profit nature. As the CSITA is a Company limited by guarantee, and there is no share capital or shareholders in the Company, the whole section 'Share Holding Pattern' is not applicable to the Company. Corporate governance stresses the basis for legislative frameworks and regulatory control of companies and for principles and guidelines in the forms of MoA and AoA for efficient board functioning and good conduct. This is in essence the focus of the study rather than viewing corporate governance within a narrow framework of administration and control. Financial management and accounts and bookkeeping aspects of the Corporate Governance will be dealt with in the next part of the research. The CSITA is an incorporated company and it has its own corporate character that we ought to study and understand. It is not like the sec. 8 companies' most popular Reliance and Prudential Foundation, nor is it like an incorporated cricket club in Chennai.

Can Nehemiah of the Sixth Century BCE Teach Us Corporate Governance?

What was corporate governance for the prophet Nehemiah? The passion for reform which Nehemiah showed, the courageous measures he

undertook to rebuild the broken walls of Jerusalem, the dedication he observed to cleanse the temple service, and the wisdom he manifested in reorganising the administration constituted his vocation. Nehemiah showed extraordinary moral courage to 'rebuke' the officials of the temple. He says, 'So I rebuked the officials and asked them, "Why is the house of God neglected?" ' Nehemiah 'warned' those engaged in commercial activities on the Sabbath day. He was a firm and most demanding man in establishing a just community in obedience to the covenant of the Lord.

Nehemiah appointed trustworthy persons in positions to manage the temple resources with justice and equity. As a mark of renewing the covenant with Yahweh he purified the temple, re-established cadres of ministry and restored Sabbath observance. He was a man of conscience as he never claimed the food allowance allotted to him as governor, because such demands would be heavy on his people's resources. He fed the people at his own expense and was not feeding on the people as previous governors did. He redeemed the poor who were under severe debt and his ruling was 'But let us stop charging interest'. He commanded the exploiters to give back to the poor immediately their fields, vineyards, olive groves and houses, and also the interest charged on their loans. Above all, Nehemiah was not a man of prayer acting piously, but a doer and a great inspirer of people to make them to do things for the temple. These are more to the point!

Tobiah, the arch-enemy, capitalizing upon his intimate alliance with Eliashib, the high priest, won a position of authority for himself to be in charge of all the temple chambers stored with treasures and had also acquired a room in the temple complex. Right in the heart of the temple, in the room that was used to store the offering for God, sat Tobiah. Nehemiah reacted to this vehemently and literally threw the interloper out. Can the CSITA governance implement similar measures in the CSI particularly on corrupt persons in positions of higher influence and au-

thority? The CSI is in the hands of the children of former bishops and Moderators who are proving to be worse frauds and corruption-mongers than their fathers.

The Church Administration Must Centre Around Corporate Governance

The introduction of the new Act of 2013 provides the CSITA with an opportunity to make the changes they need to make in the light of the new provisions. There is an essential difference between two kinds of 'bodies': the Church as the body of Christ, community of the faithful and people of God's Kingdom, and the Church as a body corporate, a company, an incorporated legal entity. One cannot be the "alter ego" of the other. We have to be more responsive in dealing with the corporate segment in the life of the Church. How to take a more integrative, strategic approach to the relationship between company and church? There are many ways of doing it. Develop a corporate management framework – shaping churches in areas of internal administration to prepare the next generation to interact with company Act. The challenge is to co-create the values for the church and corporation.

'That there are stringent provisions in the Act to tackle the problem of fraud indicates how serious the problem has been. Now, the stakeholders of a company can assure themselves of good corporate governance practices by the companies. In the event of wrong doings enough weapons are present under law to deal with the issues of Fraud … Implementation of the law should be given more importance, to reduce the occurrence of fraud.'

The CSITA does not know the fabric of corporate governance apart from fulfilling some of the corporate responsibilities, and that too in an erratic and irregular fashion such as the well-delayed submission of balance sheet and financial report to the RoC, failure to conduct the Annual General Body meeting at proper time and unapproved alteration

of the MoA. Where is the talk of governance then? The CSITA is not treated as a legal entity separated from its members or promoters, the basic principle of incorporation. Even this fundamental corporate concept is not practised by the CSITA. Their governance standard is not best attested by the Government regulators, MCA, RoC and IT. There have been inspections and investigations conducted by them with negative reports on the proceedings of the CSITA. How do we educate the CSITA in corporate governance? How can corporate culture be implanted in the CSI?

Misuse of corporate vehicles for illicit purposes has come to the forefront of the governance of the CSITA. A non-profit corporation like the CSITA can be operated as if it were a close profit corporation as the educational institutions and services generate income, and since directors and officers can seize control and run the corporation as if they are the owners.

The corporation as a separate legal entity, which has a will and existence of its own, must be respected by the CSI Synod and the Executive Committee. The members/directors/management personnel of the CSTA should not make fraudulent misrepresentations, indulge in misappropriation of funds, or violate their fiduciary duty through gross negligence. The courts will treat the corporation as a separate entity. It seems fitting that the corporate veil of the CSITA can and should be pierced, although the punishment of piercing the corporate veil of a non-profit corporation will be quite severe treatment on a company like the CSITA. The courts might consider whether the non-profit organization itself should be held liable or whether it would be sufficient to punish the individuals who were committing the abuse. The CSI has failed to recognize corporate formalities, and has been using the company's assets as if they were individuals' or diocesan assets. It is possible to disregard the corporate entity unlike in Salamon's case and find directors or members or officers personally liable for corporate obligations in certain situations. The

court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy. The CSITA is in need of a substantial remedy from the judicial system of our country.

The Grounds for Piercing the Corporate Veil of the CSITA

The MoA and AoA must always be read together. The MoA and AoA of the CSITA do not cohere and agree with each other. There are elements in both which do not connect well. The AoA of the CSITA seems to be modifying what is held by the MoA. 'The Synod of the Church of South India', according to the MoA, does not play a significant role, whereas in the AoA the phrase occurs 15 times finding a pivotal function in a decision-making capacity. The MoA must seek the consent of the Synod of the CSI before selling any of its assets, and its approval when the company is heading for a dissolution. Both seem to be acceptable. But the AoA provides that the CSI Synod will elect members to the CSITA; one third of the members will retire at each meeting of the Synod of the Church; the office-bearers of the Synod assume Ex-officio positions in the General Body as well as in the committee of Management; the Moderator of the CSI Synod will chair all the meetings and the Deputy Moderator will take his place in his absence; the Synod of the CSI has powers to restrict or select the objects of the Association mentioned in the MoA; the Committee of Management can confide its management and administration to other trustees according to the directions from the CSI Synod; and the most stunning declaration in the Articles (no. 17) under the 'General Powers of Committee' is that the Committee shall have full power to do all such acts and things as the Association could itself do but 'subject to any rules and regulations which may from time to time be laid down by the Synod of the Church'. This is totally against the Companies Act, and here is the clear case for an "alter ego" of the CSITA that a body other than the General

Body and the Board should exercise powers over the Committee of Management in as many as nine of its key functions [17(a-i)] on behalf of the company.

The Board has to elect the Chairman, and the Board can remove the Chairman when there are heavy disputes. The Articles appoint the Chairman who represents the CSI Synod, and also the replacement for the Chairman when he is absent during meetings. The government authorities have to decide whether the Articles' stipulation has to be followed at all times. If not, it is likely to be counted as a serious violation of the Companies Act. According to the MoA and AoA, the CSITA does not function as one united incorporated body holding with it all the properties of the mission boards within a single corporate structure.

The Company Acts are our primary sources of reference which means they are direct, authoritative and not influenced by anybody's opinions. The Indian Companies Act 2013 is that body of rules which regulates corporations formed under the Companies Act. 'This Act is the basic statue that is responsible for the incorporation, regulation, privileges, restrictions and regulations applicable to the corporate sector.'[334] There are 29 chapters, 470 sections and 7 schedules in the Companies Act 2013. The Act has been brought up-to-date with the present day corporate law the world-over. The allied regulations to the Companies Act are the specific Rules framed under 26 sections. The Notifications and Circulars that come from time to time effect authorizations and bring changes and additions to the existing rules and interpretation of the Companies Act. Added to this corpus of primary company law are the Amendments (Amendment to Companies Act, 2017), various Forms to be completed by companies (214 of them) relevant to fulfilment of the provisions of each section of the Act, the case law (law that is derived from the decisions issued by judges in the cases before them in court) and Parliamentary debates and publications on various aspects of the

[334] Ramaiya, *Guide to the Companies Act*, vol. I, p. 6.

corporation issues. The Secretary of the CSITA must be well-versed in all these constituents of company law. There is a serious lack of professionalism in the CSITA, and as a result efficiency in administration cannot be maintained. This has created opportunities for corrupt and fraudulent activities.

The Amendments and the new bye-laws of 2016 do not touch the problem of bribery, extortion, cronyism, nepotism, patronage, craft and embezzlement, and there are no 'red flags' or specific measures to prevent them happening in the church and company. The impotency to resist corruption, a quality unworthy of discipleship, drives people to overlook corrupt activities in the church and lends support to and even worship of the corrupt leaders. Such weak and coward minds seek to find fault with those who speak and fight against the corrupt system in the church, and such end up as sycophants to the unjust and fraudulent leaders to pick up the crumbs falling from their tables!

The CSITA must comply with company law, in particular the Companies Acts (principally the Companies Act 2013 and those parts of the Companies Acts 1956 that are still in force). In Britain, in addition to being regulated by the Charity Commission, charitable companies are regulated by Government authorities such as the Registrar of Companies. In India, in addition to the Registrar of Companies, there are Regional Directors and the Ministry of Corporate Affairs who through legislation and statutory provisions govern the companies including the CSITA, one of the sec. 8 companies. In England and Wales, charities are set up as charitable companies limited by guarantee in which the members of the company guarantee to contribute a nominal amount if the company is wound up. Perhaps, the missionaries who were part of first management committee urged the CSITA to follow the same line to be incorporated as 'a company limited by guarantee'. Like in Britain, the company by guarantee has no right to share profits but must use them for the fulfilment of the objects of the company.

The CSITA is not the sole Agent for the CSI as the MoA has stated; it can carry out its work alone or join with 'any person or persons for the Church of South India' (Sec. 3 a). Here in parenthesis it includes 'any Church which may be constituted its legal successor'. We must remember that when the Memorandum was worked out and approved by the Government authorities, the CSI was not in existence. The framers of this Memorandum were perhaps cautious about that future and therefore hinted that the CSITA could join hands with other groups of persons for the sake of the CSI. It is doubtful whether corporate laws of the country would permit an incorporated body such joint activity or shared function with a party not connected with the Indian Companies Act and other regulations.

The MoA Has No Proper 'Object Clause'

Does the MoA pre-suppose the 'Handing Over' of the properties to it? The answer is a polite 'no'. It gives several options to the already existing Trusts, Societies, institutions, organisations and charities [MoA 3 (e) & (h)] to exist as they are, and the CSITA will appoint managers, inspectors, auditors, treasurers, other officials and referees to them in cases of dispute. It will obtain for the properties a separate legal domicile, will enter into any arrangement with any Government or with supreme authorities and will hand over to any person or persons property vested in the Association, or transfer property to any other Trust by creating separate Associations. The MoA has no mandatory clause urging the missionary societies to hand over the properties registered under their names to the CSITA. The following missionary societies: Wesleyan Methodist Trust Association, Methodist Missionary Trust Association, London Missionary Corporation, Basel Mission, Society for the Propagation of the Gospel in Foreign Parts, Church Missionary Society, Church of Scotland Mission, American Arcot Mission, Australian Pres-

byterian Mission, American Madura Mission, etc., which handed over properties owned by them to the CSITA at various stages on the understanding that the CSITA was a "Bare Trust". The point is that the MoA does not envisage this as one of the objects incidental or ancillary to the main object of giving pecuniary support to the Church of South India. There is a vast difference between what the MoA states that its objects are and what happened after Union with regard to handing over the properties. In the reports of the CSITA until 10 years ago, it was stated that the process of converting the properties to the title of the CSITA was not yet completed. There is no update available on this even after 70 years of the CSITA's existence.

The church has doubled in number both church-wise and institution-wise. The documents were written in anticipation of the union of churches as the MoA 3(o) reads: 'Until the inauguration of the Church of South India to act as aforesaid for the Church of India, Burma and Ceylon, the South India United Church and the South India Province of Methodist Church and the Missionary Societies connected therewith in the said area.' It then after a day becomes applicable to the CSI in India. It is difficult to see the MoA being applicable for pre-union and post-union churches as the situation radically changed one day after the registration of the CSITA. It has further changed today, but we still follow the same instruments drawn up 70 years ago from 100-year old material. The geographical and ecclesiastical identities of the churches and their institutions have changed considerably due to formation and bifurcation of the dioceses.

The main object of the CSITA was to promote the objects of the Church of South India and give pecuniary assistance to it. This includes building, maintenance, employees, etc., connected with the Church of South India. As per Section 13 of the Companies Act, 1956 the Object Clause of a co mpany shall be divided into three categories: (i) Main Objects; (ii) Objects incidental or ancillary to the attainment of the main

objects; and (iii) Other objects. The objects as outlined in the MoA do not correspond to this three-fold pattern. Particularly, the "other objects" stand aloof from the main objects.

There are no provisions such as an "Other Objects Clause" in the CA 2013 in the Memorandum of Association which simply means that the objects clause cannot be as broad as possible ranging from horse-racing to textile productions. But the CSITA has an open and stretchable stance as far as the 'objects' are concerned. It has no control over conceiving them, formulating them and judging their validity as it has committed itself to accept whatever the Church indicates and will consider as its objects. Such objects as they are spelled out by the Church will be supported by the Company. But it is the responsibility of the Company to state its objects in clear terms within the rubrics of corporate legislation. As per Section 6 (b) of the Companies Act, 2013, 'Any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to *which it is repugnant* (logically contradictory, inconsistent or incompatible**)** to the provisions of this Act, become or be void, as the case may be.'

The CSITA Is Putting Itself to Death for the Sake of Promoting Objects of the CSI

MoA sec. 3(k): For the purpose of obtaining concessions and privileges, the CSITA can join hands with any Government, authorities, supreme, local, municipal, etc. The sole purpose is to get those benefits for the sake of fulfilling the objects of the Association which are to support and assist the work of the Church of South India.

MoA sec. 3(m) is the height of opportunism. The CSITA can hand over to any corporation, persons or association of persons, property vested in the Association 'if in the opinion of the Association, it will benefit any objects of the Association'. The CSITA is prepared to lose

its properties for the fulfilment of the objects of the CSI! This provision invites opportunities for exploitation of corporate properties.

The CSITA is prepared to split into several Associations. MoA sec. 3(n): 'In case for any part of the said area a separate Association shall at any time be formed for the purpose of holding property in that part of the said area to transfer and vest in such separate Association any property […]' The other sub-sections of sec. 3 of the MoA engage in dealings which are contrary to corporate formalities. The CSITA is one unified company holding properties in its own name, using a common seal and adopting perpetual succession, and it cannot be fragmented and separated. But it is prepared to hand over its properties to other Associations and allow itself to be fragmented.

A Newly Written MoA and AoA for the Present Context of the Church of South India from the Modern Corporate Perspective is the Need of the Hour

There is an urgent need for the constitutions of the CSITA to be totally re-written strictly from a corporate perspective and from the point of view of the Indian Companies Acts, particularly that of 2013. The Government regulatory bodies should either instruct the CSITA to undertake this important task or, as the NCLT has declared, appoint a chief Administrator who with the assistance of experts will work out a new MoA and AoA that reverberate corporate statutes and injunctions. The latter arrangement seems to us the right solution to solve the crisis. The present leadership in the CSI is quite incapable of achieving this for the CSITA.

The Guidelines of 1988 Are Putting the CSITA Management Off Track

In the history of the CSI Synod, from time to time Rules were made by the Working Committee and Executive Committee to manage movable and immovable properties, and the Rules superseded the previous Rules; finally it came in the form of an unofficial document *Guidelines for the Church of South India Trust Association* (1988), a Manual which was known as "the Synod Rules for the Management of Movable and Immovable Properties" prepared by Frederick William, the Administrator of the CSITA. This made the CSITA to deviate from the path of corporate governance and it helped the CSI to function as the "alter ego" of the CSITA. The distinction between the CSITA and CSI members was blurred. We have discussed in chapter 4 the demerits of this document as references to it are found in the CSITA Reports submitted to the CSI Synod meetings every two years. This leads us to the conclusion that the document, unrecognised by the corporate regulatory bodies but recognised by the Synod, is quite illegal in its attempt to stipulate the policies and procedures for the management of finances and properties for the CSITA. Hence the corporate veil should be lifted to see who is really working behind it.

In the Working Committee Minutes, Appendix V, it is written under the heading "Rules for Movable and Immovable Properties". 'These Rules are made under Chapter IX Rule 14 of the Constitution of the Church of South India by the Synod Executive Committee for proper administration, supervision and preservation of movable and immovable properties held by Church of South India Trust Association already in existence and recognised by the Synod for the benefit of the Church of South India in the various Dioceses and Institutions … Such properties shall be used, administered or dealt with in accordance with these Rules

or any modifications thereof or any specific directions given from time to time by Synod Executive Committee.' [335]

The Biennial Report (2010-2012) of the CSITA was presented to the 33rd session of the CSI Synod and has the following paragraph on "Immovable Properties": 'Strict vigilance was kept in the management of immovable properties. Proposals received were thoroughly scrutinized by the Committee of Management in accordance with the CSI Synod Rules for the Management of Movable and Immovable Properties. Approval has been given to the following dioceses for the sale/purchase of immovable properties and also availing the bank loan and bank guarantee during the biennium'. [336]

The MoA, AoA and Companies Act did not play any role in deciding on the legality of the sale. Approval was given by following this process to four dioceses to sell 9 acres of land for a cost of Rs. 13,84,79,145 (about 2 million dollars). Loans were taken from banks by mortgaging properties for Rs. 19,85,00,000 (2.7 million USD). If the Synod Rules *control* and direct the CSITA's activities, they are said to be acting as the CSITA's alter ego. The CSITA provides the legal shield for the persons who are actually controlling the operation. The CSI uses a corporation as a "mere shell" in an attempt to further its own business rather than the business of the corporation. If the members and directors, all of whom are affiliated to the CSI, use the corporation as an instrumentality to do their own church business or to achieve any wrongful gain they may be held personally responsible for the acts done under the shield of corporate veil by applying the doctrine of alter ego. We hope that the SFIO will bring to light more such activities by those who are hiding behind the corporate veil. Let us see more examples.

The CSITA is Distorted in the CSI Website

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[335] *CSI Minutes of the Working Committee & Executive Committee,* 1979, p. 191.

[336] *Church of South India XXXIII Session of the Synod,* p. 2.

The CSI website, in fact, has devoted only a few lines to inform its members about the CSITA. Its contents about CSITA are so outdated as it says, 'Church of South India Trust Association was constituted as a legal holding body of the movable and immovable properties of the Church of South India. The CSI-TA was registered in September, 1947 under Section 26 of the Indian Companies Act 1913 (now Section 25 of the Indian Companies Act 1956) as a Religious and Charitable Company which has no business character and with no profit motive. The properties of the Churches in Union have been transferred to CSITA.'[337] It should be noted that when the CSITA was registered on 26 September 1947, it was not registered as "religious and charitable company". The phrase "religious and charitable" is used in common parlance and it would make easy sense within the Income Tax sector, though not much sense in the corporate sector. It should be remembered that the CSITA is not a mere 'holding body' of all the properties (like a coat stand!) but should manage them in accordance with a corpus of corporate laws. The information sees the CSITA only as a T rust which we contested in stronger terms throughout the chapters in the book. It may have certain duties and responsibilities analogous to Trust but it is not a Trust in itself. The website reads:

'The main objectives of the Trust are:

1. To act as Trustees for the CSI and accordingly to acquire and hold immovable and movable properties for the purpose of the Trust within the territory of India.

2. To aid and further the work of CSI and in particular to assist pecuniarily and otherwise all or any of the Societies, Schools, Colleges, Hospitals, Institutions and other Charities which exist in connection with the said Church.

[337] CSITA, https://www.csisynod.com/csita.php,

3. To act as Trustees for the maintenance of the Church, Bishops, and other workers of the Church.'[338]

We have to wait for the days when this misconception is rooted out and the CSITA begins to be managed as a corporate body. Under the pretext of an 'incorporated body' a Trust is run with its own procedures and guidelines. The CSITA is a strong candidate for the piercing of the corporate veil.

The CSI Synod Meetings and its Committees Rule over the CSITA Matters

In the very first meeting of the CSI Synod held in Madurai in 1948, 10 months after adopting the MoA and AoA at registration, it was resolved that: '… in order to carry out its functions under the Memorandum and Articles of Association, the Synod appoints a Synod Property Committee of eight members and authorises this Committee to issue on behalf of the Synod any directions that may be necessary under the Memorandum and Articles of the Association of the C.S.I. Trust Association.[…] That the Synod Property Committee will exercise general supervision over the property affairs of the Dioceses […] In particular, it will control all property used for inter-Diocesan purposes.'[339] However, it was urged that all properties of the missionary societies were to be transferred to the CSITA. But here is the first time reference to MoA and AoA was made without making use of the contents. Then in the subsequent minutes over the past 70 years, reference to Article 4 was made a few times. In the Fifteenth CSI Synod, 1976, it was accepted that the CSITA was only a bare Trustee and that the CSITA is acting on behalf of the CSI which is the owner.[340] Article 17(a) says that the

[338] CSITA, https://www.csisynod.com/csita.php.

[339] *The Proceedings of the First Synod of the CSI*, 1948, p. 22.

[340] *The Synod Working Committee Minutes*, 1985, p. 95.

members of the Committee of Management are absolute owners of the properties of the CSITA. These contradictions have to be taken seriously in the process of the piercing of the corporate veil.

The Synod Working Committee Minutes, 1977 "C.S.I.T.A. Matters" - 'The Working Committee approved the sale of the above property (in Madras Diocese) and the CSITA was instructed to take necessary action'.[341] The next reference to MoA and AoA is found in the Minutes of the Working Committee which met in 1979 that 'Every Diocesan Council shall make Rules for the management of its finances and properties. *Such Rules shall be in conformity with the law and the Memorandum and Articles of the Church of South India Trust Association.*'[342] This shows that there were some in the Synod committees who were warning the other members to act in accordance with the MoA and AoA. In the eighteenth Synod meeting held on 1982, it was reported: 'However, there are instances of purchases and sale of properties by the Dioceses and Units without prior approval by the Synod Working Committee/CSITA and in accordance with the CSI Synod Rules for management of movable and immovable properties.'[343]

The Synod Working Committee Minutes, 1985 on "CSITA Matters" reads: 'The following properties are to be sold in accordance with Rule II (8) (iii) of the CSI Synod Rules for management of immovable properties […]'[344] Again in the Thirty-second session of the CSI Synod it was reported that the Committee of Management of the CSITA followed Synod Rules for the Management of Movable and Immovable Properties. It is crystal clear as to who and what is controlling and administering the CSITA. Tracing the working of the alter ego gives the court cause to pierce the corporate veil and hold individual members of the

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[341] *The CSI Minutes of the Working Committee,* 1977, p. 23.
[342] (Italics mine) p. 191.
[343] *Minutes and Proceedings of the Eighth Synod,* 1982, p. 166.
[344] *The CSI Minutes of the Working Committee,* 1985, p. 165.

CSITA personally liable for the debts of the corporation. The limited liability status will not protect them as lifting the corporate veil will reveal the real face of the company.

It was the Synod Working Committee which passed rules for the management of the movable and immovable properties on 31 December 1983. They are said to form the guidelines for the CSITA until today, and the CSITA is made to perform a rubber-stamp service. On 'Movable Property' the CSI Synod Rules state, 'All properties, whether movable or immovable, whether used, administered or dealt with by Diocesan Councils or otherwise, shall vest in the Church of South India Trust Association or other Trust Associations already in existence. Such properties shall be used, administered or dealt with in accordance with these Rules or any modifications thereof or any specific directions given from time to time by Synod Executive Committee.'[345]

The CSITA is a Mere Puppet

When the transaction or non-profit structures constitute a "device", "cloak" or "sham", i.e. an attempt to disguise the true nature of the transaction or structure of the company so as to deceive others or third parties or the courts, the courts will not hesitate to "pierce", "lift" or "set-aside" the corporate veil. This is the need of the hour in the case of CSITA as the CSI hierarchies and committees are acting under the cloak of the CSITA. 'Who is controlling the company?' is the question often asked. It is perceived by the public that there is impropriety in the way CSITA is run in the sense of the misuse of the company as a device or façade to conceal wrongdoing. The details of the court cases relating particularly to the SFIO investigation over the CSITA found in the court websites record some of the serious irregularities and mismanagement in the affairs of the company and stress that the true picture of the CSITA

[345] *Guidelines for the Church of South India Trust Association*, 1988, p. 7.

should be revealed. The SFIO investigation, at the time of writing this sentence, is again taken to Chennai High Court for the fourth time to obtain a 'stay' for it. The CSI leaders are acutely aware of the outcome of the Government investigation which will uncover the most corrupt and fraudulent activities that marred the image of Christianity in India. Some of the bishops and lay leaders will be put to shame.

The SC Judgement on the Corrupt Practices of the Tamilnadu Chief Minister Jayalalitha and her Associates: A 'Pulpit Touch' by the Honourable Judges

I was skimming through the Judgement document[346] from the Supreme Court of India on the accumulation of wealth through unfair means over the known sources of income case involving the former Chief Minister of Tamil Nadu, South India and her close friend Sasikala. It was an eye-opening experience for me to read the SC's views, criticisms and observations on corruption in society and on the punishment awarded to corrupt public servants. It contains an extensive survey on Indian Laws/Acts that were enacted and are currently in force to combat corruption in public places committed by public officials particularly those who operate occupying higher levels of power and authority. This analysis along with astute observations by the Supreme Court have much to teach us Christians, particularly those who wield power and influence at the Synod, diocesan and congregational levels. If you read the quotes below (glittering like pearls) through Christian eyes to understand corruption you will spot valuable lessons for learning the art of resisting corruption in the church. They also serve warnings to those who are comfortable with bribery and political corruption in the Church. The oft-repeated concern expressed throughout the Judgement is: 'To

[346] IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION: JUDGEMENT, 14 February 2017, 570pp.

keep a public servant free from corruption and to ensure purity in public life'.

The term 'public servant' is expanded by the SC to include CEOs, Directors and Employees of the Company functioning under the Indian Companies Act 2013 and this is squarely applicable to the Chairman and the directors of the CSITA who are mostly bishops and lay leaders. The Judges said, 'Any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established' needs to be under the scrutiny of the Corruption Prevention Act. Let us apply the statements below to church authorities and administrators both lay and ordained with a view 'to keep a church administrator or minister free from Corruption and to ensure purity in Church life'.

1) Criminal misconduct by a public servant is spelled out thus: "if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."[347]

2) "The scheme of the 1988 Act, thus ensures a stricter legislation to combat and eradicate corruption in public life and takes within its sweep, not only the public servants but also those who abet and conspire with them in the commission of offences, enumerated therein."[348]

3) "Corruption in a civilized society is a disease like cancer, which if not detected in time is sure to afflict the polity of the country leading to disastrous consequences. It was ruled that corruption is like a plague which is not only contagious but if not con-

[347] JUDGEMENT, p. 225

[348] JUDGEMENT, pp. 232-33.

trolled spreads like fire in a jungle. It was proclaimed that corruption is opposed to democracy and social order, being not only anti people but aimed and targeted against them."[349]

4) "It can be stated without any fear of contradiction that corruption is not to be judged by decree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, […] corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered."[350]

5) "In a charge of corruption, expressing its concern against rampant venality by public servant [the court] observed that the malady is corroding like cancerous lymph nodes, the vital veins of the body politics, and the social fabric of efficiency in public service, and demoralizing the honest officers. The need for public servants to devote their sincere attention to the duties of the office was emphasized."[351]

6) "It was observed that the corruption is an enemy of the nation and to track down the corrupt public servants and to punish them is the necessary mandate of the 1988 Act, and as such the purposes of law being either to eliminate public mischief or achieve public good, the classification militates against the same and in a way advances public mischief and protects the crime doer."[352]

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[349] JUDGEMENT, pp. 243-44.
[350] JUDGEMENT, pp. 245.
[351] JUDGEMENT, pp. 260-61.
[352] JUDGEMENT, p. 261.

7) "[…] as corruption is not to be justified in degree. A serious concern was expressed noticing the permeating presence of the malady in the contemporary existence, so much so, that immoral acquisition of wealth visibly has the potential to destroy the morale of the people believing in honesty, destroying societal will to progress, aside corroding the sense of civility and enervating the marrows of governance."[353]

8) "[…] the ambit of Section 165 was wider than that of Sections 161, 162 and 163 of the Indian Penal Codes (IPC) and was intended to cover cases of corruption. It was elaborated that the difference between the acceptance of a bribe made punishable under Section 161 and 165 IPC was that under the former section, the present is taken as a motive or reward for abuse of office, but under the latter, the question of motive or reward is wholly immaterial and the acceptance of a valuable thing without consideration or with inadequate consideration from a person who has or is likely to have any business to be transacted, is forbidden because though not taken as a motive or reward for showing any official favour, it is likely to influence the public servant to show official favour to a person giving such valuable thing."[354]

The FINAL comments come from the Honourable Justice J. Amitava Roy[355] are highly illuminating. He writes, "A few disquieting thoughts that have lingered and languished in distressed silence in mentation demand expression at the parting with *a pulpit touch*."

i) "A growing impression in contemporary existence seems to acknowledge, the all pervading pestilent presence of corruption almost in every walk of life, as if to rest reconciled to the octopod

[353] JUDGEMENT, p. 262.
[354] JUDGEMENT, p. 343.
[355] 7 pages of Supplement at the end of the verdict document JUDGEMNET

stranglehold of this malaise with helpless awe […] Emboldened by the lucrative yields of such malignant materialism, the perpetrators of this malady have tightened their noose on the societal psyche."

ii) "Corruption is a vice of insatiable avarice for self-aggrandizement by the unscrupulous, taking unfair advantage of their power and authority and those in public office also, in breach of the institutional norms, mostly backed by minatory loyalists. Both the corrupt and the corrupter are indictable and answerable to the society and the country as a whole."

iii) "This pernicious menace stemming from moral debasement of the culpables, apart from destroying the sinews of the nation's structural and moral set-up, forges an unfair advantage of the dishonest over the principled, […] It encourages defiance of the rule of law and the propensities for easy materialistic harvests, whereby the society's soul stands defiled, devalued and denigrated."

iv) "Such is the militant dominance of this sprawling evil, that the majority of the sensible, rational and discreet constituents of the society imbued with moral values and groomed with disciplinal ethos find themselves in a minority, besides being estranged and resigned by practical compulsions and are left dejected and disillusioned. A collective, committed and courageous turnaround is thus the present day imperative to free the civil order from the suffocative throttle of this deadly affliction. Every citizen has to be a partner in this sacrosanct mission, if we aspire for a stable, just and ideal social order as envisioned by our forefathers and fondly cherished by the numerous self-effacing crusaders […] pledging their countless sacrifices and selfless commitments for such cause."

Every faithful Christian should sow the seeds of anti-corruption thoughts and actions among the people of the Church as corruption has become a status symbol to secure positions of power and authority. The corrupt should be brought to justice meted out by God, the supreme Judge and by the courts of Law.

Bishop Dyvasirvadam, the Ex-Chairman of the CSITA Is Arrested and Sent to Jail

The Most Rev. Bishop G. Dyvasirvadom, the former Moderator of the Church of South India and the Chairman of the CSITA has been put behind the bars on account of several criminal charges. A court in the city Vijayawada ordered Dyva to be held on judicial remand for two weeks and sent him to prison on 11 December 2018. Dyva filed a bail application last Friday in the court and the court postponed its hearing to 19 December.

The former Moderator of the CSI, held two other top positions in the Church of South India, both as its General Secretary and the Deputy Moderator, apart from being the bishop of the Krishna-Godawari diocese for sixteen years. He was a great manipulator and had mastered the art of having his say in committees. He was a schemer and has won elections for himself and his followers through conspiracy and illegal designs. He was a bishop of 6 dioceses including three richest dioceses of the cosmopolitan cities of Bangalore, Madras and Hyderabad at one time during his tenure as the Moderator. He was the chairman of many committees and boards that managed schools and colleges and controlled the transfer, dismissal and appointment of the employees of those institutions. For two decades he practically ruled the CSI by placing his loyalists/benamis and family members in key positions in the church and keeping away those who might be a challenge or threat to him. He was the law unto himself. He amended the constitution of the church by his

own efforts despite many opposing him, and claimed to have secured approval from two-thirds of the dioceses in order to pass them.

Some of the overseas churches including the Church of England and grant-making bodies gave him red carpet welcomes whenever he visited the UK, Europe and the USA. Nobody can estimate the value of his personal and family assets, and he has allegedly accumulated a tremendous amount of wealth while in office as Chairman of the Church of South India Trust Association. For some, he was 'a god' like the king Agrippa II in Acts of the Apostles ch. 12, in that there were always groups waiting to see him and make peace with him.

The episcopacy and episcopal (corporate) governance have been wholly distorted and brought to the level of utter disrepute by his leadership and, as a result, 90% of the CSI bishops and lay leaders follow his life-style and use his techniques to ascend to and stay in positions of power. There is not a single person to oppose him among the bishops because he has had a hand in the choice of the appointment of bishops in almost all dioceses. Every bishop knew the consequences of opposing him or even criticising him. It will take 20 years or more to dismantle the kingdom of corruption erected by Dyva in the CSI and CSTA.

Dyva's imprisonment was due to the First Investigation Report (FIR) filed with the Police on 13 October 2017 by Mr. B. Yohan of Vijayawada on criminal charges under the Indian Penal Code 403 (dishonestly misappropriates or converts to his own use any movable property), 406 (criminal breach of trust in connection with property), 409 (criminal breach of trust by public servant) and 420 (cheats and thereby dishonestly induces the person deceived to deliver any property to any person). Now the case is handled by the Crime Branch-Crime Investigation Department (CB-CID). Here are excerpts from the leading national dailies reporting the event of the arrest of Bishop Dyvasirvadam.

***The Times of India,* 14 December, 2018**

'The Crime Investigation Department (CID) arrested the archbishop of Church of South India (CSI) G. Dyvasirvadam (68) for his alleged involvement in misappropriation of church funds on Tuesday. The CID officials who have been investigating the case for the last one year and made the arrest at his residence at Governorpet and produced him at a local court which remanded him to a 14-day judicial remand … Another relative of the archbishop, Sudhir Samuel, is also said to be involved in the scam … The CID officials estimate that the scam goes to the tune of several thousand crores (1 crore = 1,50,000 USD) considering the existing irregularities … Dyvasirvadam was first arrested by the CID on January 2018 for an interrogation.'

***The Hindu,* 13 December 2018**

'The investigation into allegations of misappropriation of properties and funds worth several crores of rupees over years at the Church of South India's Krishna-Godavari Diocese, the largest diocese in Andhra Pradesh spanning eight districts, gained momentum with the arrest of the former Moderator (2014) of CSI synod and the Diocese's Bishop (2002-2018) Govada Daivasirvadam (sic).

'Before going to file the charge sheet there is lot more investigation to be done to bring out more facts out of the allegations, Mr. Bhaskara Rao told *The Hindu*.

'Mr. Daivasirvadam and his accomplice Godada Samuel Sudhir, the former secretary of the diocese, and two others were booked under charges of dishonest misappropriation of property, criminal breach of trust, fraudulent destruction of documents and others. The complaint's main accusation was an unauthorised sale of property belonging to CSITA without necessary clearances and permissions.

'The former moderator was accused of selling of various properties including 62 acres of the CSI's prime land in the city worth Rs. 200 crore, five acres of land in Eluru worth Rs. 17 crore and others using benamis from his family and fake link documents. He was also accused of misuse of crores of funds received by the Diocese from foreign countries for years.

'Mr. Daivasirwadam was first questioned by the CID in January. Later in February, the Hyderabad High Court dismissed the petition filed by the prime accused and Mr. Sudhir seeking to quash all proceedings by the CID in the case.

'"The above allegations regarding misappropriation of crores of rupees in different ways taking advantage of their position in CSITA is a serious matter to be investigated into and at this stage the proceedings the case cannot be quashed," the High Court said in the judgment.'

***Matters India Reporter*, 13 December 2018**

'A former moderator of the Church of South India (CSI) has been reportedly arrested and jailed on December 11 by the Crime Investigation Department on alleged charges of corruption and illegal sale of Church properties.

'Bishop Govada Dyvashirvadam is the former bishop of the Protestant Church's Godavari-Krishna diocese.

'The CID questioned the 68-year-old prelate several times about illegal selling of CSI lands in Eluru in Andhra Pradesh and for keeping the sale proceeds for himself.

'A large number of CSI members have been fighting against him for the last few years for his alleged corrupt practices. The prelate has denied all the allegations and claimed some CSI members never liked him holding important position in the Church.'

***The Indian Express*, 15 December 2018**

'Three days after the Church of South India (CSI) Bishop Govada Dyvasirvadam was arrested and produced in court for misappropriating church funds to the tune of hundreds of crores, Crime Investigation Department (CID) officials have reportedly sought permission of the local court to transfer him to their custody for further investigation.

'During their investigation, officials found that there were irregularities in selling away of the CSITA's land, misuse of deposits from the shop lease holders of the commercial complex which was constructed by the association in Suryaraopet, and misuse of foreign funds.'

'"Dyvasirvadam needs to be interrogated thoroughly based on the allegations levelled against him. Even the High Court observed that committing financial frauds and taking advantage of his position in CSITA was a serious offence. We are expecting the role of bigwigs in the church-funds scam," said a senior official on the condition of anonymity'. [356]

Bail applications for release from prison were made twice from Dyvasirvadam's side but were rejected by the court as the CB-CID listed the acts of the illegal sale of lands and other misappropriations committed by him and submitted a statement to the court with these words, 'Bishop Govada Daivasirwada (Accused no. 1) swallowed crores of

[356] The readers are asked to read also the following articles published in Virtueonline https://www.virtueonline.org/
"BANGALORE, India: Office of the Church of South India Moderator Turns Pontifical" – 1 June 2016.
"CHENNAI: Church of South India Moderator Arrested for Embezzling $2.5 million" – 25 January 2018.
"Church of South India Leaders Accumulate Wealth Through Corrupt Practices" – 3 December 2018.
"Former Church of South India Moderator Arrested and Jailed on Corruption Charges" – 11 December 2018.

rupees [Rupees one crore is app. USD 150,000] … which were not deposited in the church bank accounts. These (sic) money is shared by him and his followers.' The Judge therefore refused to grant bail because he judged that there was every chance Dyvasirvadam tampering with the evidence and influencing the material witnesses. Dyvasirvadam remains in judicial custody.

Corruption has a Broader Footing in the Church

Corruption is often the door through which persons of low integrity and no Christian commitment enter into the corridors of power in the church, through which they occupy positions of authority and influence, through which illegal sale of Church properties takes place, and through which all kinds of illicit activities in financial management are committed. Such a system corrodes the instincts for integrity and holy living and deadens the conscience, making one comfortable with falsehood under the pretext of truth. The churches which run schools, colleges and other institutions are subjected to practices of graft and bribery which mar the Christian witness of the church. Elections and selections for bishoprics in the Church are bought and sold for large sums of money. The high-level committee members prefer persons who have a dubious history of character and performance as candidates for positions of power. It is they who can side-step rules and create ways of rewarding loyalist and coterie behaviours. Another acid test for corruption is that in a corrupt church, whistle-blowers acting from the best of motives often find that they are seen as the problem, being side-lined, discredited, and even punished for speaking out, enough to dissuade anyone from doing the right thing. This is the plight of the CSI. If Dyva is convicted of all the charges of corruption and fraud levelled against him, he should be regarded as 'the father of corruption in the CSI and the CSITA'.

The biggest corruption the book aims to identify is that under the mask of an incorporated company, a Trust is run in which the bishops and the Synod hierarchy have a free hand over the assets of the church as if they were given legal title to the trust properties. Under the pretext of an incorporated company it functions as an agent to CSI to serve its pecuniary interests and needs. They have created their own document of rules and regulations in the form of *Guidelines for the Church of South India Trust Association* (1988) which is not worked out on the basis of Companies Acts. The document makes the CSI as the 'alter ego' of the CSITA and legitimates an Attorney concept which is repugnant to the letter and the spirit of Company management. This has led to a 'conflict of interest' situation when the chief Attorney, the bishop, exercises an official power, duty or function which provides an opportunity to further his private interests or those of his relatives or family members or friends improperly and illegally. The Attorney system followed by the CSITA provides a recipe for corruption and exploitation as it made people to get accustomed to the notion that the managerial system of the CSITA has a central head represented by bishops of each diocese, the units of the CSITA.

The episcopal doctrine of bishops as heads of the religious body, the Church of South India, is automatically transfused into the structure of the management of the CSITA which ought to be determined by and decided on the basis of Company regulations. The doctrine of ecclesiastical Corporation Sole as it is practised by the CSITA cannot find justification in the Indian Corporate Laws. A bishop, as a spiritual head, can act at the church congregational level as a 'karta' just like the head in a joint family system. But the same role of 'one individual who shall head such matters and hold decision making powers' cannot be assumed in the property and financial management matters which should come under the statues and provisions of Companies Acts. The 'karta' cannot hold supreme managerial and alienation powers over the rights of the

property though he/she need not be entirely kept away from the dealings and ventures of the CSITA.

The CSITA can re-write its MoA and AoA so that inter alia the Moderators and Deputy Moderators and other church officials do not become automatically ex-officio members of the Board of Directors of the CSITA. They should compete for their places on the Board along with other qualified men and women based on their merits and qualification to manage Company affairs. They ought to bring with their theological training the necessary expertise to meet the requirements for establishing corporate governance with truth and integrity. The church under the leadership of the bishops can be the faithful agent to fulfil the objects of the Company with spiritual discipline and vision.

BIBLIOGRAPHY

A Review of Charities Administration in India. New Delhi: The Planning Commission, Govt. of India, 2004.

Arangaden, A. J. *Church Union in South India: Its Progress and Consummation*, Mangalore: Basel Mission Press, 1947.

Avatar Singh. *Company Law.* 16th ed. Lucknow: Eastern Book Company, 2016.

Balouziyeh, John M. B. *A Legal Guide to United States Business Organizations. The Law of Partnerships, Corporations and Limited Liability Companies*, 2nd ed., Berlin: Springer Verlag, 2013.

Borg, M. *Jesus: Uncovering the Life, Teachings, and Relevance of a Religious Revolutionary*. San Francisco: Harper Collins, 1989.

Buckland, P. L. The Indian Companies Act VII of 1913. Calcutta: Thacker, Spink & Co., 1916.

Chandratre, K. R. *Bharat's Practical Guide to Memorandum of Association & Articles of Association Including Incorporation of a Company.* New Delhi: Bharat Law House, 2006.

Chaturvedi S. K. et.al., "An Analysis of Section 08 Companies in India", International Journal of Innovative Science, Engineering & Technology, Vol. 2 Issue 12, December 2015, pp. 349-50.

Chopra, D. S. and N. Arora. *Company Law: Piercing the Corporate Veil.* Kolkatta: Eastern Law House, 2013.

Companies Act, 2013 and Rules & Forms with Concise Commentary and Referencer. 5th ed. Gurgaon: Wolters Kluwer (India) Pvt Ltd, 2017.

Company Law, Lucknow: Eastern Book Company, 2016.

*Corporate Law Referencer***.** 3rd ed. Gurgaon: Lexis Nexis, 2017.

Davies, P. L. *Gower and Davies' Principles of Modern Company Law***.** London: Sweet & Maxwell, 2003.

Eller, H. "Corporate Governance in Alpine Clubs – a Must Have?" *Journal of Business and Economics,* May 2014, Volume 5, No. 5, Academic Star Publishing Company, 2014, pp. 747-757.

Garratt, B. *Thin on Top: Why Corporate Governance Matters and How to Measure and Improve Board Performance*. London: Nicholas Brealey Publishing, 2003.

Guide to Memorandum, Articles and Incorporation of Companies. 6th ed., Haryana: LexixNexis, 2016.

Henn H. G. & J. H. Boyd, "Statutory Trends in the Laws of Nonprofit Organizations", *Cornell Law Review*, vol. 66, August 1981, pp. 1104-1126.

Jahanbegloo, R. *The Disobedient Indian: Towards a Gandhian Philosophy of Dissent.* New Delhi: Speaking Tiger Publishing PVT Ltd. 2018.

Jai Lal. 'Interpretation of Law of "Trusts"', in S. Krishnamurthi Aiyar, *Commentary on the Indian Trusts Act.* Rev. by S. K. Sarvaria. 9th ed., Gurgaon: Universal Law Publishing, 2017.

Kapoor, G. K. and S. Dhamija. *Taxman's Company Law: A Comprehensive Text Book on Companies Act 2013.* 20th ed. New Delhi: Taxman Publication, 2017.

Krishnamurthi Aiyar. S. *Commentary on the Indian Trusts Act Including Model Trust Deeds and Forms.* Revised by S. K. Sarvaria *et.al.* 9th ed. Gurgaon: Lexis Nexis, 2017.

OECD Principles of Corporate Governance, Paril: OECD, 2004.

Radhakrishnan, S. *East and West in Religion*. London: George Allen & Unwin Ltd, 1958.

Ramaiya, A. *Guide to the Companies Act Providing Guidance on the Companies Act. 2013.* Vol. 1, 2 & 3, 18th ed. Gurgaon: Lexis Nexis, 2015.

——. *Guide to the Companies Act Providing Guidance on the Companies Act. 2013: Consolidated Table of Cases & Subject Index and Additional reference Material.*18th ed. Gurgaon: Lexis Nexis, 2015.

——. *Guide to the Companies Act Providing Guidance on the Companies Act. 2013.* Appendices 1 & 2. 18th ed. Gurgaon: Lexis Nexis, 2015.

——. *Guide to the Companies Act Providing Guidance on the Companies Act, 2013: Free Supplement.* 18th ed. Gurgaon: Lexis Nexis, 2015

Satheesh Kumar, T. N. *Corporate Governance,* New Delhi: Oxford University Press, 2010.

Sealy, L. S. "The Director as Trustee", *Cambridge Law Journal*, April 1967.

Siebart, P & C. Reichard. "Corporate Governance of Nonprofit Organizations", in *Future of Civil Society: Making Central European Nonprofit-Organizations Work*, Wiesbaden: VS Verlag für Sozialwissenschaften, 2004.

Taxmann's Companies Act with Rules. New Delhi: Taxmann Publications, 2018.

Taxmann's Guide to Companies (Amendment) Act 2017. New Delhi: Taxmann Publications, 2018.

The Constitution, Canons and Rules of the Church of India, Burma, and Ceylon, Calcutta: G. E. Tucker, 1930.

The Constitution of the Church of South India, Chennai: The Church of South India Synod, 2003.

The Indian Companies Act, 1882. Madras: Law Printing House, 1910.

Tricker, B. *Corporate Governance: Principles, Policies, and Practices.* International 3rd ed. Oxford: Oxford University Press, 2015.

Viraraghavan, R. *Bhandari and Makheeja Guide to Memorandum, Articles and Incorporation of Companies.* 6th ed. Gurgaon: Lexis Nexis, 2016.

The Minutes & Reports

SIUC Minutes of the Sixth Assembly, 1917.

SIUC Minutes of the Seventh Assembly, Mysore: The Wesleyan Mission Press, 1919.

The Wesleyan Methodist Church: Thirty Fourth Report of the South India Provincial Synod, Mysore: Wesleyan Mission Press, 1928.

The Proposed Scheme of Church Union, 1932 edition, *Appendix B.*

Proposed Scheme of Union, seventh edition (revised), Madras: CLS, 1943.

"The 20th Session of the Joint Committee", Madras Diocesan Magazine, August, 1947.

A Report of the Joint Committee on Church Union in India, June, 1947, Nagercoil: The London Mission Press.

Church of South India: Minutes of the Proceedings of the First Synod, Madras: Diocesan Press, 1948.

Church of South India: Fifth Synod: Minutes of the Proceedings, 1956.

Church of South India: Sixth Synod: Minutes of the Proceedings, 1958.

Church of South India: Eighth Synod: Minutes of the Proceedings, 1962.

Minutes of the Ninth Synod, 1964.

Minutes of the Tenth Synod, 1966.

Church of South India: Minutes of the Proceedings of the Tenth Synod, 1966.

CSI: Minutes of the Proceedings of the Twelfth Synod, 1968.

Minutes of the Proceedings of the Eleventh Synod, 1968.

"Church of South India Trust Association to the Synod 1970", *Church of South India: Minutes of the Proceedings of the Twelfth Synod* – 1970.

Minutes of CSI Twelfth Synod, 1970.

Minutes of the Executive Committee, 1971.

Church of South India: Minutes of the Working Committee & Minutes of the Executive Committee, 1971.

CSI: Minutes of the Proceedings, 1972.

CSI: Minutes of the Proceedings of the Synod, 1974.

CSI Minutes of the Working Committee, 1977.

CSI: Sixteenth Synod: Minutes of the Proceedings, 1978.

CSI: Minutes of the Working Committee, 1979.

CSI: Minutes of the Working Committee, 1979.

Church of South India: Seventeenth Synod Minutes of the Proceedings, 1980. Madras: Diocesan Press, 1980.

CSI Eighteenth Synod: Minutes of the Proceedings, Madras: Diocesan Press, 1982.

Minutes of the Church of South India Nineteenth Synod, 1984.

Minutes of the Working Committee, 1985.

Church of South India: XXI Synod: Minutes of the Proceedings, 1988.

Church of South India: XXII Synod: Minutes of the Proceedings, 1990.

Church of South India: Thirty-Third Session: Minutes of the Proceedings, 1992.

Church of South India: Minutes of the Executive Committee, 2004.

Church of South India: XXX Synod: Minutes of the Proceedings, 2006.

Church of South India: XXXI Synod: Minutes of the Proceedings, 2008.

Church of South India Trust Association: Standalone Financial Statements for period 01/04/2015 to 31/03/2016.

Webliography

"Active Trust", https://www.investopedia.com/terms/a/active-trust.asp#ixzz5ICp6lvNX.

"Agent", www.businessdictionary.com/definition/agent.html

"An Introduction to Governance", https://knowhownonprofit.org/governance/getting-started-in-governance/getting-started-in-governance-1

Annual Report, Ministry of Corporate Affairs, 2017-18.

"AntiCorporate Social Responsibility", http://anticsr.com/social-business-criticism/

Atkinson, S. "https://charitycommission.blog.gov.uk/2017/07/13/the-new-charity-governance-code-essential-reading-for-all-trustees/

Balram, G. "'Trust' and 'Body Corporate'" http://corporatelawcorpus.blogspot.com/2010/03/can-trust-under-indian-trusts-act-1882.html

"Before the Company Law Board", http://www.watchout investors.com/Press_Release/clb/CLB-227.PDF.

"Best Practices: Nonprofit Corporate Governance", https://www.mwe.com/en/thought-leadership/publications/2004/06/best-practices--nonprofit-corporate-governance.

Bhanu, P. B. "What is Constitutional Morality?", http://www.india-seminar.com/2010/615/615_pratap_bhanu_mehta.htm.

Carter, E. "Top 15 N on-profit Board Governance Mistakes" http://charitylawyerblog.com/2009/10/05/top-15-non-profit-board-governance-mistakes-from-a-legal-perspective/#ixzz5Oannf6l

"Characteristics of a Company", http://www.company-formation.co.in/characteristics-of-a-company.php

"Companies Auditor Report Order (CARO) Rules, 2016", http://icmai.in/upload/Students/Supplementary/CARO-2016.pdf

"Corporation Sole", https://www.thefreedictionary.com/Corporation+sole

"Corporate Governance and the Financial Crisis: Key Findings and Main Messages, June 2009", https://www.oecd.org/corporate/ca/corporategovernanceprinciples/43056196. pdf,

"Corporate Governance Redefined: The Sarbanes-Oxley Act of 2002 and Related Rulemaking", https://corporate.findlaw.com/finance/corporate-governance-redefined-the-sarbanes-oxley-act-of-2002.html.

"Corporate Governance in India – Past, Present & Future by Sonali Soni", http://indiacsr.in/corporate-governance-in-india-past-present-future-by-sonali-soni-top-prize-winner-article/

"Corporate Governance: Clause 49 and Companies Act 2013 Provisions". https://www.gktoday.in/academy/article/corporate-governance-clause-49-and-companies-act-2013-provisions/.

DAIMLER CO LTD V C ONTINENTAL TYRE AND RUBBER COMPANY (GREAT BRITAIN) LIMITED: HL 1916, http://swarb.co.uk/daimler-co-ltd-v-continental-tyre-and-rubber-company-great-britain-limited-hl-1916/

"Daimler_Co_Ltd_v_Continental_Tyre_and_Rubber_Co_(GB) Ltd", https://en.wikipedia.org/wiki/Daimler_Co_Ltd_v_Continental_Tyre_and_Rubber_Co_(GB)_Ltd

"Defining Non-profit Sector in India", http://ccss.jhu.edu/wpcontent/uploads/downloads/2011/09/India_CNP_WP12_1993.pdf.

"Difference Between Trust and Company", http://www.differencebetween.net/business/difference-between-trust-and-company/#ixzz5DnCO7Xg2.

Dibra, R. "Corporate Governance Failure: The Case Of Enron And Parmalatp". https://pdfs.semanticscholar.org/90a2/ea06 1926e898edf50c598d77210a7fd70d7f.pdf

"Exemptions to companies licensed u/s Section 8 of CA 2013", https://www.aubsp.com/exemptions-to-section-8-non-profit-companies/

Furtado, R. "Decoding the Entrenchment Clause as Provided by the Companies Act, 2013", https://blog.ipleaders.in/decoding-entrenchment-clause-provided-companies-act-2013/

"G20/OECD Principles of Corporate Governance, 2015", http://www.businessdictionary.com/definition/stakeholder.html.

Gandhi, S. "Gaps in GAAPS: Issues in non-profit accounting and reporting in India", http://vslir.iima.ac.in:8080/xmlui/bitstream/handle/11718/6278/2005-03-03sgandhi.pdf?sequence=1&isAllowed=ypp

Garcia, M. "Importance of Corporate Governance in a Nonprofit Organization" https://smallbusiness.chron.com/importance-corporate-governance-nonprofit-organization-62533.html.

"Govt forms committee to strengthen SFIO", http://zeenews.india.com/news/nation/govt-forms-committee-to-strengthen-sfio_272533.html

https://indiankanoon.org/doc/1709862/.

https://indiankanoon.org/doc/58559855/.

https://indiankanoon.org/doc/1038148/.

https://indiankanoon.org/doc/388605/.

https://indiankanoon.org/doc/34523/.

https://indiankanoon.org/doc/34523/.

https://indiankanoon.org/doc/1038148/.

https://indiankanoon.org/doc/1001559/.

http://kanoon.nearlaw.com/2018/01/08/doctrine-ultra-vires/

https://indiankanoon.org/doc/197209950/

https://indiankanoon.org/doc/134852828/

"IN RE H R HARMER LTD: CA 1958", https://swarb.co.uk/in-re-h-r-harmer-ltd-ca-1958/.

"India: Corporate Governance Framework In India", http://www.mondaq.com/india/x/456460/Shareholders/Corporate+Governance+Framework+In+India

"India: Update On Companies Act, 2013 - Exemptions To Non-Profit Companies", http://www.mondaq.com/india/x/504434/Securities/Update+On+Companies+Act+2013+Exemptions+To+ NonProfit+Companies

Jaitley, A. "Over 10 lakh active unlisted private companies exist" thttp://timesofindia.indiatimes.com/articleshow/62294178.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Kumar, R. "Memorandum and Articles of Association – Meaning, Relationship", https://lawjugaad.com/memorandum-and-articles-of-association-meaningrelationship/

"Laws Applicable To A Public Charitable Trust In India",https://blog.ipleaders.in/laws-applicable-public-charitable-trust-india/

"Legal Entity", http://www.businessdictionary.com/definition/legal-entity.html

"Lifting of the Corporate Veil", http://www.ckadvocates.co.ke/2013/10/lifting-of-the-veil-principle/

"List of Companies Incorporated for Charitable Purposes", http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Section25_Companies.pdf

MCA Notifications-Exemptions, Relaxations to Section 8 Licensed Companies with Charitable Provisions of the Companies Act, 2013 (06-06-2015)" https://abcaus.in/companiesact2013/

exemptions-to-section8-license-charitable-objects-companies-mca-notification.html

"Memorandum of the Association", https://www.lawteacher.net/free-law-essays/business-law/memorandum-of-association-companies-act-1956-business-law-essay.php

Monthly Information Bulletin, Ministry of Corporate Affairs, vol. 8, June 2018.

"NGO Network in India", http://www.ngosindia.com/resources/ngo_registration1.php.

"Non-Governmental Organizations and Civil Society Engagement in World Bank Supported Projects: Lessons from OED Evaluations", http://lnweb90.worldbank.org/OED/OEDDocLib.nsf/DocUNIDViewForJavaSearch/851D373F39609C0B85256C230057A3E3/$file/LP18.pdf.

"Nonprofit Corporate Governance: The Board's Role", https://corpgov.law.harvard.edu/2012/04/15/nonprofit-corporate-governance-the-boards-role/

"Non-Profit Organisation", https://en.wikipedia.org/wiki/Nonprofit_organization.

"OECD Principles of Corporate Governance: Sarbanes-Oxley Act (2004)", https://www.ey.com/Publication/vwLUAssets/EY-sebi-clause-49-and-companies-act-13-a-comparison/$FILE/EY-sebi-clause-49-and-companies-act-13-a-comparison.pdf.

"Oppression and Mismanagement under Companies Act, 2013", https://taxguru.in/company-law/oppression-mismanagement-companies-act-2013.html

Pandey, A. "Regulatory Framework for Corporate Governance in India", https://blog.ipleaders.in/corporate-governance/

Pandey, T. N. "Religion: Why Differently Construed for the Purposes of Company Act, 2013 and Income Tax Act, 1961?",

"Piercing the Corporate Veil", https://en.wikipedia.org/wiki/Piercing_the_corporate_veil

"Religion under Constitution and Related Laws", http://shodhganga.inflibnet.ac.in/bitstream/10603/1936/8/08_chapter%203.pdf.

"Report of the Committee on The Financial Aspects of Corporate Governance", December 1992, https://ybumrepil.tk/muwykghornumbgj.php

"Reverse piercing of corporate veil-an unemployed phenomenon in India", http://corporatelawreporter.com/2017/07/12/reverse-piercing-of-corporate-veil-an-unemployed-phenomenon-in-india/.

"Salomon v. Salomon & Co Ltd [1897] AC 22", https://www.trans-lex.org/310810/_/salomon-v-salomon-co-ltd-%5B1897%5D-ac-22/

"Section 8 Company – Old Section 25 C ompany", https://www.indiafilings.com/learn/section-8-company/

"Serious Fraud Investigation Office opens probe into Protestant church body after complaints of discrepancies", //economictimes.indiatimes.com/articleshow/53106502.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

"So you think you can get away with fraud", //economictimes.indiatimes.com/articleshow/54749482.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, accessed on 21 June 2018.

Sullivan, J. "The role of corporate governance in fighting corruption", https://www2.deloitte.com/content/dam/Deloitte/ru/Documents/finance/role_corporate_governance_sullivan_eng.pdf.

Surbhi, S. "Difference Between Memorandum of Association and Articles of Association", https://keydifferences.com/difference-

between-memorandum-of-association-and-articles-of-association.html

"The Cadbury Report 1992: Shared Vision and Beyond", http://www00.unibg.it/dati/corsi/900002/79548Beyond%20Cadbury%20Report%20Napier%20paper.pdf.

"The Companies Auditor's Report Order – CARO 2016", https://blog.saginfotech.com/companies-auditors-report-order-caro-2016

"The Doctrine of Separate Legal Entity", https://writepass.com/journal/2016/11/the-doctrine-of-separate-legal-entity-a-case-of-salomon-vs-salomon-co-ltd/.

"The Doctrine of Separate Legal Entity: A Case of Salomon Vs. Salomon Co. Ltd.," https://writepass.com/journal/2016/11/the-doctrine-of-separate-legal-entity-a-case-of-salomon-vs-salomon-co-ltd/

"The New Provisions in Companies Act 2013, For Protecting Rights of Stakeholders", http://shodhganga.inflibnet.ac.in/bitstream/10603/183412/6/chapter%204.pdf

The Report of the Companies Law Committee, February 201 http://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf

"The Trust Concept", http://catalogue.pearsoned.co.uk/assets/hip/gb/hip_gb_pearsonhighered/samplechapter/panesar_C02.pdf

"Top 15 Non-profit Board Governance Mistakes", http://charitylawyerblog.com/2009/10/05/top-15-non-profit-board-governance-mistakes-from-a-legal-perspective/

"Trust Company" Wikipedia. https://en.wikipedia.org/wiki/Trust_company

"'Trust' and 'Body Corporate'", Corporate Law Corpus, 2010, http://corporatelawcorpus.blogspot.com/2010/03/can-trust-under-indian-trusts-act-1882.html.

"Trust Company", https://www.investopedia.com/terms/t/trustcompany.asp#ixzz5Huh7y.

"Trust company", Encyclopaedia Britannica. https://www.britannica.com/topic/trust-company

"Trust Company" Wikipedia. https://en.wikipedia.org/wiki/Trust_company

"Trusts", http://www.totalserve.eu/Assets/Images/uploadedContent/CMS/documentsImages/informationsheetno36a1460443228.pdf.

"What is a Corporate Trustee", https://www.publictrust.co.nz/business/cts/what-is-a-corporate-trustee.

"What is Governance?", https://tamayaosbc.wordpress.com/2014/08/21/what-is-governance/

"What is the Procedure to Create a P ublic Trust in Tamilnadu", http://www.lawyersclubindia.com/experts/What-is-the-procedure-to-create-a-public-trust-in-tamilnadu--244626.asp

8

APPENDICES

THE INDIAN COMPANIES ACT, 1913

MEMORANDUM OF ASSOCIATION OF
THE CHURCH OF SOUTH INDIA TRUST ASSOCIATION

1. The name of the Company is 'THE CHURCH OF SOUTH INDIA TRUST' association

2. The Registered Office of the Association will be situated in the State of Madras.

3. The objects for which the Association is established are:

(a) To act and allow its name to be used as Trustee or Agent whether alone or jointly with any person or persons for the Church of South India (which expression shall where the context admits include any Church which may be constituted its legal successor) and accordingly to acquire by all lawful means immovable and movable property and to apply both capital and income thereof and the proceeds of the sale or mortgage thereof for or towards all or any of the objects hereinafter specified, within the territories of India.

(b) To aid and further the work of the Church of South India in those parts of India where the Church of South India may function (hereinafter and in the Articles of Association called the said area) and for that purpose to do and carry out or assist in doing or carrying out all such matters and things as are likely to promote the objects of such Church and in particular to assist pecuniarily or otherwise all or any of the societies, clubs, trusts, organizations, schools, colleges, ashrams, hostels,

boarding houses, hospitals, dispensaries, industries, homes, refugees and other charities now existing or hereafter to exist in connection with the said Church within the said area whether the same are confined to the said area or not. The Association shall not act outside the said area.

(c) To acquire sites for buildings and to build alter or enlarge such buildings and to maintain and endow churches, chapels, churchyards, burial grounds, schools, colleges, ashrams, hostels, boarding houses, hospitals, dispensaries, church and mission halls, prayer houses, residences for ministers, doctors, schoolmasters and schoolmistresses and other workers, refugees, homes, industrial establishments and other buildings to be used in connection with the work of the said Church within the said area.

(d) To act as trustee for the maintenance of bishops, presbyters, deacons, pastors, teachers, evangelists, catechists, doctors, nurses, and other workers of the Church within the said area and for the relief, provident funds or pensions, for such persons, their widows and families.

(e) To act as or to exercise any power which may be confided to the Association of appointing managers, treasurers, trustees, auditors, inspectors, examiners or other officials of any such societies, institutions, trusts, organizations and charities as are referred to in paragraph (b).

(f) To accept propenyto beheld by the Association (1) for the general purposes of the Association or (2) on special trusts, either as original trustee or as new trustee of a trust already existing, or (3) as bare or passive trustee without undertaking the mana.gement or administration of such propeny.

(g) To nominate persons to act as trustees for the Association for any of its purposes.

(h) (h)To appoint referees in relation to any disputes affecting any such societies, institutions, trusts, organisations, and charities as are referred to in paragraph (b).

(i) To appoint and employ and pay agents for any of the purposes of the Association.

(j) To incorporate or register the Association or its title deeds, if necessary, in any other pa.rt of India or in any Indian State in which the Association may from time to time acquire or hold or contemplate acquiring or holding property and to obtain for it a legal domicile in any pan of the said area.

(k) To enter into any arrangement with any Government or with authorities supreme, local, municipal or otherwise in pursuance of the objects of the Association and to obtain from any such Government or authority all rights, concessions and privileges that may seem conducive to the objects of the Association or any of them.

(l) To sell, mortgage, charge lease, dispose of, exchange and otherwise deal with any property of or held by the Association in any manner authorised by law with such consent (if any) as may be by law required and in accordance with such rules and regulations as may from time to time be laid down by the Synod of the Church of South India.

(m) To hand over to any corporation, persons or association of persons, property vested in the Association either for its general purposes or on special trusts which permit of such handing over, if in the opinion of the Association, it will benefit any objects of the Association or of any such special trust as aforesaid.

(n) In case for any part of the said area a separate Association shall at any time be formed for the purpose of holding property in that part of the said area to transfer and vest in such separate Association any property relating to trusts administered in that part of the said area as may be considered suitable.

(o) Until the inauguration of the Church of South India to act as aforesaid for the Church of India, Burma and Ceylon, the South India United Church and the South India province of the Methodist Church and the Missionary Societies connected therewith in the said area.

(p) To pay out of the funds of the Association or out of any particular part of such funds all expenses of, or incidental to the formation and management of the Association of administering any special trust or otherwise carrying out any of the foregoing objects, including the payment of salaries to persons employed.

(q) (q) To do all such other lawful acts and things as are incidental or conducive to the attainment of the above objects.

4. The income and property of the Association whencesoever derived shall be applied solely towards the promotion of the objects and purposes of the Association as set forth in this Memorandum and no

portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Association pr ovided that nothing herein contained shall prevent the payment in good faith of our-of-pocket expenses or of remuneration to any officers or servants of the Association or to any member thereof or other person in return for services rendered to the Association or to any of the objects for which t he Association is established. Provided further that no member of the Council of management or of the governing body of the Association shall be appointed to any salaried office or to any office of the Association paid by fees, and that no remuneration shall be given by the Association to any member of such Council or governing body except repayment of out-of-pocket expenses and interest on money lent or rent for premises demised to the Association.

5. The fourth paragraph of this Memorandum is a condition on which a licence is granted by the Goverment of the Association in pursuance of section 26 of the Indian Companies Act, 1913.

6. The liability of the members is limited but if any member of the Association receives any dividend, bonus or other profit in contravention of paragraph *4* of this Memorandum his liability shall be unlimited.

7. Every member of the Association undertakes to contribute to the assets of the Association in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Association contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories among themselves provided that such amout does not exceed Rs. 15 or in the case of hisliability becoming unlimited such amount as may be required in pursuance of the last preceding paragraph.

8. If,upon the winding up or dissolution of the Association there shall remain any surplus after the satisfaction of all its debts and liabilities, the same shall not be paid to or distributed among the members of the Association but shall be given or transferred to or applied to some other institution or institut ions, having objects similar to the objects of the Association or to some one or more of the charitable objects of the Association to be determined by a majority of the members of the Association, voting at a meeting duely convened at or before the time of dissolution and the rafter approved by the Synod of the Church of South India, or in default thereof by such Judge of the High Court of Madras or such other Court as may have or acquire jurisdiction in the matter.

9. True accounts shall be kept of the sums of money received and expended by the Association, and the manner in respect of which such receipt and expenditure take place and of the property credits and liabilities of the Association and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations for the time being of the Association these accounts shall be open to the inspection of the members. Once at least in every year the accounts of the Association shall be examined and the correctness of the balance sheet ascertained by one or more properly qualified auditor or auditors.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of the Memorandum of Association.

Names addresses and Descriptions of Subscribers	Names, Addresses and Descriptions of Witnesses
1. Lewis J. Thomas, Ordained Minister of Religion. *Secretary-Treasurer, London Missionary Society, India, 18, Lavelle Road, Bangalore.*	C. E. George, *Manager, C.L.S. Press, St, Marks Road, Bangalore.*
2. P. K. Monsingh, Wallajah Road, Woriur Trichinopoly. *Headmaster, Board High School, Musiri, Trichinopoly.*	V. Krishnamurthi, *Assistant, Board High School, Musiri, Trichinopoly District.*
3. Leslie D. Miller, High Court Building, Madras, *Solicitor.*	R. Malvenan, *Manager, South Indian Export Co., Ltd.*
4. C. J. Lucas, Teacher, 57, *Tanah Street, Purasawalkam, Madras.*	C. S. Balraj, *Priest-in-Charge, St Paul's Church, Vepery, Madras.*
5. A. M. Payler, Minister of Religion, Wesley House, Ritherdon Road, Vepery Madras. *Committee Representative, Methodist Missionary Society, Madras.*	D. Chellappa, *Priest, St. Paul's High School, Vepery, Madras.*

6. J. White *Archedeacon of Madras,* *The Diocesan Office,* *Cathedral P. O, Madras.*	T. S. Ranjore, *Clerk, Diocesan Office,* *Cathedral P O., Madras.*
7. T. R. Foulger, Minister of Religion, Meston College House, Royapettah, Madras. *Chairman, Methodist Church, Madras District.*	D. Joseph, *Head Clerk, Meston Training College, Royapettah, Madras.*

DATED THIS 26TH DAY OF SEPTEMBER 1947

Source: The Indian Companies Act, 1913 Memorandum of Association of the Church of South India Trus Assocaition, pp. 1-5.

THE INDIAN COMPANIES ACT, 1913

ARTICLES OF ASSOCIATION
OF
THE CHURCH OF SOUTH INDIA TRUST ASSOCIATION

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1. For the purpose of registration the number of members is declared not to exceed fifteen. The committee of management may register an increase of members whenever they consider it desirable.

2. These articles shall be construed with reference to the provisions of the Indian Companies Act, 1913, and terms used in these articles shall have the same respective meanings as they have when used in that Act.

3. The Association is established for the purposes expressed in the Memorandum of Association. The expression 'The Church of South India (hereinafter referred to as 'the Church') as used in the Memorandum and in all or any Articles of Association or other regulation of the Association for the time being in force shall be deemed to mean and include the Madras, Dornakal, Tinnevelly and Travancore and Cochin Dioceses of the Church of India, Burma and Ceylon, the South India United Church and the South India Province of the Methodist Church uniting to form the Church of South India and the Church of South India after inauguration.

MEMBERSHIP

4. The first members of the Association shall be :

1. The Venerable Archdeacon J. White,
2. Mr. L. D. Miller,
3. Mr. C. L. Lucas,
4. Rev. L. J. Thomas,
5. Mr. P. K. Monsingh,
6. Rev. A. M. Payler,
7. Rev. T. R. Foulger,
8. The Venerable Archdeacon P. C. Kora,
9. The Venerable Archdeacon E. M. Spear,
10. Mr. M. G. Jesubatham,
11. Rev. S. J. Savarirayan,
12. Rev. B. C. D. Mather,
13. Rev. V. J. Chelliah,
14. Rev. P. Gurushantha,
15. Rev. F. Whittaker,

who shall remain members until replaced by members elected by the Synod of the Church and thereafter members shall be such persons as shall be elected as members by the Synod of the Church The Moderator, Deputy Moderator, General Secretary and the Treasurer of the Synod of the Church shall be ex-officio members.

The Moderator of the Synod of the Church of South India, Ex-officio is also the Ex-officio Chairman of the Association, the General Secretary of the Synod of the Church of South India, Ex-officio is also

the Ex-officio Secretary of the Association and the Treasurer of the Synod, Church of South India, Ex-officio is also the Ex-officio Treasurer of the Association.

5. One third of the members shall retire at each meeting of the Synod of the Church but shall be eligible for re-election. The one-third to retire shall be those who have been members longest since last elected as members. The Synod shall decide at its first meeting the order of retirement of the members elected at that Meeting. A member otherwise shall cease to be a member of the Association.

(a) in the case of first members until replaced by members elected by the Synod of the Church ;

(b) on his retirement to be signified in writing ;

(c) on his absence from India for a period of twelve consecutive months.

COMMITTEE OF MANAGEMENT

6. The business and affairs of the Association shall be managed by a committee of management (hereinafter called the Committee) which shall be not less than five and not more than ten in number until otherwise determined by a general meeting and who shall be elected annually by the Association in General Meeting. The first seven members named as the first members of the Association in Articles 4 shall be the first members of the Committee and they shall continue in office until the first general meeting of the Association.

7. From and after the first general meeting of the Association the Committee shall consist of ex-officio and members elected by the Association from amongst its members at its ordinary meeting in each year. Members shall retire from office each year at the ordinary meeting of the Association, but a retiring member shall be eligible for re-election.

8. If any members of the Committee shall become insolvent or take the benefit of any act for the relief of insolvent debtors or become of unsound mind or cease to reside in the area for a period of more than twelve consecutive months or shall signify in writing to the Chairman or the Committee his desire to retire or he is absent for three consecutive meeting of the committee or from all meetings of the Committee for a continuous period of three months whichever is the longer without leave of absence from the Committee he shall as from the happening of any of such events cease to be a member of the Committee.

9. Any casual vacancy occurring among the members of the Committee may (but shall not neecessarily) be filled up by the

Committee but any person so chosen shall retain his office only until the next ordinary general meeting of the Association when the vacancy shall be filled up by the Association.

10. Meetings of the Committee shall be held at such times and places as they may determine and also at such other times as the Chairman of the Committee may convene a meeting. Until the Committee shall otherwise determine five members shall form a quorum.

11. All acts done by the Committee or by any sub-committee shall notwithstanding the existence of some disqualification or some defect in the appointment of any member of the Committee or sub-committee or the existence of any vacancy in any sub-committee be as valid as if such vacancy, disqualification or defect had not existed.

DUTIES AS TO ACCEPTANCE OF PROPERTY

12. The Association may accept property to be held

(a) upon trusts for the general objects of the Association ;

(b) upon special trust for any of the objects mentioned in the Memorandum of Association to be declared by the donor;

(c) upon special trusts already in existence for any of such objects incases where a corporation may lawfully be trustees thereof ;

(d) as the bare depository of the legal or other owner-ship of property devoted to any of the objects mentioned in the Memorandum of Association special trusts of which are to be carried out and administered by another body of trustees.

Provided that the Association shall not be bound to accept property the acceptance of which they may deem inexpedient.

13. Where property is accepted by the Association for the general objects of the Association they may apply both capital and income in or towards any of the objects mentioned in the Memorandum of Association except in so far as they may be restricted by any resolution of the Synod of the Church or they may accumulated such income until the same can in their opinion be usefully applied for all or any of such objects.

14. Where property is accepted by the Association upon special trusts to be declared by the donors all the powers and provisions of these presents shall be deemed to be incorporated in the instrument declaring the special trust except insofar as the same shall be expressly excluded or modified or be inconsistent with such special trusts.

15. Where property is accepted by the Association upon trusts already in existence the Association shall administer such trusts

according to law and the general powers hereby conferred on the Association shall not apply.

16. where property is accepted by the Association as bare trustees they shall from time to time apply such property according to the lawful directions of the trustees or other Committee to whom the management or administration of it may have been confided, by the instruments or document creating the trust or by the Synod of the Church.

GENERAL POWERS OF COMMITTEE

17. The Committee shall have full power to do all such acts and things as the Association could itself do, and which are not hereby or by statute expressly directed or required to be exercised or done by the Association in general meeting and in paticular the Committee shall have the following powers, viz : Subject to any rules and regulations which may from time to time be laid down by the Synod of the Church.

(a) To sell, exchange, partition, lease, invest, or otherwise dispose of the property of the Association or any part thereof, or any interest therein, for money or other valuable consideration, as fully as if they were absolute owners.

(b) To borrow money on mortgage of the property or any part thereof or otherwise, provided that money so borrowed on mortgage shall not exceed one half of the estimated selling value at the date of the mortgage of the property to be mortgaged.

(c) To invest money in the name of the Association in any investment in which a trustee may, by law, invest money, or in the purchase or improvement of any land property or estate, or any interest in land, property or estate.

(d) To promote and contribute to any enterprise, whether conducted by individuals or associations present or future, which shall have for its objects the making or doing of any works or things conducive directly or indirectly to the objects of the Association.

(e) To resign the administration of any property bested in the Association as orginal trustees upon special trusts and to vest the same in any new trustee or trustees or convey or assign the same to any Association or Corporation When, in the opinion of the Committee, such conveyance or assignment will operate for the benefit of the objects intended to be benefited by the original gift.

(f) To pay all expenses incurred in the management of the concerns of the Association out of the money coming into their hands.

(g) To appoint or remove and delegate any of their powers to a manager or an Attorney or sub committee or sub committees consisting

of one or more members of the Committee, and to fix the quorum of any such sub-committee.

(h) To take legal advice on any matter they think fit and to act in accordance with such advice, without being responsible for any error thereby committed.

(i) To appoint such officers, clerks or servants as they may from time to time deem necessary, and to fix their duties and remuneration, and (if considered necessary) to require security for the proper discharge of such duties; and also to discharge or suspend any officer, clerk or servant, for such reasons as they may deem sufficient.

18. Provided nevertheless that the Committee shall be subject to any directions which may be given by any resolution passed by three-fourths of the members of the Association present and voting at a general meeting duly called for the purpose, but no such resolution shall invalidate any prior act otherwise valid.

GENERAL MEETINGS OF THE ASSOCIATION

19. The first general meeting of the Association shall be held within six months from date of the registration of the Association at some place to be determined by the Committee.

20. Subsequent general meetings shall be held once in every year and not more than 15 months after holding the last preceding general meeting at such place and date as the Committee may determine.

21. The above mentioned general meetings shall be called ordinary meetings; all others shall be called extra ordinary meetings.

22. The Committee may, whenever they think fit, and they shall, if required in writing by not less than one-third of the members of the Association, convene, an extra ordinary meeting. Every such requisition shall express the object of the meeting proposed to be called, and shall be left with the Secretary and thereupon an extra-ordinary meeting shall be convened by the Committee to be held within thirty-one days from the date of the receipt of such requisition. If the Committee shall neglect to convene such meeting the requisitionists may themselves do so.

23. A quorum at a general meeting shall be six.

24. Twenty-one days notice at least specifying the place and time of meeting, and (in case of special business) the general nature thereof, shall be sent to each member of the Asoociation, but non-receipt of such notice by any member shall not invalidate the proceedings of any general meeting. All business shall be deemed special except the consideration at the annual meeting of :

(a) The accounts ;

(b) The annual report of the Committee ; and

(c) The election of members of the Committee and officers

25. Any member may, on giving to the Secretary not less than twenty-one days notice in that behalf, submit any resolution to a general meeting, and notice thereof shall be given to the members by the Secretary.

PROCEDURE AT GENERAL MEETINGS AND COMMITTEE MEETINGS

26. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is demanded in accordance with clause (c) sub-section (1) of sub Section 79 of the Indian Companies Act, 1913, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority or lost and an entry to that effect in the books of the proceedings of the Association shall be conclusive evidence of the fact, without proof of the number or proporation of the votes recorded in favour of, or against, that resolution.

27. If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to the resolution of the meeting at which the poll was demanded.

28. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

29. On a poll votes may be given either personally or by proxy.

30. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing. No person shall act as a proxy unless he is a member of the Association.

31. The instrument appointing a proxy and the power of attorney or the other authority (if any), under which it is signed or a notarially certified copy of that power of authority, shall be deposited at the registered office of the Association not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

32. An instrument appointing a proxy may be in the following form, or in any other form, which the members of the Committee shall approve:

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THE CHURCH OF SOUTH INDIA TRUST ASSOCIATION

I of in the district of being a member of the Church of South India Trust Association hereby appoint of as my proxy to vote for me and on my behalf at the (ordinary or extraordinary as the case may be) general meeting of the Association to be held on the day of 20 and at any adjournment thereof

Signed this day of 20

33.The Moderator, shall be Chairman of the general meetings and meetings of the Committee. In the absence of the Moderator, CSI, the Deputy Moderator, CSI will act as Chairman. But in case of the absence of the Moderator, CSI and the Deputy Moderator, CSI, the Members present at the meeting shall choose any one of the present members to be the Chairman of the meeting.

34.No business shall be transacted unless the prescribed quorum is present. If at a general meeting there is not a quorum, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to a time and place to be fixed by the Committee but if at such adjourned meeting, a quorum of members shall not be present, the members present shall form a quorum.

35.Every meeting, with the consent of the majority of the persons present and entitles to vote, may be adjourned from time to time, and from place to place, but only the business left unfinished shall be transacted at any adjourned meeting.

36. Every member, Committe member or Sub Committee member shall have one vote only, and any objection to the validity of a vote shall only be made at the meeting at which it is tendered. Every vote then and there disallowed shall be deemed valid for all purposes.

37.Subject to the provisions of the Statutes and of these presents, the Chairman of general meetings and meetings of the Committee shall be the sole and absolute judge of the validity of any vote tendered,

RESOLUTIONS CIRCULATED IN WRITING

38. A resolution in writing signed by all the Committee shall be as valid and effectual as if it had been passed at a meeting of the Committee duly called and constituted.

MINUTES

39. Minutes of the proceedings of all meetings, whether general or special or of any Committee or sub-Committee, shall be recorded in books to be kept for the purpose, and shall be signed by the Chairman of the meeting, or of the meeting at which the minutes are read and confirmed, or in default by any two members present and every such minute purporting to be so signed shall be prima facie evidence of the facts stated therein.

THE SEAL

40. The Committee shall provide a common seal for the Association which shall always be deposited at the office, and shall never be used except by the authority of the Committee previously given, and then only in the presence, and accompanied by the signature of two members of the committee, or of one member of the Committee and the Secretary. No person dealing with the Association shall be bound or concerned to see or inquire as to the authority under which any instrument is sealed or in whose presence.

ACCOUNTS

41. The banking account shall be kept in the name of the Association at such bank as the Committee shall from time to time appoint.

42. Cheques shall be drawn, signed, and endorsed in such manner and by such person or persons as the Committee shall from time to time direct.

43. No payment shall be made without the order of the Committee, except the payments on petty cash account, for which the Committee may place at the disposal of the Secretary and Treasurer such sum as they think fit, not exceeding at any one time Rs. 5000/- and the Secretary and the Treasurer shall make at such times as the Committee direct a return of all receipts, payments and liabilities on petty cash account.

44. All subscriptions and other moneys payable to the Association shall be received by the Treasurer, or such other officer of the Asociation as the Committee shall appoint to receive the same, who shall forthwith pay them into the banking account. The receipt of the Treasurer or such other officer shall be a sufficient discharge.

45. The Association shall cause true accounts to be kept in such a manner as it thinks fit of all the receipts, credits, payments, and liabilities of the Association and of each object or purpose in the management or administration whereof the Association shall for the time being act, and of all other matters necessary for showing the true state and condition of the Association. Such books and all vouchers relating thereto and all the documents belonging to the Association shall be kept at such place or places and under the control of such officer or officers as the Committee shall from time to time appoint, and (subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed by the committee) shall be open to the inspection of members.

46. The Committee shall submit a balance sheet to the annual meeting of the Association, together with a statement made up to the 31st day of December next preceding, or such other day as the Committee shall from time to time determine, of the income and expenditure of the Association since the last preceding statement and a report on the state and progresss of the Association Subject to section 133 of the Indian Companies Act, 1913, the balance sheet, statement and report shall be signed by at least two members of the committee and both the Secretary and the Treasurer or in such other manner as the committee shall from time to time direct, and a copy thereof shall, at least fourteen days previously to the annual meeting, be sent to each member. A Copy of the balance sheet and statement shall be sent to the general secretary of the Synod of the Church.

47. Every balance sheet and statement, when audited and appoved by a general meeting, shall be conclusive except as regards any error discovered therein within two months after such approval, which shall forthwith be corrected.

AUDIT

48. At the first general meeting of the Association and afterwards at the ordinary meeting one or more qualified auditors shall be appointed for the year, and the salary or remuneration, if any, of such auditor or auditors shall be fixed by the meeting, and paid out of moneys applicable to the general purposes of the Association. Any casual vacancy shall be filled up by the Committee.

49. The Auditors may be members of the Association, but no person shall be eligible as an auditor who is interested otherwise than as a member in any transaction of the Association. No member of the

committee or other officer of the Association shall be eligible as auditor during his continuance in office. Any auditor shall be eligible for re-election on quitting office. Any auditor must be a person qualified under section 144 of the Indian Companies Act, 1913.

50. Not less than three months before the ordinary meeting there shall be delivered by the Committee to the auditors the accounts and vouchers relative thereto, and the balance sheet for the preceding year, and the auditors shall examine the same and within two months after the receipt thereof shall report thereon.

51. The auditors shall have access to all the books of account and documents of the Association, and shall receive such information and assistance from the Committee, the Secretary and other officers of the Association as they may reasonably require.

NOTICES

52. Every member shall from time to time in writing name to the Secretary a place of address in the area as his address, which shall be entered in the register of Members of the Association.

53. A notice may be served by the Association on any member whether personally, or by sending it through the post in a prepaid letter addressed to him at his registered address and shall be conclusively deemed to have been served at the time when the letter containing the same is put into the Post Office and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office.

INDEMNITY

54. Every member of the Committee, and every other officer for the time being of the Association, shall be indemnified out of the funds of the Association against all losses and expenses incurred in the discharge of his duties, except such as shall happen through his own wilful act or default; and each one shall be chargeable only for so much money or property as he shall himself actually receive for, or in the discharge of the business of the Association; and each one shall be answerable only for his own acts, neglects, or defaults, and not for those of any other person nor for the insufficiency of any security for money invested or of title to any estate or property acquired, nor for any loss or damage which may happen in the discharge of his duties, unless the same shall happen through his own wilful neglect or default.

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Names addresses and Descriptions of Subscribers	Names, Addresses and Descriptions of Witnesses
1. Lewis J. Thomas, Ordained Minister of Religion. *Secretary-Treasurer, London Missionary Society, India, 18, Lavelle Road, Bangalore.*	C. E. George, *Manager, C.L.S. Press, St, Marks Road, Bangalore.*
2. P. K. Monsingh, Wallajah Road, Woriur Trichinopoly. *Headmaster, Board High School, Musiri, Trichinopoly.*	V. Krishnamurthi, *Assistant, Board High School, Musiri, Trichinopoly District.*
3. Leslie D. Miller, High Court Building, Madras, *Solicitor.*	R. Malvenan, *Manager, South Indian Export Co., Ltd.*
4. C. J. Lucas, Teacher, 57, *Tanah Street, Purasawalkam, Madras.*	C. S. Balraj, *Priest-in-Charge, St Paul's Church, Vepery, Madras.*
5. A. M. Payler, Minister of Religion, Wesley House, Ritherdon Road, Vepery Madras. *Committee Representative, Methodist Missionary Society, Madras.*	D. Chellappa, *Priest, St. Paul's High School, Vepery, Madras.*
6. J. White *Archedeacon of Madras, The Diocesan Office, Cathedral P. O, Madras.*	T. S. Ranjore, *Clerk, Diocesan Office, Cathedral P O., Madras.*
7. T. R. Foulger, Minister of Religion, Meston College House, Royapettah, Madras. *Chairman, Methodist Church, Madras District.*	D. Joseph, *Head Clerk, Meston Training College, Royapettah, Madras.*

DATED THIS 26TH DAY OF SEPTEMBER 1947

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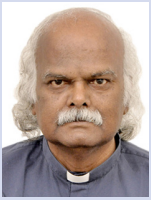

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