C=f(P): The trust, ‘general public utility’, and charity as a function of profit in India

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Abstract

With an interest in historicizing contemporary philanthropic formations such as corporate social responsibility, this article outlines the modern Indian governmental coding of charity as a function of profit. To do so, it charts a trajectory of legal-fiscal policy on charitable tax exemption in India, especially since the 1940s. Informed by the study of vernacular capitalism, research on economization and on epistemologies of calculation, the analysis maps juridical trajectories on the idea of charity, its relationship with trade, and, more specifically, profit-making. It demonstrates how the legal mechanism of the public trust, which serves in the late nineteenth century to institutionalize a strict distinction and separation between charity and profit-making, later reconfigures and connects them by buttressing the main legal criterion for charity in India, that is, ‘general public utility’. This legal story is deployed to draw attention to philanthropy more broadly as a key terrain for research on processes of economization and neoliberal governing. At the same time, the argument also works against the grain of palimpsests in contemporary public discourse which stage a continuous and direct line from pre-colonial vernacular practices to Indian philanthropy today.

The profitability of a [vernacular] business was almost impossible to calculate because many of its goals were incalculable social benefits.¹

¹ C.A. Bayly, Rulers, Townsmen and Bazaars: North Indian Society in the Age of British Expansion, 1770–1870, Cambridge: Cambridge University Press, 1988, p. 376. This article is dedicated to the late Professor Sir Christopher Bayly, whose foundational reading of the merchant family opened unprecedented channels for the study of global capitalism.
Introduction

Perhaps counter-intuitively, given the theme of this special issue, this article addresses charity in India by drawing attention to the concept of profit. In 1890, the Charitable Endowments Act defined ‘charitable purpose’ as ‘relief of the poor, education, medical relief, and the advancement of any other object of general public utility’ [emphasis mine], and tied it to newly minted taxation and fiscal procedures that had been established in the first comprehensive Indian Income Tax Act of 1886. Just over a century later, as evinced in India’s new corporate social responsibility (CSR) requirements mandated by the Indian Companies Act of 2013, giving for social welfare had become clearly legible as a function of profit-making, for CSR is now understood as a ‘management concept whereby companies integrate social and environmental concerns in their business operations and interactions with stakeholders’. In the long twentieth century bookended by these developments, new governmental rationalities mapped charity through formal practices of accounting and fiscal procedure; these processes produced broadly relevant anxieties about the very nature and possibility of charity in a market-based coding of society. As I will highlight here, Indian case law since the 1940s exposes a grappling with the question of whether the legal mechanisms for modern philanthropy—that is, the public trust and its cognates, the non-profit society or company—whose endowments rely on a regular return of income to be distributed for charity, are fundamentally instruments directed at profit-making. Jurists were forced to ask: if charitable endowments rely on profit-making (whether through trade, rent, or return on investment), then does this fact fortify or undermine the very idea and practice of charity itself?

Such ethical questions concerning the very meaning of charity in market societies emerge robustly from India’s particular history of vernacular capitalist social gifting and the transformation in its legibility by colonial law and market governance. This history was followed by nationalist-developmentalist policies and then economic liberalization which, by the turn of the twenty-first century, has produced a celebration of Indian entrepreneurship and buttressed

new forms of corporate philanthropy that are now described as ‘social responsibility’. Still, this legal-ethical angst is also widely relevant for studying philanthropy in neoliberal settings broadly, for it demands that we examine modern philanthropy as a governmental rationality. Philanthropic governmentality selectively and expertly crochets non-market temporal-social imaginaries encompassed by concepts such as charity, daan, and zakaat into contemporary market society. It institutionalizes the instrumental benefits of gifting, coding the gift as a mechanism of return, even as it deploys age-old and multivalent vocabularies of charity that perform the gift as given without expectation of return. As such, I emphasize that the genealogy from imperial liberalism to neoliberal governance evinces a systemization of gift-giving as an exchange, and then, more specifically, as a market exchange in service of profit, all the while enabling the iteration of multiple ‘traditional’ moralities within the new and evolving parameters of society as market.


4 For an example of the ways in which the wide range of traditional notions of giving—such as the Hindu daan, utsarg (the gift of property for general common use), poorta (construction of community infrastructure such as wells), and the Islamic zakaat (the obligatory redistributive ‘tax’ for the poor), sadaqa (voluntary gift), and khum (a portion of gains)—are translated into contemporary discussions on philanthropy, see S. Agrawal, Daan and Other Giving Traditions in India: The Forgotten Pot of Gold, New Delhi: AccountAidIndia, 2010: www.accountaid.net, [accessed 11 December 2017]. Another key non-market imaginary that is actively being folded into contemporary markets is that of sharing. Profit-motivated companies like Uber and Air B&B, which claim to promote ‘sharing’ economies, are prominent examples.

Outlining the overarching paths of twentieth to twenty-first century Indian jurisprudence on the idea of charity as ‘general public utility’, this article mines a rich legal-administrative archive on philanthropy for two broad purposes: first, to further explore the techniques by which practices of giving are folded into market logics, and, second, to highlight continuities across liberal and emergent neoliberal governmental rationalities. More specifically, through jurisprudence on the public trust, it investigates the legal confusions and infusions of definitions of charity and profit in India from especially 1940, mapping new parameters and lines of inquiry for a genealogy of contemporary neoliberal market society, one understood to be constituted by entrepreneur-citizens. In the process, the argument considers how the post-colonial regulation of charitable giving at once evinces a departure from the nineteenth-century world-views of vernacular capitalism, while also seeking to reanimate them in current CSR iterations.

Informed by established research on colonial governmentality and its regimes of calculability, as well as more recent scholarship on processes of economization and financialization, this article begins with a brief mapping of the historical and analytical parameters for exploring the making of charity as a function of profit, and therefore as a modern governmental rationality that links imperial liberalism’s discourses of benevolent improvement with techniques of neoliberal administration. To illustrate and launch such a genealogy, it then

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6 The project of reading continuities across nineteenth-century liberalism (both economic and political) and twentieth-century neoliberal discourses of governing was launched by Michel Foucault. See M. Foucault, The Birth of Biopolitics: Lectures at the Collège de France 1978–79, (ed.) Michael Senellart, (trans.) Graham Burchell, New York: Palgrave Macmillan, 2009. The argument in this article is informed by a broader project that seeks to bring Foucault’s insights to an imperial genealogy of neoliberalism. For an initial statement of this intervention, see R. Birla, ‘Jurisprudence of Emergence: Neo-liberalism and the Public as Market in India’, South Asia, 38:3 (Fall 2015), pp. 466–480.

charts significant moments in twentieth-century jurisprudence on the
meaning of charity as ‘general public utility’, assessing precedent-
setting cases from 1944 to the present. These jurisprudential
debates emerge from the legal history and fiduciary authority of
the trust, which establishes a tripartite relation of donor, trustee,
and beneficiary. The trust relation governs gifts for ‘the public’ as a
collective beneficiary; these are considered ‘charitable’ in law and so
tax exempt. The analysis investigates a twentieth-century reframing
and fine-tuning of the nineteenth-century distinction between public
gifts and private interests institutionalized in the legal mechanism of
the trust: the binary of charitable versus profitable activity. Colonial
law on charity sought to establish a rigid boundary between self-
oriented (profit-seeking) and other-oriented (or altruistic) action.
This process reflected the ‘disembedding’ of the abstract market
from the fluid vernacular capitalist contexts of gain and giving that
saw self-directed action (or profit) as always already within broader
communities (the patriarchal ‘joint family’ firm being the kernel of
this social imaginary), and so also always other-directed. But at the
same time, governmental techniques which distinguished profit and
charity also bonded them in ways that ultimately fortified the social
imaginaries of contemporary market society: charity becomes read
through tax exemption, the calculation of profit, and so as a problem
of the distribution of profit. Said differently, the article explores tensions
between the juridical logic of colonial then national sovereignty, which
institutionalizes the rigid distinction between charity and profit via the
public trust (and its cognates, the non-profit association and company),
and the imperatives of fiscal administration that render charity legible

Social Structure and Objectification in South Asia’ in An Anthropologist Among Historians
and Other Essays, Delhi: Oxford University Press, pp. 224–254; A. Appadurai, ‘Number
in the Colonial Imagination’ in Modernity at Large, Cultural Dimensions of Globalization,
Minneapolis: University of Minnesota Press, 1996, pp. 114–138; D. Chakrabarty,
‘The Governmental Roots of Modern Ethnicity’ in Habitations of Modernity: Essays in
On economization, see K. Çalışkan and M. Callon, ‘Economization Part 1: Shifting
Attention Away from the Economy Towards Processes of Economization’, Economy and
Part 2: A Research Program for the Study of Markets’, Economy and Society, 39:1
(February 2010), pp. 1–32.

8 The trust mechanism also regulates gifts for private purposes, predominantly for
the aid of family and securing of estates across generations; these do come under
tax provisions and are regulated by the Indian Trusts Act, 1882. This article focuses
specifically on the public charitable trust.
via profit. To close, I consider such tensions and entanglements in the light of corporate social responsibility today. I address CSR in the context of jurisprudence on general public utility, the ‘re-embedding’ of earlier mercantile world-views that prioritized giving to local communities, and the relationship of the law of trust with new political imaginaries of benevolent trusteeship.

Charity and profit: vernacular fluidities

It is important to remember that in the subcontinent, the administration of modern charitable giving coincided with the late colonial mapping of the public as market, which aggressively distinguished philanthropy from vernacular value-systems. These were governed by personal law and classified as religio-cultural. Colonial law thus distilled charity into two categories: first, philanthropy directed at an abstract public, and second, charity governed by a supposedly anachronistic ancient tradition, seen to be enmeshed with extended family, caste, and local community, and subject to their instrumental interests. ‘Modern’ philanthropy in India was at its inception informed by a standardizing Utilitarian pragmatism that resisted interpreting charity in its multivalent meanings and practices, a hermeneutics that in fact continued to inform jurisprudence in the United Kingdom through the foundational 1601 Statute of Elizabeth. This early modern law had identified charity through its vast colloquial meanings—from care for individuals to the support of local communities—identifying a range of moral acts that were meaningful exactly because they were not measurable. In contrast, informed by a calculating Utilitarian register, colonial jurists and administrators struggled with

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9 This remapping regulates all kinds of institutions of vernacular gifting, not just mercantile, for they are coded as ‘private trusts’ and, ultimately, are subject to taxation. For this history, see R. Birla, Stages of Capital: Law, Culture and Market Governance in Late Colonial India, Durham, NC: Duke University Press, 2009, Chapters 2 and 3.

10 Ibid., Chapter 2. On British jurisprudence’s engagement with the moral meanings of charity as presented in the 1601 Statute of Elizabeth through to the twentieth century, see H.G. Carter and F.M Crawshaw (eds), Tudor on Charities: A Practical Treatise on the Law Relating to Gifts and Trusts for Charitable Purposes, fifth ed., London: Sweet and Maxwell, 1929. On the lack of weight of the Elizabethan definition of charity in India, see the Indian Supreme Court judgment presented by Justice P.N. Bhagwati on behalf of himself, Justices N.L. Untwalia, and V.D. Tulzapulkar in
the ‘embedded’ social welfare practices of vernacular capitalism, identifying them as problematic because they seemed to be indifferent to any *a priori* opposition between charitable giving and profit-making endeavours: among vernacular family firms, welfare benefits to the broader community were not conceived of as exclusive of benefits to the family and firm. Merchants would establish institutions that provided education and sustenance to local populations, but at the same time, mercantile custom (or the ‘native’ *lex mercatoria* as it was termed by government officials) did not prohibit financial gains from these endowments from circulating back into the commercial activities or personal expenses of the family firm, as they were ultimately to be returned to the endowment. For example, the rent from the lands of a temple or retail space in a *dharmshala* (rest-house) could be deployed to invest in new retail concerns or to defray the debt of the firm; they could also assist in providing for a daughter’s dowry. Thus, as I have argued in detail elsewhere, the financial portfolios of mercantile endowments for social welfare could be tapped for market instrumentality and in service of non-market symbolic economies.\(^\text{11}\) Vernacular market ethics required that such ‘loans’ from charitable endowments would be returned, reflecting these institutions’ capacity as banking operations as well as sites of charitable donation.

Seen from the perspective of profit-making, vernacular charitable practices were also fluid. As Bayly asked in his foundational study of the North Indian merchant family: ‘[W]hat was the meaning of profit in a context where many families were directing their energies to improving their position within marriage groups or systems of sub-caste ranking, an equally vigorous form of entrepreneurship?’\(^\text{12}\) It is difficult to articulate the relationship of profit and charity as a fixed measurement amid practices that exhibited an extensive negotiability—if not fungibility—between symbolic and market values. This difficulty provides the impetus for presenting the transformations in governmental policy detailed here, which expose historical shifts lost in the palimpsest of contemporary corporate-philanthropic discourse in India.


\(^\text{12}\) Bayly, *Rulers, Townsmen and Bazaars*, p. 376.
Philanthropic intention, economization, and the profitable gift

Before delving into jurisprudence, it is worth outlining briefly how the colonial and post-colonial history of philanthropy may fit into, first, broader methodological discussions on economization, and second, a Foucauldian-inspired study of liberal governmentality, which investigates the play of languages of juridical sovereignty (in India’s case, imperial subjecthood and national citizenship) with political economy’s shifting techniques of governing and administration.13 Here, it is important to remember that the formalization of charitable giving in India was integral to the broader process of the production of the abstract, supra-local arena of ‘the economy’. The legal-governmental institutionalization of free trade’s ‘invisible hand’ produced a complex jurisprudence on categories of property that could be held in mortmain, that is, by a ‘dead hand’ outside of commercial circulation, valuation, and profit-making.14 Thus in late nineteenth and early twentieth century Anglo-American legal thought, the exception that enabled the general rule of bourgeois profit-making through the free circulation of capital was the category of the gift in mortmain to be maintained ‘extra commercium’. However, since all gifts were also bundles of capital that could produce profit, the law asserted that it was the original charitable intention of a gift that had to be protected and could not revert into a profitable intention. In this legal context of profitable versus charitable intention, the question of the very meaning of profit and charity in the fluid vernacular circulations of the family firm offers an empirical lever for opening a more detailed genealogy of the social and political imaginaries—private vs public being perhaps the most potent—that configure contemporary relations of profit-making and charitable giving.

Such a genealogy, necessarily attentive to the translation of vernacular value-systems, can be buttressed by recent work in critical social science and science studies on processes of economization. Economization refers broadly to ‘processes through which activities, behaviours, spheres and/or fields are established as being economic’.15 These epistemological-institutional processes are understood to be

13 See Foucault, *Birth of Biopolitics*.
14 ‘Mortmain’ was a Roman law term that referred to the influence of the ‘dead hand’—from Latin, *manus mortus*—of the testator on the future use of their property. See Birla, *Stages of Capital*, pp. 68–73.
performative, that is, they produce ‘the economy’ and ‘economic behaviour’ as effects while rendering them *ex ante*, originary realities.\(^{16}\) Scholarship in this vein, most strongly historical research on the ‘enframing’ of economic space in colonial sites, has called upon economics and other social science disciplines to become more aware of ‘the impacts of their own inquiries on the objects they seek to study’.\(^{17}\) Renewed attention to processes of economization has also generated critical re-readings of classics in economic sociology, such as Max Weber.\(^{18}\) Reading thinkers like Weber against the grain of their modernizing chronologies, scholars in economic history may more carefully articulate how, why, and when practices become coded as ‘economic’ and then formalized and governed as *markets* in institutions such as guilds, *mahajans*, chambers of commerce, commodities, and stock exchanges. Equally important are the temporal and spatial parameters laid down by processes of economization that colonial contexts foreground: the classification of some practices as simply enacting ancient, locally oriented norms (as is the case with vernacular charity—mercantile and otherwise—in India) as distinct from public, market-relevant, modern ones.

The story of the legal regulation of charity in India is an especially rich area for detailing processes of economization, for it foregrounds globally relevant techniques by which the gift that is deemed publicly relevant is institutionalized as an exchange, and then, more specifically, as a market exchange in service of profit. At first, it seems that colonial law in the late nineteenth century was invested only in the moral ideal of the gift as uni-directional—as directed at

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\(^{17}\) Çalıkkan and Callon, ‘Economization: Part 1’, p. 371. A significant argument for the colonial as a research site and analytical ground for such study is Mitchell, *Rule of Experts*.

\(^{18}\) For recent critical reanimations of Weber, see Appadurai, *Banking on Words*. 
the donee or beneficiary, premised on no return. As such, jurists did not pose the gift as an exchange or as ‘economic’ in the classic Maussian or Malinowskian senses of gift exchange. Indeed, the gift in modernizing colonial law operated much like the ‘primitive’ gift in Pierre Bourdieu’s well-known reading, that is, as a wilful misrecognition of its own calculatedness. Thus for nineteenth-century colonial jurists, charity’s moral value lay in the fact that it stood outside calculable relations of exchange or ‘extra commercium’. Nevertheless, evincing Bourdieu’s analysis of the calculated nature of the gift, colonial authorities at the very same time defined charity via utility, a concept that from Utilitarian political economy to marginalist neoclassical economics understood value through market exchange and so as clearly calculable. We might say that in this way, the late nineteenth century saw an arranged marriage between a feminized, affective ethics of charity (compassion, sympathy) and a masculinized ethos (rational calculation) of profit, in which charity could not be thought of without reference to profit. The legal debates in India that grapple with charity as a function of profit-making call for engagement with economic anthropology’s long attention to modes of valuation. Such work helps to assess the ways in which vernacular or ‘embedded’ value-systems—and, at the expense of over-extrapolating, perhaps human value-systems in general—have become economized. Moreover, the legal ascription of conduct as ‘profit-making’ versus ‘charitable’ highlights not only the production of the universal and


abstract frame of ‘the economy’, but also points to the variety of markets and conventions, both licit and illicit, that constitute and transgress it.\textsuperscript{22}

\section*{Tax law and the changing definition of charitable exemption}

The arranged marriage between profit and charity, we might say, is rendered sacred in tax law’s new ritual delineations of charitable exemptions. It is important to note that the first Indian Income Tax Act of 1886 preceded the Charitable Endowments Act by four years and incorporated a measure for tax exemption for gifts for ‘public charitable purposes’, but the 1886 definition of that category remained vague. Shortly thereafter, two decades of jurisprudence on vernacular endowments was codified in the Charitable Endowments Act of 1890.\textsuperscript{23} This occurred only after tax law had substantially expanded fiscal administration for accounting; the sovereign template and abstract register for the calculation of profit or gain. As U. Kalpagam has elaborated, practices of collecting and calculating annual revenue established by the East India Company were standardized into an all-India budget beginning in 1862; this marked a move to an all-India accounting framework that ‘enabled the envisioning of the colonial economy as a macroeconomic aggregate’.\textsuperscript{24} Such processes expose the changing definitions of the very idea of profit that corresponded with shifting political economies and, by the late nineteenth century, the standardization of the system of double-entry book-keeping for all official accounts. For example, Burke’s characterization of East India Company plunder (enabled by military conquest and extraction of land revenue for financing trade) was first translated as legitimate ‘profit’ by the Company through its mercantilist accounting. After 1862, the Company’s profit was calculated in relation to home charges and the making of public debt for India;


\textsuperscript{23} For the detailed story, see Birla, \textit{Stages of Capital}, Chapter 2.

and later in the twentieth century, via emergent capital accounting and entrepreneurial codings of ‘profit’ that included the calculation of risk and anticipated profits and losses.\textsuperscript{25} And with mandatory CSR in India today, which is calculated as a percentage of profit, the concept of triple bottom line reporting (TBL) presents a new accounting framework that ‘goes beyond the traditional measures of profits, return on investment, and shareholder value’ and measures business performance in the context of social, environmental as well as financial parameters to produce ‘sustainability’.\textsuperscript{26} Understanding this powerful performative framing of profit through accounting, one may pose charity as an object of economization, not only in budgets, but also via the performativity of law. As a medium of ethico-political accounting, law effects universal, \textit{ex ante} economic categories through not only the statutory exercise of sovereignty but also through the iterative work of citation and precedent-making.\textsuperscript{27} Through law on charity, then, we can better detail transformations in modes of valuation instituted by modern sovereignty and governmental administration.

The distinction between charitable and profitable intention that structured the 1890 legal definition of charity as the gift for ‘general public utility’ came into crisis in case law after the first major revision of the 1886 Income Tax Act, which occurred in 1922. The 1922 Act fortified the administrative structure for the collection and enumeration of accounts, and was motivated by vernacular capitalism’s impressive speculative gains and entry into industry during the First World War. It thus combined measures for income-tax and the ‘super-tax’ on high profits for companies and firms/Hindu Undivided Families, while also elaborating on the kinds of incomes that would \textit{not} be subject to tax, including, for example, the interest on securities held by provident funds and other sorts of mutual association. Most significantly, it revised the 1886 Act by fine-tuning and expanding its stipulations for tax exemption, building on the 1890 Charitable Endowments Act. Section 2(15) of the 1922 Indian Income Tax Act thus stated: ‘charitable purpose includes relief of

\textsuperscript{25} Kalpagam, \textit{Rule by Numbers}, p. 151.


\textsuperscript{27} See Birla, ‘Performativity Between Logos and Nomos’. 
the poor, education, medical relief, and the advancement of any other form of general public utility’.²⁸ A slightly revised iteration of the ‘advancement of any other object of general public utility’ phrase in the 1890 Act, this criterion was now formally incorporated into tax law. The broad phrasing of this last stipulation—and the imagining of ‘forms’ or activities for and not just objects of general public utility—emerged as the lynchpin of Indian jurisprudence on the meaning of charity through the rest of the twentieth century. The key issue that appeared again and again in precedent-setting cases concerned the meaning, extent, and expanse of the term ‘general public utility’.

This question dominated Indian jurisprudence in a way that it never could in Britain, exactly because in India, the 1890 Charitable Endowments Act had deployed the term, instituting a much wider statutory definition of charity than in the UK. There, the modern definition of charity was specifically articulated in a significant House of Lords case occurring at the same time as the passage of the 1890 Act. In this foundational judgment, Lord Macnaughten drew a strict distinction between the everyday forms of charity that had informed case law through the 1601 Statute of Elizabeth, and modern legal definitions of the term: “Charity” in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads.²⁹ In the UK, even ‘purposes beneficial to the community’ soon seemed too expansive, and another precedent-setting case in 1896 in the Court of Chancery clearly warned against the term ‘general public utility’ being deployed as a criterion for charitable activity. Here Lord Justice Lindley argued, ‘Lord Macnaughten did not mean to say that every object of general public utility must necessarily be charitable. Some may be and some may not be.’³⁰

²⁸ Indian Income Tax Act, Act XI of 1922, Section 4(3) at lawmin.nic.in/legislative/textofcentralacts/1922.pdf, [accessed 14 December 2017].
³⁰ In Re Macduff, (1896) 2 Ch 451. The Court of Chancery adjudicates cases in equity and trusts and the administration of estates, and is thus a mediator between the conventions of common law and statutory change.
From *khadi* to chambers of commerce: trade as general public utility?

The question of the legal-governmental versus colloquial understandings of charity, and the extent and limits of the term ‘general public utility’ as an object and an activity emerged as a powerful politically charged topic of clarification in the 1940s. In 1941, the All India Spinner’s Association, an organization formed in 1925 under the All India Congress Committee (AICC) specifically to promote *khadi* (hand-woven cloth) trade, and then officially registered under the 1860 Societies Registration Act as an official association in 1937, came under the scrutiny of the Revenue Department. The Bombay Commissioner of Income Tax reviewed its accounts from 1935 and claimed that, at the time, the association was unregistered and that its income resulted from a clear purpose: earning profit. According to a document that defined the Association’s purpose, its goals were to cultivate hand-spinning, to provide *charkha* and handlooms to poor families, education in hand-spinning, and to open *khaddar* stores. The spinning-wheels were bought with donations to the AICC and then given to families. As summarized by the Bombay High Court (from evidence presented to it), the Association represented a system of business in which both hand-spun yarn and the cloth sold as *khadi* would provide wages to labourers:

The Association gives a certain wage to ... persons which, in some cases, is the sole source of income to these persons and in others adds to the earnings of the said persons so as to enable them to maintain and support their families. The yarn so spun is taken over by the Association and supplied to . . . other persons for weaving cloth on handlooms. The Association also buys hand-spun yarn from the said persons who have spun the same out of their own raw cotton paying them for the same on the basis of the cost of the raw cotton and the wages for spinning the same into yarn. The persons to whom all the yarn is handed over for weaving are also paid a certain wage sufficient either in itself or as an addition to the other income of the persons to maintain and support their families.  

The question of profit arose in the 1936 accounting year, when the Association decided to increase the wages of the weavers and so charged more for the hand-spun cloth. However, the workers who had produced that cloth were not initially forwarded any higher wages;

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31 In Re: The All-India Spinners Association vs Unknown on 8 April 1941, (1941) 43 BOMLR 742.
these were to be dispensed from the profit on the sale of goods at the increased price. This situation opened a compelling legal question: was *khadi*—the potent economic performative of Congress’s popular nationalism and Gandhian idiom of collective ethico-political uplift—to be understood as trade for profit, and so taxable? As Chief Justice Beaumont asked: had the Association ‘made a profit, and [if so] the question is whether such profit is derived from property held under trust or other legal obligation for religious or charitable purposes’.32 By posing the question in this way, the Bombay High Court equivocated, arguing that the Association had indeed made a profit, but that the key issue was fundamentally a matter of whether the Association was a *trust*, for if it was, the profitable activities would be understood as simply *incidental to the purpose of the trust*, which was relief and education of the poor and the public in general—‘general public utility’. Reviewing the Association’s legal formation, the Court decided that there was no deed of trust for the year 1936, and so it should be assessed as subject to tax.

Not surprisingly, in this moment of accelerated nationalist momentum, the All India Spinner’s Association appealed. The case went up to the Privy Council in 1944. Perhaps recognizing the insult of casting *khadi*—a symbol of nationalist political economy, Gandhian ethics, and the collective project of *swaraj*—as mere profit-making, the Privy Council overturned the earlier Bombay High Court decision.33 This move may also have reflected the decreasing profitability of the imperial political economy, the Indian budget surplus emerging during the Second World War, and so the weakening status of Britain in relation to India. Either way, the thrust of the Privy Council judgment was that while the Spinner’s Association had not been formally constituted as a trust, the regularity and formality of its procedures, rules, and accounting allowed it to be understood legally as such.34 The case was significant not only for its symbolic value, but also because it set the stage for two seemingly opposing trends: first, the project of clearly distinguishing profit-making from charitable activity and, second, for reading the promotion of trade, and possibly trade itself, as ‘general public utility’ and so as charity.

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32 Ibid.
34 Ibid.
In 1961, the new socialist-capitalist-developmentalist nation-state furthered this 1944 Privy Council precedent in another precedent-setting case in the Madras High Court: *Andhra Chamber of Commerce v. Commissioner of Income Tax* (February 1961). Following the 1944 precedent, this case highlighted the problem of what counted as charitable activity and what counted as profit-incentivized trade, a quandary that evinced tensions between the Indian nation’s long-held claims to economic sovereignty—and articulated in an understanding of trade as fuelling general public utility—as opposed to the extractive aims of fiscal governmentality. Such tensions would later be managed, if not reconciled, by neoliberal codings of society as a market of entrepreneurs, in which all transactions were to be legible through the main motivator of business, that is, the profit-motive.

But first, jurisprudence and administration slowly folded profit-making into the legal definition of charity. The Andhra Chamber of Commerce case was a key moment in this process. The Chamber had been established under section 26 of the Indian Companies Act 1913, which (repeating the same section in the 1882 Companies Act) allowed for the incorporation of not-for-profit companies such as chambers of commerce, whose incomes were to be spent ‘solely on the promotion of [their specified] objects’ and not distributed as dividends to their members. Such income would be tax exempt if its use fell under section 2(15) of the 1922 Indian Income Tax Act, which defined charitable purpose, as elaborated above. In this case, the Andhra Chamber of Commerce had income in the years from 1947–1953 from property that it owned and rented. The net income from its buildings was assessed to tax under section 9 of the 1922 Act, which covered income from property. The assessee contested and the case went to the Income Tax Tribunal, which agreed with the Revenue Department. At this point, the case moved to the Madras High Court, which was asked to consider whether the income should have been exempt, given the primary purpose of the Chamber as per sub-paragraphs (a), (b), (c), and (y) of its memorandum of association:

(a) To promote and protect trade, commerce, and industries of India in the Province of Madras and in particular in the Andhra country; (b) To aid, stimulate and promote the development of trade, commerce and industries in India or any part thereof with capital principally provided by Indians or under the management of Indians; (c) To watch over and protect the general commercial interests of India or any part thereof and the interests of the Andhras in particular engaged in trade, commerce or manufacture in India and in particular Andhra Desa [Andhra homeland]; . . . (y) To do all such
other things as may be conducive to the preservation and extension of trade, commerce, industries, and manufactures or incidental to the attainment of the above objects or any of them.\textsuperscript{35}

Furthermore, the Court highlighted that the Chamber submitted a claim that its ‘earnest desire’ was to ‘set up a commercial and industrial museum, arrange to send trade delegations to various countries for the promotion of India’s trade relations with those countries, institute scientific and technical research and study, expand the library and also organize commercial intelligence service on a larger scale.’\textsuperscript{36}

The key question for the Madras High Court was whether the objects outlined here could pass the test of section 2(15) of the 1922 Act, that is, did these objects qualify as ‘the advancement of any other form of general public utility’? Writing on behalf of the Court, Justice Rajagopalan’s judgment explained that while ‘it might at first sight appear to be a startling claim that a trade association like the assessee is a charitable institution or a charitable organization. It is not, however, the popular concept of what constitutes charity that matters.’ Citing Lord McNaughten’s strong distinction between legal and colloquial definitions of charity, alongside the subtleties of British jurisprudence on that definition, as well as the deeply politically potent precedent of the All-India Spinners Association Case, the judgment emphasized that in India, unlike in the UK, the word ‘public’ was deployed to define charity. To emphasize that public benefit could be interpreted broadly, it then proceeded to challenge a precedent in an earlier case concerning the Hapur Chamber of Commerce that had been adjudicated by the Allahabad High Court in April 1936.\textsuperscript{37}

In this case, the Allahabad court had argued that in the case of associations like chambers of commerce that had been established under section 26 of the Companies Act, \textit{only the members}—the merchants involved—benefit from being in the association. Even though such chambers did not distribute dividends, here the Allahabad court argued that their income was subject to tax, because such associations were only directed at a specific section of the public, in this case, merchants, and not the public at large. Furthermore, the

\textsuperscript{35} \textit{Andhra Chamber of Commerce vs Commissioner of Income-Tax} on 22 February 1961, 1961 42 ITR 503 Mad.

\textsuperscript{36} Ibid.

\textsuperscript{37} \textit{Chamber of Commerce, Hapur vs Commissioner of Income-Tax} on 6 April 1936, 1936 4 ITR 397 All.
judgment asserted, ‘before an institution can be held to be charitable there must be an element of altruism’.\textsuperscript{38} Said differently, in the Hapur case, the Court understood charity as other-directed, not self-directed. But in the Andhra Case, the Madras High Court reversed such precedent:

The fact that members of the assessee-association also benefits is no bar to the acceptance of its claim that the object of the association as distinguished from the objects of each of the individual members of the association fulfils the statutory requirement of ‘charitable purpose.’... [N]either the test of altruism nor the fact that members of the association also benefited by it can determine the question[:] is the object of the assessee-association one of general public utility [emphasis mine]?

In this assessment then, the criterion for charitable purpose was the object of the corporate body that sought to promote both the interests of the general public—trade and its benefits—as well as the particular concerns of the members. The conduct of profit-making (i.e. renting buildings) was deemed incidental to the broader charitable purpose, but, at the same time, fuelled it, thus blurring the distinction between charitable and profit-making activities. Here, the judiciary spoke in the voice of the nation as national economy, emphasizing that trade could be interpreted as both an object of ‘general public utility’ and also as the form or medium for its promotion.

**The 1970s: conducting profit-making conduct**

The Andhra Chamber of Commerce judgment was presented in February 1961. It marked an emergent battle between the judiciary and parliament, for at the very same time, the Lok Sabha was framing a major revision to the 1922 Income Tax Act: the Indian Income Tax Act of 1961, which came into force on 1 April 1962.\textsuperscript{39}

In it, the definition of charity was once again fine-tuned, this time specifically articulated in reference to profit-making. Section 2(15) of this Act revised the 1922 definition, stating that ‘charitable purpose includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not...
involving the carrying on of any activity for profit’ [emphasis mine].40 These transformative few words not only specifically placed charity in relation to profit, but also referred to profit as conduct, and so not just as an abstract accounting category. This move reflected what Lloyd and Susan Rudolph identified in their now classic analysis of India’s post-colonial political economy as a struggle between judicial review and parliamentary sovereignty.41 This struggle had reached an acute state in the 1970s under Indira Gandhi and the influence of the progressive wing of the Congress (I), which advocated against propertied elites and were fortified by Gandhi’s upset victory in 1971.42 The insertion of the new phrase in the Income Tax Act asserted both strong sovereignty and a governmental interest in the ‘conduct of conduct’.43 Understood as such, we might amend the Rudolph’s state-based reading of this political moment which identified judicial review with India’s liberalism and protection of citizenship, and parliamentary sovereignty with its ‘vice-regal’ strong centre and imperial heritage. From the perspective of the governmentalization of charity, it seems it was the judiciary that had helped to institute an economic liberalism that harkened back to imperial ‘free trade’, and parliament, speaking in the name of political liberalism and equal citizenship, that sought to exercise an imperial executive authority over the extraction of revenue.

Under Indira Gandhi, two significant Supreme Court cases, both with judgments in 1975, ensued after this significant statutory change. These cases reversed the precedents of the Spinner’s Association and Andhra Chamber of Commerce cases, which had understood the activities of trade, including profit-making, as servicing the purpose of general public utility. The first case—Sole Trustee Loka Shikshana [Public Education] Trust vs Commissioner of Income Tax, Mysore—concerned a trust established for a Kannada vernacular newspaper for, in its broadest articulation, ‘establishing, conducting and helping directly

40 Interestingly, this version of the Income Tax Act, now void, is not accessible online from any Indian government department. I am relying on the Supreme and High Court judgments that cite this section and its history.
42 For example, following in the spirit of her father’s abolition of zamindari shortly after independence, Indira Gandhi had, just before her 1971 victory, led her minority government in measures seeking to nationalize the 14 largest commercial banks and deprive princes of their privileges and purses. Ibid., p. 108.
43 On the ‘conduct of conduct’ see Foucault, Birth of Biopolitics, especially the lectures of 21 March 1979, 28 March 1979, and 4 April 1979.
or indirectly institutions calculated to educate the people by spread of knowledge on all matters of general interest and welfare. The commissioner of income tax argued that the trust was engaged in activity for profit—focused solely on the selling of newspapers, and so it should not be tax-exempt.

The justices here delved into a new distinction between ‘profit’ and ‘private profit’: that is, the Court was asked whether only profit in the service of private interests was taxable, or whether profit in general, for example that made by a trust that could be deployed for public charitable purposes such as education, could also be taxed. The Supreme Court emphasized that ‘it has been declared repeatedly by the courts, even before the addition of the words “not involving the carrying on of any activity for profit” to the definition of “charitable purpose” that activities motivated by private profit making fell outside the concept of charity altogether’. Building on the tensions in jurisprudence since the late nineteenth century that at once distinguished charity and profit, and also entangled them via the idea of general public utility, the Supreme Court reviewed the trusts’ accounts and workings, and decided that it was a ‘highly profitable’ newspaper business. It emphasized that the trust deed did not specify any ‘condition upon the conduct of the newspaper . . . business from which one could infer that it was to be on a “no profit and no loss” basis’ and so confirmed the decision of the lower courts. This judgment’s major impact was its assertion that any kind of profit-making activity was contrary to the purpose of charity. The justices closely examined the parliamentary addition to section 2(15) of the Income Tax Act, arguing that the phrase ‘not involving the carrying on of any activity for profit’ broadly qualified the pursuit of ‘general public utility’. Such pursuit would be challenged by evidence of any activity that focused only on the ends of profit-making, alongside any budgetary accounting of profit.

Decided a few months later, the second case—Indian Chambers of Commerce vs West Bengal Commissioner of Income-Tax—involved members of the Federation of Indian Chambers of Commerce and Industry, and came to the Supreme Court on appeal from both the West Bengal

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and Kerala High Courts. Here, the Supreme Court was tasked with clarifying the scope of the burden of proof for charitable activities and to define ‘an activity for profit’. Reversing the precedent in the 1961 Andhra Chamber of Commerce case cited by the appellants in their defence, the Court held that:

The income of the assesses, which are chambers of commerce, [stems] from three sources, namely, (a) arbitration fees levied by them; (b) fees collected for issuing certificates of origin; and (c) share of profit in another company for no. of certificates of weighment and measurement, which services are extended to members and non-members. [T]hat is, [the income is derived from] trade generally, [and so] is not entitled to the exemption, and is liable to tax.

The majority judgment emphasized that the chambers had been ‘deriving tax-free profit’ from ‘under the cover of charitable activities’. The decision was informed by many corrupt deployments of the trust mechanism, which even outside India had a long history stretching back to the monopolies of the late nineteenth century in the USA and the UK (and for which the entire domain of anti-trust law had been launched). As such, the justices argued that the legal definition of charity as general public utility had offered opportunities to cultivate ‘a crop of camouflaged organizations’ whose ‘mask was charitable’, but whose ‘heart [was] hunger for tax-free profit’. Amid an exposure of the sly manoeuvres for profit-making, a whole new category of profit—profit via freedom from taxation—emerged from the legal concept of charity itself, and served as a criterion for assessing the intention to make profit. The judgment supported the arguments of the West Bengal Tax Commissioner, whose counsel argued for ‘a total exclusion from the charmed circle of charitable purposes all activities which are prone to produce profits’. Accordingly, ‘the telling test . . . is to see that the means, like the ends, are charitable, untainted by gainful stimulus and purged of the potential for profit in reality’.

This argument stood in stark contrast to the arguments put forward by the chambers of commerce, who reiterated, as in earlier precedents, that it was the end of charity, not the means by which it was achieved, that should be the criterion for tax exemption. This position, according to the Court, read ‘the profit motive of the operation as against [its]

48 Ibid.
service-oriented activity which may or may not en passant yield an income’. This approach, the justices asserted, put too much emphasis on whether the activity is ‘wrapped up, entangled and intertwined with the public utility object’. Such intimacies in tax law’s arranged marriage of charity and profit would not be tolerated as ‘the resultant surplus’ would be incorrectly rendered tax-exempt.\(^49\)

**Building a genealogy of economic liberalization: profit-making as charitable medium**

Despite the compelling rhetoric of the 1975 Supreme Court cases, shortly thereafter—indeed, just as Foucault was delivering his lectures on the continuities between liberal and neoliberal governmentality in 1979—two new cases came to the Indian Supreme Court, challenging both 1975 decisions and calling for a return to earlier precedent. The first—*Additional Commissioner of Income Tax, Gujarat vs Surat Silk Art Cloth Manufacturers’ Association*—was a weighty decision full of jurisprudential hermeneutics that reflected the oscillation in precedents on charity as ‘general public utility’; this was articulated in the cases’ majority as well as minority opinions.\(^50\) The assessee was an incorporated company and carried out various activities for the promotion of commerce and trade in art silk yarn, art silk cloth, and silk cloth. It also obtained licences for the import of raw material as well as licences for the export of cloth manufactured by its members. Just as we may think of silk art manufacturing as a more delicate version of *khadi*, the Surat Silk Art Manufacturers’ Association case offered a more precise spin of the All-India Spinner’s Association case. According to Surat Silk’s memorandum of association, its income and property were to be applied solely for the promotion of its objects, with no dividends or bonus returned to its members, and in the event of its dissolution, its assets were to be transferred to another company for similar purposes. As what today would be a called a non-profit company, the Association claimed exemption under section 11(1) of the Income Tax Act, which allowed companies to exempt portions of income that complied with the definition of charitable purpose in section 2(15). This claim to exemption was rejected by the income tax officer on the grounds that

\(^{49}\) Ibid.

\(^{50}\) *Additional Commissioner of Income Tax, Gujarat vs Surat Art Silk Cloth Manufacturers’ Association* on 19 November 1979, 1980 AIR 387, 1980 SCR (2) 77.
none of Association’s objects were charitable within the meaning of section 2(15). The Appellate assistant commissioner held that Surat Silk’s income was entitled to exemption under section 11(1) exactly because its activities did not involve ‘the carrying on of any activity for profit’. The Appellate Tribunal on appeal affirmed this second opinion of the assistant commissioner.

The Supreme Court therefore had to adjudicate on the specific meaning of the final phrase in the 1961 Income Tax Act’s definition of charitable purpose: ‘the advancement of any other object of general public utility not involving the carrying on of any activity for profit’ [emphasis mine]. With a careful detailing of the legislative history of the definition of charitable purpose, the judgment investigated whether ‘not involving the carrying on of any activity for profit’ modified the word ‘advancement’ or directly modified the phrase ‘object of general public utility’. The impetus for these grammatical acrobatics came down to a question of instrumental rather than moral/philosophical agency. Said differently, the Court decided that ‘not involving the carrying on of any activity for profit’ qualified only the end or purpose of ‘general public utility’ and did not qualify the term ‘advancement’, that is, the means or media by which this end would be achieved. Fine-tuning and specifically articulating the implications of the All India Spinner’s Association and Andhra Chamber of Commerce precedents, the Supreme Court here posed profit-making as not just incidental, but instrumental, to charity, all the while preserving the sanctity of charity from ‘entanglement’ with profit-making. The conduct of profit-making was not to be identified with the intention of profit-making; as such, the conduct of profit-making could actually fuel charitable purposes.

The proto-neoliberal tendencies of this judicial activism were fortified by another case shortly afterwards, in a powerful reversal of the 1975 Indian Chambers of Commerce decision that stemmed from a series of appeals by the Federation of the Indian Chambers of Commerce (FICCI), the premier organization representing chambers of commerce across India.51 The case—Commissioner of Income Tax, New Delhi vs Federation of Indian Chambers of Commerce—had a long history, for it concerned the accounting year 1962–63, when FICCI had been assessed taxes on income that had been realized at a trade fair it had held at New Delhi, from the rental of stalls and storage space,

and advances from participants for hotel accommodation. In that accounting year, FICCI had also held the Conference of the Afro-Asian Organization for Economic Cooperation, supported by a grant-in-aid by the Government of India of three lakh rupees, for which it had spent two lakh rupees. FICCI moved through various appeals, first deploying the 1961 Andhra Chamber of Commerce case precedent, which was rejected due to the statutory changes in the definition of charitable purpose in the 1961 Income Tax Act which had come into effect in April 1962. The FICCI case then ascended to the Supreme Court shortly after the Surat Silk Art Manufacturers' decision, and like that Association, FICCI contended its activities were not motivated by earning profits, but rather that its object was the promotion, protection, and development of trade, commerce, and industry in India and abroad. It therefore argued that the aims for the income realized were legitimate charitable aims governed by the term ‘any other object of general public utility’.

Reiterating the majority opinion in the Surat Silk Art Manufacturers’ case in favour of FICCI, the Supreme Court held that:

There is a distinction between the ‘purpose’ of a trust and the ‘power conferred upon the trustees’ as incidental to the carrying out of the purpose. If the primary or dominant purpose of a trust or institute is charitable, any other object which is merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or the institution being a valid charity.

Here profit-making was thus posed as a medium for charity by distinguishing between the purpose of a trust or non-profit corporate body, and the instrumental agency of its members—the means—to effect that purpose. Indeed, the force of this decision was validated in law by the 1984 Finance Act, which removed the words ‘not involving the carrying on of any activity for profit’ from section 2(15) of the Indian Income Tax Act.

At the same time, it is worth noting that in a robust minority opinion, Justice Venkataramiah asked whether charity could be made ‘at the expense of others’, strongly articulating the redistributive responsibility of the liberal welfare state:

Whatever may have been the position in those days when the State was just a police State performing minimum functions of Government [i.e., under empire], today when the State is a welfare State would it be right either morally or constitutionally to allow amounts which should legitimately form

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52 Ibid.
part of the revenue of the State to be dealt with by non-governmental agencies administering trusts[?]

Significantly, and prophetically, this minority opinion highlighted that judicial trends established by the Surat Silk Art Manufacturers and the FICCI cases posed serious questions about whether the responsibilities of economic justice—the just distribution and management of wealth—would remain with the sovereign or whether this task would devolve to market organizations defined at their core by profit-making.

**Conclusion: trusteeship, local giving, and CSR’s philanthropic governmentality**

The Indian case-law genealogy elaborated here has sought to demonstrate that the very distinction between charity and profit so rigorously instituted through the trust for ‘general public utility’ also enabled their infusion. Indeed, seemingly contradictory legal performatives first enclosed a realm of incalculable public benefit as enshrined in the Charitable Endowments Act and then rendered that very realm calculable and so knowable through the category of profit in the income tax acts. These moves reflect processes of economization in which the pursuit of profit as an end, tied to the calculability of risk (another significant story in the history of the liberal social welfare state and its relation to neoliberal governance) inform the framing of India as a liberalized market society.\(^{33}\) The fiduciary force of the trust—and, indeed, the non-market, even feudal, social imaginaries embedded in the very ethics of trust—enabled the enclosure of charity as the gift outside market exchange. The governmental administration of the trust, manifest in its tax-exempt status, folded charity into that very domain of exchange.

As M.K. Gandhi, a lawyer trained in equity, understood, the trust had a powerful political corollary, the concept of trusteeship. Trusteeship was a sovereign manifestation of imperial liberalism, perhaps most well known through the mandate system instituted by

the League of Nations. It spoke of paternal benevolence to publics of colonial subjects. If trusteeship was the incarnation of the trust in a language of juridical sovereignty, this article has asked: how might we understand the governmentality of the trust relation and that of philanthropy more broadly? The new CSR regulations of the 2013 Indian Companies Act, and a very recent case in the Income Tax Appellate Tribunal Kolkata in December 2014 citing the precedent of the 1981 FICCI decision, offer initial approaches to this query.54

The new CSR rules outlined in section 135 of the 2013 Act are applicable to companies that have an annual turnover of 1,000 crore rupees or more, or a net worth of 500 crore rupees or more, or a net profit of five crore rupees or more. These companies are mandated to constitute a CSR committee of three or more directors, and must set aside at least two per cent of their average profit over the previous three years for CSR. The law enumerates a wide range of CSR activities, including promoting education, gender equity, and women’s empowerment; combating disease, child mortality, and extreme poverty; contributing to the Prime Minister’s National Relief Fund and other central funds; and supporting social business projects, environmental sustainability, and vocational skills. Corporations are thus directed to address much of the portfolio of the old developmentalist state.55 But at the same time, companies are to give preference to local areas when formulating their CSR policies.56 As such, the new rules seem to evoke a return to an ethos of customary social welfare practices directed not at the abstract public of citizens, but rather in cultivating local communities. For example, a recent study of CSR activities in 2012–13, the year just before passage of the Act, found that most firms undertake CSR expenditure for the welfare


of rural communities, especially around their areas of operation. A possible reason could be to generate goodwill amongst people in the neighbourhood and become familiar with the area and its needs, which in turn would minimise costs of providing services.\(^{57}\)

With this interest in giving to familiar, local communities, have we returned then to the vernacular market ethics of the nineteenth century and before? To say so would be to ignore the epistemological-institutional transformations of philanthropic governmentality, which has folded embedded giving into philanthropy, and now philanthropy into ‘corporate social responsibility’. Indeed, we might say that the corporate life (in its robust Weberian/Henry Maine sense) of nineteenth century vernacular capitalism has been economized into the calculable intentionality—that is, the strategic deployment of the net profits—of the corporate person.\(^{58}\) A recent 2014 case concerning the Indian Chamber of Commerce (ICC) in the Kolkata Income Tax Tribunal is a good illustration. In it, the ICC sought to reverse its own earlier admission to the assessment officer that its activities in conducting ‘Environment Management Centres, meetings, conferences and seminars’ were profit-making activities. It sought to do so after the enactment of the 2013 CSR rules, and in its appeal, it also cited the 1981 Surat Silk Art Manufacturers’ and the FICCI Supreme Court cases, emphasizing that the objects of the ICC have been, since its inception in 1925, to advance trade, general public utility, and so charitable purposes.

Significantly, the Chamber elaborated on the role of the environment management centre it had established, arguing that the Centre sought ‘to promote environment management for enhancing competitiveness and efficiency in business and industry in order to ensure a cleaner, safer and healthier environment for the society at large’. Even more significantly, the Appellate Tribunal supported the case, and reversed the earlier decision, emphasizing that the ICC’s activities were directed at ‘implementing effective energy conservation practices, managing environmental hazards and mitigating risks’ and so containing ‘damage to the Environment done

\(^{57}\) Rai and Bansal, ‘An Analysis of Corporate Social Responsibility Expenditure in India’.

by unregulated/ill informal industries’. Thus ‘charitable purpose’ was further economized through the concept of ‘environment’, for benefit to the public translated here as managing environments of business (ecological and otherwise) by creating a safer society and managing risk. Beneficiaries are now populations enframed by ‘environments’. These are local spheres that re-situate the modern philanthropic practice of giving to an abstract public into giving to ‘communities’ that are understood as environments for business. Charity has become a function of profit: if jurisprudence in the twentieth century emphasized that the conduct of profit-making can fuel charity, under CSR’s world-view, the conduct of charitable giving can fuel profit.

Furthermore, the concept of local ‘environments’ is actively being tied to vernacular capitalism’s traditions of social welfare, this to contest critiques of India’s low rates of public philanthropy. A recent report from the global management consulting firm McKinsey and Company on ‘designing philanthropy for impact’ in India presents a series of challenges for traditional giving practices in the subcontinent, emphasizing that ‘charitable donations in India fall below the global average’. While contemporary research on philanthropy in India has studied how much people give, and on the efficiency of the execution of donations, a key problem, according to the report, is actually the ‘where’ and ‘how’ of giving—that is, choices about which institutions should receive donations, and expectations about what the impact of giving should be:

Indian donors tend to prefer direct interventions designed to help beneficiaries immediately, as opposed to more indirect interventions that seek to build organizational capacity at scale. In the educational sector, for example, a more direct intervention would be funding a local school. A more indirect intervention would be... helping government education agencies improve their monitoring and data-collection programs.

59 Indian Chamber of Commerce vs Assesee on 2 December 2014, p. 33.
62 Ibid.
Deconstructing the management language here, the report distinguishes between broad and ‘indirect’ investments to the abstract public and more ‘direct’ ones, like the many local schools and institutions in the names of wealthy families that are peppered across towns, villages, and large city neighbourhoods in India. In this vein, a recent article on corporate social responsibility in the *Hindustan Times* entitled ‘Charity a rarity in India’ cited a corporate philanthropy expert who emphasized that ‘Companies like to do CSR but only around their factory [that is, locally and directly] and this does not lead to overall social development of the nation’.

However, rather than only ask why there is not enough philanthropy in India, or why the nature of philanthropy is limited to local interventions, here I have sought to locate it in a genealogy of market governance that extends from colonial India to its neoliberal capitalist present. Addressing philanthropy not just in classic humanitarian terms as ‘doing good’, but rather as a form of governing, provides insights into the ways in which citizenship is understood through developmentalist languages of economic growth and now entrepreneurial models of market participation. In addition, it is important to remember that the modern practices we call philanthropy and corporate social responsibility are both distinct from and interact with value-systems negotiated in vernacular idioms. Remembering the history of vernacular capitalism and its modes of valuation might allow for more sophisticated understandings of what the Mckinsey report calls ‘direct’, locally informed giving, as opposed to ‘indirect’ forms such as institutional capacity-building. It also reminds us that contemporary public discourse that stages direct lines between CSR and Indian tradition must be problematized: traditional norms of vernacular mercantile gifting—such as investment in local communities—may appear to be ongoing and resilient, but they now operate within and indeed operationalize new processes of economization.

Significantly, in this mode, CSR has been promoted by the Ministry of Corporate Affairs in the language of trusteeship: directors and upper level managers of companies are ‘custodians of public money— they are trustees, if we go to the Mahatma Gandhi notion of

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trusteeship . . . they are actually trustees of the nation’.64 The imperial genealogy of the public, as institutionalized via philanthropy and market governance, comes full circle here. The Ministry channels imperial notions of trusteeship via Gandhi’s rewriting of the concept, in which the fiduciary ethics of trust are manifest in a paternalist economic agenda for Indian capitalists.65 Gandhi’s focus on the fiduciary trust relation emphasized the obligation or duty to further the interests of others; this is distinct from the very purpose and presuppositions of the private law contract, or indeed the social contract, which assume that parties act in their own interests and so must be bound by contractual stipulations.66 In the contemporary coding of CSR as trusteeship, the public becomes a governed ‘environment’ and its constituents become subjects of corporate responsibility; ‘responsibility’ itself being a fiduciary concept. At the same time, vernacular forms of social welfare are also tied to CSR though Gandhian trusteeship. A CSR handbook published by the Confederation of Indian Industry thus summarizes in palimpsest:

CSR in India has traditionally been seen as a philanthropic activity. And in keeping with the Indian tradition, it was an activity that was performed but not deliberated [this may refer to the customary practices of charity among vernacular capitalism]. As a result, there is limited documentation on specific activities related to this concept. However, what was clearly evident was that much of this had a national character . . . [tied to] India’s freedom movement, and embedded in the idea of trusteeship.67

Metaphorically, we might see these new forms of philanthropic governmentality—enabled by the trust relation—as effecting what I would call a ‘fiduciary citizenship’, in which the rights of citizenship

67 Confederation of Indian Industry, Handbook on Corporate Social Responsibility in India (2014) at www.pwc.in, [accessed 14 December 2017].
are mediated by the responsibilities of corporations. As such, we might consider philanthropy a key ground on which imperial liberalism and its self-proclaimed paternal responsibilities to a public of subject-beneficiaries, formalized in the legal mechanism of the trust and performed in its sovereign incarnation—political trusteeship—may be seen to inform a neoliberal framing of market society and its corporate responsibilities. These responsibilities are coincident with its entrepreneurial demands of profit-making. And while the abstract public of citizens and, more broadly, humanity itself are the classic objects of modern ideas of philanthropy, the governmental trajectory of charitable regulation in India also exposes a renewed investment in the category of ‘community’. This at once reiterates the imperial characterization of vernacular capitalists’ Gemeinschaft worlds and evinces their contemporary nativist validation, which fortifies the contemporary global/local logics of neoliberal governance.

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