"CLEARING THE CHARITY MUDDLE — A STATUTORY PROPOSAL" THE CHARITIES ACT, 1982

I. *Introduction*

IT is often said that charity begins at home but as far as the law of charities in Singapore is concerned, it began in England and has persisted to this day. In 1982, the Singapore Legislature enacted the Charities Act,[1] for purposes of registration and better administration of charities in Singapore.[2] Under Section 2 of the Act, the phrase "charitable purposes" is defined as "purposes which are exclusively charitable according to the law of Singapore" which in effect begs the question as to the legal definition of charity. Thus the issue is thrown back to the (English) Statute of Charitable Uses, 1601[3] which is still binding upon Singapore by virtue of the Second Charter of Justice, 1826,[4] and the common law. In the case of *Choa Choon Neoh* v. *Spottiswoode,* which involved the issue of whether '*sin-chew*' (or ancestral worship) was charitable, Maxwell C.J. held that:

> In this Colony, so much of the law of England as was in existence when it was imported here, and as is of general (and not merely local) policy, and adapted to the condition and wants of the inhabitants, is the law of the land; and further, that law is subject, in its application to the various alien races established here, to such modifications as are necessary to prevent it from operating unjustly and oppressively on them....[5]

Since then, the law of charity has often been taken to be based upon the same principles as the English common law of which the leading authority is Lord Macnaghten's classification in *Pemsel's* case.[6]

The purpose of this article is to analyse the controversies surrounding the legal definition of charity by first examining the applicability and usefulness of both the 1601 Statute and *Pemsel's* case to the present Singapore context. Secondly, the question of whether fiscal privileges should be an automatic consequence of charitable status and some English proposals for reform will be examined. Finally, a solution to this 'charity muddle' will be proposed in the form of a statutory codification of the existing law.

II. *The Applicability of English Charity Law to Singapore*

(a) *The Preamble to the 1601 Statute*

The charitable purposes set out in the preamble are, in modernised English, as follows:

> The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning,

1 Act No. 20 of 1982.

2 Parliamentary Proceedings of 31 August 1982 at column 132.

3 Otherwise known as the Statute of Elizabeth, 43 Eliz. c. 4.

4 In *R.* v. *Willans* (1858) 3 Ky. 16, Maxwell, B. held that the effect of the Second Charter of Justice, 1826 was to import the English law into the Colony of Singapore as of that date.

5 (1869) 1 Ky. 216, 221. For criticisms of the reception of English law, see M. Gopal, "English law in Singapore. The Reception that Never Was." [1983] 1 M.L.J. xxv.

6 *Commissioners of Special Income Tax* v. *Pemsel* [1891] A.C. 531, 583.

> free schools and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea-banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; the marriages of poor maids, the supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives; and the aid or ease of any poor inhabitants concerning the payment of fifteens, setting out of soldiers and other taxes.

The Statute of Charitable Uses, 1601, was not passed for the purpose of giving a definition of charity but was directed to providing for the reformation of abuses in the application of property devoted to charitable uses. However, by a singular construction, it was held to authorise certain gifts to charity which otherwise would have been void[7] and it contained in the preamble a list of charities so varied and comprehensive that it became the practice of the courts to refer to it as a sort of index or chart.[8] At the same time, it should be noted that the objects there enumerated are not to be taken as the only objects of charity but are given as instances.[9]

It must be remembered that the 1601 Statute was drawn up at a time when the functions of the state and local administrations were rudimentary in the field of social welfare, education and even the bare amenities of life such as highways. It represents only a statement of the voluntary service to the community then practised.[10] During this period, there was a breakdown of the feudal relationship and parishes were empowered to levy 'poor rates' to pay for the upkeep of parish workhouses, houses of correction for the 'undeserving poor' (i.e. those able-bodied and capable of working) and parish almshouses, coupled where necessary, with dole payments for the 'deserving poor' (i.e. those incapable of working due to youth, age, sickness or other disability). But private philanthropy was still crucial to meet these expenses and the Tudor state had to encourage and facilitate such philanthropy through a series of measures including first, the enactment of the Statute of Charitable Uses; secondly, the Court of Chancery recognising and enforcing charitable uses and thirdly, the privileges already accorded by the common law were confirmed and enhanced.[11]

By the nineteenth century, the practice of referring to the preamble had become a rule of law.[12] Yet, it is not only the objects emunerated in the preamble which are ranked as charitable, but also all other purposes "which by analogies are deemed within its spirit and intendment."[13] In other words, the objects named in the preamble are regarded as instances and not the only objects of charity. On the

7 H. Picarda, *The Law and Practice Relating to Charities* (1977) at p. 8.

8 *Supra,* n. 6 at 581.

9 *London University* v. *Yarrow* (1857) 1 De. G & J 72, 79 *per* Lord Cranworth, L.C.

10 *Charity Law & Voluntary Organisations* — Report by the Goodman Committee (1976) para. 13 at p. 8.

11 For a more detailed discussion of the history and background information relating to the 1601 Statute, refer to M. Chesterman, *Charities, Trusts and Social Welfare* (1979) at Chaps. 2-5.

12 The watershed was the case of *Morice* v. *Bishop of Durham* (1804) 9 Ves. 399 *per* William Grant, M.R.; on appeal (1805) 10 Ves. 522 *per* Lord Eldon, L.C.

13 *Morice* v. *Bishop of Durham* (1804) 9 Ves. 399, 405.

other hand, objects which are neither enumerated in the preamble nor within its spirit and intendment are not charitable no matter how beneficial to the public they may be.[14]

The United Kingdom Charity Law Reform Committee criticised the fact that the categories which were derived from the preamble had been stretched beyond recognition by the judges in successive cases to produce a mass of conflicting and contradicting precedents. For example, the "repair of... seabanks" had led to lifeboats being charitable and by further analogy to fire brigades; the "repair of ... churches" had, in turn, led to the provision of churches, all religious advancement and the provision of cemetries and crematoria all being adjudged as charitable. Thus, there is no real common sense legal definition of charity.[15]

The Goodman Committee also commented that the preamble is inflexible and out of tune with modern mode of thought and social needs because it was never intended as an exhaustive classification but merely a series of examples of charitable gifts.[16] An example was provided in the case of *re Patten* [17] where it was held that a gift to the Sussex Cricket Club to train youngsters to be professionals was not charitable. Counsel in that case tried to argue that the trust was for the "supportation, aid and help of young tradesmen, handicraftsmen and persons decayed" but the argument was rightly rejected by Romer J.

Sheridan in his Braddell-Memorial lecture,[18] pointed out that purposes which may be beneficial to the community in 1601 might have ceased to be beneficial now because of the social situation being changed. For example, the category of "marriage of poor maids" can be validly criticised as obsolete since the custom of dowry had been abolished in both England and Singapore. In Singapore, all that a couple needs to be legally married is to register themselves *(i.e.,* giving a notice of marriage) at the Registry of Marriages [19] and pay a sum of $18. After a minimum of three weeks interval,[20] they can proceed to solemnize their marriage before the Registrar of Marriages and they will then be issued a marriage certificate which legally recognises them as man and wife. As such it is doubtful whether any 'poor maid' needs assistance in this regard. This category also creates anomalies in the present context as it discriminates in favour of maids and not other vocations. Furthermore, in this era of sexual equality, should not the marriages of poor lads be treated as charitable as well? Since there is such a discrimination in favour of "poor maids" the question arises as to whether such a provision satisfies the 'rational relation' test under Article 12 of the Singapore Constitution? Secondly, there is the category of "relief or redemption of prisoners or captives." It should be noted that slavery is now extinct and illegal and funds

14 *Gilmour* v. *Coats* [1949] A.C. 426, 442-443 *per* Lord Simonds, L.C.; *National Anti-Vivisection Society* v. *IRC* [1948] A.C. 31, 41 *per* Lord Wright.
15 *Report of the Chanty Law Reform Committee,* [1974] N.L.J. Annual Charities Review 26, 30.
16 *Goodman Committee Report, supra,* n. 10 para. 29.
17 [1929] 2 Ch. 276.
18 L.A. Sheridan, "The Movement for Charity Reform", the Seventh Braddell Memorial Lecture, 1976. Reported in [1976] 2 M.L.J. lii.
19 S. 13 of the Women's Charter, Cap. 47 (1970 Rev. Ed.).
20 S. 16 of the Women's Charter, *supra.*

for the redemption of slaves set up in less humane times have been applied *cy-pres* for a century or more.[21] Finally, the preamble allows as charitable the mitigation of revenue liability in the form of "aid or ease of any poor inhabitants concerning the payment of fifteens, setting out of soldiers and other taxes." Now, 'fifteens' is a variety of antique wealth tax and with the present fiscal privileges being attached to charitable purposes, it would create a serious anomaly if society were to subsidise the payment of taxes.

Hence, it is submitted that by enumerating charitable purposes specifically instead of giving a general statutory definition, an undesirably inflexible system is created whereby the courts are forced to adopt a quite absurd method like 'analogy upon analogy' in order to accept or reject a purpose as charitable. Also, those purposes listed as charitable are totally inadequate to cover various other categories which have arisen over the years. However, the main objection is that the concept of charity must be, in a sense, personal to the indigenous environment and it is no longer good enough to rely on the preamble, for what it is worth.[22] Here a distinction must be drawn between being bound to a legislative relic and referring to it where necessary. Therefore, it will be highly undesirable to be shackled to a legacy from medieval England and a young, independent, modern state like Singapore should have the unfettered discretion to mature.

(b) *Suitability of Lord Macnaghten's Classification in Pemsd's Case*

Presently, a claim to charitable status is determined by considering whether the purpose in question comes within Lord Macnaghten's classification as exemplified by the cases decided in accordance with it.[23] In other words, the 1601 Statute had been interpreted by common law to be a classification comprising of four categories which are:

(1) trusts for the relief of poverty;
(2) trusts for the advancement of education;
(3) trusts for the advancement of religion;
(4) trusts for other purposes beneficial to the community.

To this classification, Lord Wilberforce added the caveat that first, it is only a classification of convenience and there may well be purposes which do not fit neatly into one or other of the headings. In fact, there are many purposes which overlap; for example, a gift for the preparation of "poor students of the Ministry" may come under all the four heads. Secondly, the words used must not be given the force of a statute to be construed. Thirdly, the law of charities is a moving subject which may have evolved since 1891.[24]

The law has evolved to such an extent that a trust, in order to be charitable, must be for the public benefit.[25] This requirement of

21 See Sheridan, *supra,* n. 18 at p. Iviii.
22 W.J.M. Ricquier, "Charity Begins ____At Home? Charities Act 1982 (No. 20) (1982) 24 Mal. L.R. 323, 326.
23 Hanbury and Maudsley, *Modern Equity* (11th Ed. 1981) at p. 452.
24 *Scottish Burial Reform & Cremation Society Ltd.* v. *Glasgow Corporation* [1968] A.C. 138, 154.
25 *Tudor on Charities,* (6th Ed. 1967) Edited by McMullen, Maurice & Parker, at p. 2.

benefit has two aspects: first, there must be a benefit which must not be too vague and incapable of proof [26] and secondly, it must be of a public character, i.e. it must benefit the community or a section of it.[27] Where the purpose appears to be for the relief of poverty or the advancement of education or the advancement of religion, the court will assume it to be for the benefit of the community and therefore charitable[28] unless the contrary is shown. It is for those who dispute the validity of the gift or trust to satisfy the court that the community will not be benefited in a way that the law regards as charitable because the purpose is not within the spirit and intendment of the preamble.[29]

In England, the Charity Law Reform Committee stated that the law as laid down by *Pemsel's* case is vague and uncertain in almost every aspect.[30] Being so vague, the law is open to arbitrary interpretation by the Charity Commissioners and this interpretation will be virtually free from any possibility of appeal. Although it may be argued that vagueness allows flexibility, the Committee stated that flexibility to the Charity Commissioners could seem arbitrary to the rejected applicant. The Committee cited records which indicated that only one appeal resulted from 1380 rejections of applications for registration of charitable status from 1960 to 1971.[31] As a result of these arbitrary boundaries, charities may be deterred from doing work that is worthwhile.

Furthermore, there are practical problems faced by the Charity Commissioners in both England and Singapore when confronted with a newly formed organisation applying for registration with purposes unlike any of the previous common law decisions. In the Report of the Charity Commissioners for England and Wales for the year 1966,[32] the Commissioners lamented the fact that due to prohibitive costs of appeal to the High Court, an appeal from their decisions will usually not be forthcoming.[33] Thus, in the absence of any regular appeal from their decisions, they will inevitably move further and further away from cases decided by the Courts and in reality, they will become the sole determinant of the definition of the term 'charitable purpose'.

In Singapore, the present procedure is for an organisation to submit an application to the Charity Supervision Branch to be registered as a charitable organisation. Since this Branch is actually part of the Seventh Division of the Inland Revenue Department, any cases of doubt as to whether any purpose is charitable or not will probably be

26 *E.g.* in *Gilmour* v. *Coates, supra,* n. 14, it was held that the purposes of a community of cloistered and contemplative nuns were not legally charitable because the benefit to mankind of intercessory prayers and of the example of pious lives were too vague and incapable of proof.

27 *Oppenheim* v. *Tobacco Securities Trust Co. Ltd.* [1951] A.C. 297, 305 *per* Lord Simonds.

28 *National Anti-Vivisection Society* v. *IRC, supra,* n. 14 at p. 65, *per* Lord Viscount Simonds.

29 *Tudor on Charities, supra,* n. 25 at p. 3 citing *National Anti-Vivisection Society* v. *IRC* and *Gilmour* v. *Coates, supra,* n. 14.

30 *The Charity Law Reform Committee Report, supra,* n. 15 at p. 32.

31 This point was substantiated in the Report of the Charity Commissioners for England and Wales, 1966, the relevant portions of which are reproduced in the appendix to Picarda, *supra,* n. 7, pp. 717-720.

32 *Supra,* n. 31.

33 The Commissioners stated that out of 800 rejections of the applications for registration, none of the rejected applicants appealed against their decisions.

referred to the Law Division of the Department. If the issue is still not resolved, then most probably the Attorney-General's Chambers will be consulted. Therefore any area of doubt will most probably be resolved within the public administrative process. This situation is indeed unfortunate because it effectively eliminates appeals to a Court of Law by the Inland Revenue Department from the Charity Commissioners' decisions, since the latter is in fact part of the Inland Revenue Department. Further it is doubted whether the trustee will have the means to appeal to the High Court.

One writer[34-35] has commented that our local judges have, in the past, exhibited a marked reluctance to adopt or modify English practices and customs and that English law was often applied indiscriminately. Although some judges had spoken of the need to modify English principles to local conditions,[36] it was not a simple task for such judges bred and trained in the teachings of common law and equity. The early local reports on charity indicated that evidence of local religious practices and customs was not always forthcoming in court. Both Chinese and Muslim customary laws suffered from a lack of detailed codes or doctrines and in the absence of evidence, the courts decided in accordance to the words of the wills. Some of these early cases[37] involving gifts or purposes alleged to be for the advancement of religion were expressed in rather 'obscure and uncertain' language. This was construed strictly with little regard for the fact that the purposes were dedicated to charity.

Since the English law of charity is currently being developed by their Charity Commissioners, whose reports are not easily accessible and together with the fact that local judges as well as our Charity Commissioners are dependent upon English legal principles, the nett effect will be that our local law will most probably remain stagnant. Furthermore, the concept of charity should be influenced by factors such as local culture, customs and beliefs which are unique to our society. Therefore, it is submitted that the time is ripe for a break-away from the English traditions.

III. *Whether Fiscal Privileges should be Accorded to Charitable Organisations*

(a) *Present Fiscal Privileges Accorded to Charitable Purposes*

Section 13(l)(g) of the Income Tax Act[38] states that:

> There shall be exempt from tax, the income of any charitable institution or of any body of persons or trust established for charitable purposes only:

34-35 Then Bee Lian, "The Meaning of 'Charity' in Malaya — A Comparative Study" (1969) 11 Mal. L.R. 220, 224-225; see also part 2 of the article in (1970) 12 Mal. L.R. 1.

36 *E.g.,* see the comments of Maxwell, C.J. in *Choa Choon Neoh* v. *Spottiswoode, supra,* n. 5.

37 *Yeap Cheah Neo* v. *Ong Cheng Neo* (1875) L.R. 6 P.C. 381: *A.G.* v. *Thirpooree Soonderee* (1874) 1 Ky. 377, *per* Ford, J.

38 Cap. 141 (1970 Rev. Ed.).

Provided that —

(a) where a trade or business is carried on by any such institution, body of persons or trust, the income derived from such trade or business shall be exempt from tax only if such income is applied solely for charitable purposes and either —

(i) the trade or business is exercised in the course of the actual carrying out of a primary purpose of such institution, body of persons or trust; or

(ii) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution, body of persons or trust was established;

(b) the institution, body of persons or trust applies in any year of assessment for charities or charitable objects within Singapore not less than eighty percent of its income (after providing for allowable deductions) in the preceding year unless the Comptroller otherwise permits;

(c) if the institution, body of persons or trust applies any amount of its income which otherwise than in accordance with its charitable objects the institution, body of persons or trust shall pay to the Comptroller tax on that amount of its income and a determination and assessment under this sub-paragraph shall be treated as a notice of assessment and shall be subject to the provisions of Part XI and Part XII of this Act.

It should be noted that it is the income of the three categories, *viz.* (i) any charitable institution, (ii) any body of persons and (iii) trust, that are exempt from tax and in Singapore, no distinction is made as to whether such income is derived from trade, business, rent, interest or dividend.

Of the three categories, only the phrase "body of persons" is defined under Section 2 of the Income Tax Act as "any body politic, corporate or collegiate, any corporation sole and any fraternity, fellowship or society of persons whether corporate or not corporate but does not include a company or a partnership " However, the term "trust" is defined under Section 2 of the Trustees Act[39] as "trust does not include duties incident to an estate conveyed by way of mortgage, but with this exception the expressions "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative...." But it is again the category of "charitable institution" that has not been defined and one is forced to resort to the general principles of charity law as discussed above.

The limitation inherent in Section 13(l)(g) is that the charitable institution, body of persons or trust must be established for charitable purposes only. In addition, there are further conditions which must be satisfied before fiscal privileges are given. First, where the income of the charitable organisation is derived from any trade or business, such income must be used solely for the charitable purposes. Furthermore, such trade or business must either be the primary purpose of such organisation or the work is being carried on by the beneficiaries

39 Cap. 40 (1970 Rev. Ed.).

of the charity. Secondly, where the income is derived from sources other than trade or business, such institution, body of persons or trust must apply at least 80% of the income for charities or charitable objects within Singapore. This is generally referred to in tax parlance as the "80% Rule".

Hence, where such body applies any amount of its income not in accordance with its charitable objects, then it shall pay tax on that amount of its income. In other words, to prevent charitable institutions from abusing the exemption from tax on the income they receive, the law requires a charitable organisation to utilise not less than 80% of its income which is derived from sources other than trade or business (for example, gifts from donations, endowments etc.) for charitable purposes. Where the charitable institution fails to apply 80% of its adjusted income for charitable purposes, it will be subject to tax on that portion that is not so applied.[40]

Another tax privilege is given under Section 37(2)(c) of the Income Tax Act which states that:

> There shall be deducted — …
>
> (c) an amount not exceeding the statutory income, if any, remaining after the deduction authorised by paragraph (a) of this subsection has been made, in respect of gifts of money made by him in the year preceding the year of assessment to the Government or to any institution of a public character in Singapore approved by the Minister on application by the institution concerned.
>
> For purposes of this paragraph, an "institution of a public character" means an institution or fund in Singapore which is — … (viii) a charitable institution or a body of persons or a trust established for charitable purposes only.

The purpose of this section is to allow a taxpayer to deduct the amount of donations given to an "approved institution of a public character" from his taxable income so that there is a fiscal incentive for him to contribute to charity. The effect is that a deduction for a charitable gift will not only reduce the amount of taxable income but may actually move the taxpayer into a lower tax bracket them would otherwise apply. Hence, the 'net cost' to the donor is the difference between the amount of gift and the tax he would otherwise have to pay.[41]

A third privilege is provided under Section 6(5) of the Property Tax Act[42] which states that "all buildings or parts of buildings used exclusively for charitable purposes … shall be exempted from payment of such tax or taxes...." Although there is the requirement that the building or part of it should be used exclusively for charitable purposes, it is conceivable that certain parts of it may not be so utilised. In such circumstance, property tax will be levied on those parts not so used.[43]

[40] S.M. Jiang, "Charity and Tax Implications", Concise and Tax Programme, (1980), prepared by the Inland Revenue Department, Singapore, at p. 41.
[41] Surrey, *Federal Income Taxation* (1972) at p. 573.
[42] Cap. 144 (1970 Rev. Ed.).
[43] S.M. Jiang, *supra,* n.40 at p. 47.

The final fiscal privilege is accorded under Section 7(c) of the Estate Duty Act[44] where gifts for public or charitable purposes made more than one year before the donor's death will be exempt from estate duties liabilities. Similarly, under a disposition made by the deceased for public or charitable purposes and such possession and enjoyment of the property was bona fide assumed immediately upon the creation of the trust and retained to the entire exclusion of the deceased, then if such possession is taken more than twelve months before the deceased's death, such property shall not be deemed to pass upon the death of the deceased.[45]

In all these statutes, the term "charitable purpose" has often been used without its meaning being defined. Yet, under Section 6(1) of the Charities Act, 1982 an "institution shall for all purposes... be conclusively presumed to be or have been a charity at any time when it is or was on the register of charities." Hence, the above fiscal privileges will automatically be conferred upon such "charitable institutions" and for every dollar contributed to it, the rest of society will be concurrently subsidising it through the loss of tax which the taxpayer would otherwise have to pay. Thus the question is raised as to whether such fiscal benefits should be linked to the definition of charity in the first place.

(b) *Arguments in Favour of Fiscal Privileges Being Accorded to the Charitable Organisations*

Critics of the present system argue that fiscal privileges should not be accorded to charity at all because first, the taxpayer is subsidising charities where he has not consented to it at all. Presently, the institutions need only to be within the legal definition of charity to obtain fiscal privileges and the consent of Parliament (which is, in theory, the taxpayer's representative) is not needed. Secondly, the administrative cost of some charities bears an unduly high proportion in relation to their income. Thirdly, money saved by abolishing charitable tax exemptions can be put back into the pockets of individuals and put to better use. Finally, not everyone (i.e. taxpayers) agrees with the charitable objects and the question raised is whether it is reasonable that the taxpayer should in effect be forced to subscribe to them.[46]

Although the arguments raised are valid, it is felt that stronger counter arguments exist especially in view of the fact that the very basis of 'charity' is the concept of private philanthropy and the fiscal concessions are designed to encourage individual or corporate philanthropy.[47] Also, the public in effect receives various forms of return, for example, with the reduction in scale of governmental support of the arts, a voluntary contribution is necessary if cultural activity is not to be curtailed; also, voluntary workers contribute an enormous amount of their time and the cost of replacing or substituting them with government workers will far exceed any increased tax revenue

44 Cap. 137 (1970 Rev. Ed.).
45 See the proviso of s. 8(2) of the Estates Duties Act.
46 See P.E. Bridge, "Charitable Tax Exemptions; The Case Against", (1980) 43 N.L.J. Annual Charities Review 3.
47 Refer to the effect of s. 37(2)(c) of the Income Tax Act, *supra.*

which the removal of charity's tax privileges would bring.[48] Thus, charities harness the talent, time and kindness of the people and there will be more hope, dignity and respect for volunteers with different skills and sensitivity than would be possible for a statutory agency operating in the same field.[49] As such, the government is merely using tax exemptions to foster the concept of private philanthropy as it would like to encourage the virtue of giving and sharing of wealth among its citizenry.

It is submitted that charities do have a role to play in our society and there is a close relationship between charities and the State. In fact, charities may do the work which:—

(a) the State will never do (e.g. the SPCA)

(b) the State may agree to undertake but not at the present moment (e.g. the Samaritans of Singapore)

(c) the State will have to take over if the charity collapses (e.g. the Home of the Retarded)

(d) the State is also doing either perfectly or imperfectly (e.g. the various Homes for the Aged).[50]

Therefore, it should be obvious that charities are not parasites and their relationship with society is symbiotic to a certain extent. In fact, the State which is supported by taxpayers, has an obligation towards upholding these charitable purposes and to ask these taxpayers merely to subsidise a portion of the costs required for the creation and maintenance of charities is justifiable. Thus, having established that tax exemptions should be given to charities, the question will now be examined as to whether the *status quo* should be maintained or whether the proposals for reform should be adopted.

(c) *Review of the Non-automatic Fiscal Linkage Proposal*

Critics, such as Gravells,[51] who concentrate on the fiscal advantages enjoyed by charities, propose a two-tier structure by way of reform. The first tier is 'public purpose trust' which will have legal validity and which will not fail for uncertainty of objects and which will be perpetual in duration but will not have any fiscal privileges. The second tier will be the present group of charities with all its attendent privileges. The argument is based upon 'considerations of principle' that such public trusts which satisfy the 'public benefit' test should be valid. This will be advantageous in two aspects in that fiscal privileges will cease to be available to a range of organisations (such as animal charities and obscure religious sects) which are on the periphery of 'charity' and do not really deserve them. Also, purpose trusts of a public nature which presently fall foul of the rules as to certainty of

48 *E.g.,* in the United Kingdom, it is estimated that voluntary workers contribute approximately sixteen million hours weekly. To replace them will require about 400,000 full-time, paid workers. However, no information is available about the local situation.

49 See R. Mullin, "Second Opinion" (1980) 43 N.L.J. Annual Charities Review 5

50 Adapted from B. Nightingale, *Charities* (1973) at p. 74.

51 See N.P. Gravells, "Public Purpose Trusts" 40 Mod. L.R. 397; see also Cross, "Some Recent Developments in the Law of Charity", [1972] L.Q.R. 187 and *Dingle* v. *Turner* [1972] A.C. 601 *per* Lord Cross.

objects because fiscal privileges have excluded them from the definition of 'charity' will no longer be deprived of the right to exist. Thus, those trusts in the cases of *re Shaw*[52] *re Bushnell*[53] and *re Astor's Settlement Trust*[54] will be validated.

However, there will be new problems created by this proposal which raises such questions as to whether there will be some procedure for the *cy-pres* modification of their purposes if the 'public purpose trust' is to have the privilege of perpetual existence and the freedom from the 'certainty of objects' requirement. Also, what level of 'public benefit' will justify the necessary expenditure of public funds in using the Attorney-General or other governmental bodies to supervise them? Finally, will 'grant-making trusts' be allowed to retain their fiscal privileges attached to genuine charities if they make grants to public purpose trusts as well?[55]

Also, it is implicit in the present law that all charities should be treated alike and that the recognition of the fundamental motive and purpose behind charitable activity is the desire to help and benefit society.[56] Therefore, it is felt that to emphasise the fiscal privileges which charities enjoy is to take a too materialistic approach to charitable activities.

In the Singapore context, there are already statutory provisions which can validate such 'public purpose trusts' which though not strictly legally charitable, deserve to exist independently. For example, under the Singapore Council of Social Services Act,[57] section 6(3)(b) provides that "organisations or bodies engaged in any social, welfare, community or humanitarian work or service" may be accepted as members of the Council and hence validated. It should be noted that this criterion is much wider than the present legal definition of charity law (which is discussed above) and the Schedule to the Act contains some organisations and trust funds which may not be strictly charitable.[58] Furthermore, the Council itself is a tax exempt body as well as an 'institution of a public character' under the Income Tax Act.[59] Secondly, the definition of an 'institution of a public character' under section 37(2)(c) includes a category called "a public or benevolent institution" which should be wide enough to encompass such proposals of 'public purpose trusts'.[60] Finally, the difficulties could easily be overcome by the creation of companies or societies instead of trusts.[61] Therefore, it is submitted that this proposal of a 'two-tier' structure will not be applicable here in Singapore.

52 [1957] 1 W.L.R. 729.
53 [1975] 1 W.L.R. 1596.
54 [1952] Ch. 534.
55 These questions were posed by M. Chesterman, *supra,* n. 11 at p. 398,
56 See H. Cohen, "Four Heads are Better than.. . " N.L.J. Annual Charities Review April 27 1978 at p. 8.
57 Cap. 321 (1970 Rev. Ed.).
58 *E.g.,* organisations such as the Siglap Women's Association, the Silver Jubilee Fund and so forth are included in the Schedule.
59 See the First Schedule and Appendix VI of the Income Tax Act.
60 Appendix VI contains institutions such as the "Asian Women's Association Welfare Fund," which does not seem to be charitable. However, no information is available about it.
61 *Goodman Committee Report, supra,* n. 10 at para. 24.

(d) *Review of the Proposal for Non-Profit Distributing Organisations*

The English Charity Law Reform Committee proposed a radical new category called 'Non-Profit Distributing Organisation' (or NPDO) which would be eligible for all the benefits which are presently given to charities (including all the fiscal privileges) so long as they did not distribute their profits to their members.[62]

However, there was an immediate objection raised by the English Inland Revenue Department on the grounds that it would have substantial financial implications and that the scope of financial abuse could be considerable. Also, there would be a high risk of tax avoidance by profit making organisations seeking to obtain relief. The Expenditure Committee of the House of Commons accepted this argument and concluded that the proposal created more problems than were already present.[63] Similarly, the Goodman Committee concurred and stated that they saw no justification for such a proposal because the present difficulties in reaching a definition of charities would be sidetracked by giving the same status to all organisations that were presently charitable. Also, professional bodies, political parties and pressure groups of all sorts would be accorded the various privileges now confined to charities.[64]

It is submitted that these arguments are equally applicable in Singapore and it is highly undesirable for organisations to be granted privileges just because they are not profit distributing. In conclusion, it is felt that the present status quo should be retained and the above proposals would not be applicable here.

IV. *The Proposed Statutory Definition*

After reviewing the present state of the law under the 1601 Statute and the common law with all its shortcomings, and taking into account the various fiscal privileges, a statutory definition is now proposed in order to remedy the situation.

Preamble: This definition is intended to be a codification of the common law and will apply to the whole law of Singapore wherever applicable.

Section 1(1): The term 'charitable purpose' is defined as a purpose which is for the benefit of the community or a section of the community.

(2): The term 'benefit' is defined as a purpose which is for:

(a) the relief of poverty;

(b) the advancement of education;

(c) the advancement of religion;

(d) the promotion of health;

(e) the promotion of security of other essential services; or

(f) the promotion of social, welfare, community or humanitarian work or service.

[62] *Supra,* n. 15.
[63] The Tenth Report of the Expenditure Committee of the House of Commons, Session 1974-75, H.C. 495-I/74-75 (HMSO 1975).
[64] *Goodman Committee Report, supra,* n. 10 at para. 22-23.

Provided that:

(a) the purpose must not be illegal, immoral or contrary to public policy;

(b) the purpose must not be for the attainment of any political objects in any form whatsoever; and

(c) the purpose must not be for the benefit of persons other than the beneficiaries of the charitable objects listed in (a) to (f) above;

(3): For the purposes of this section:

(a) '*poverty*' *refers to person (or persons) in conditions of need, hardship or distress, whether temporary or otherwise. This does not include the relief of any form of rates or taxes but funds may be used to supplement relief or assistance provided out of public funds or other social welfare benefits.*[65]

(b) (i) the '*advancement of education*' *includes the establishment or support of any activities, whether physical, mental, technical, academic or social, connected with any schools or institutions in Singapore.*

(ii) For research to be education, the object of the research must either increase the scope of knowledge and the result must be capable of being disseminated to the public,[66] *or the research must be approved by any tertiary institutions in Singapore.*

(c) (i) the '*advancement of religion*' *means the promotion of any form of spiritual or divine teachings whatsoever; the maintenance of the doctrines on which it rests or the observance of the doctrines that serve to promote and manifest it.*[67]

(ii) The term includes the provision and maintenance of places of worship but such places shall not be confined to any one class of persons and shall be accessible to anyone who wishes to profess or indulge in its teachings.

(iii) The term shall not include the establishment or maintenance of any tombs or monuments or graveyards or for the worship of any specific deceased.[68]

(d) '*the promotion of health*'[69] *includes:*

(i) the relief of the aged;

(ii) the relief of the disabled or the handicapped;

65 Adopted from the Report of the Charity Commissioners for England and Wales. 1966, *supra,* n. 31, para. 18.

66 Adapted from Harman's J. dictum in *Re Shaw* [1957] 1 W.L.R. 729.

67 Adapted from Lord Hanworth's judgement in *Karen Kayemeth Le Jisroel Ltd.* v. *IRC* [1931] 2 K.B. 465, 477.

68 Public policy in Singapore is against the establishment and maintenance of monuments or graveyards due to the scarcity of land.

69 Adapted from a combination of section 37(2)(c)(i) of the Income Tax Act; *The American Restatement of Law* (2nd Ed.) s. 372; and Picarda, *supra,* n. 7 Chapter 5 at pp. 78-84.

(iii) the prevention or cure or treatment of any form of disease including social diseases like alcoholism, drug addiction and so forth;

(iv) the study of the causes or cure or treatment of such diseases;

(v) the improvement of the mental health of the people; and

(vi) the establishment or maintenance of any hospitals.

(e) the 'promotion of security or other essential services' includes:

(i) the establishment, maintenance or promotion of the efficiency of the Armed Forces of Singapore, the Singapore Police Force and its auxilliary services, the Civil Defence Force, the Singapore Fire Brigade and any other services necessary for the maintenance of the infrastructure of Singapore;

(ii) the resettlement or rehabilitation or the general improvement of the welfare of the personnel involved in these services.

(f) the 'promotion of social, welfare, community or humanitarian work or service' and the organisations or bodies involved in such work or services are those approved by the Singapore Council of Social Services.[70]

(4): (a) the term 'the community or a section of the community' means a sufficiently large or indefinite class of persons who may be interested in its enforcement;[71] *and*

(b) the benefit must not depend on any relationship with a particular individual or organisation.[72]

Section 2(1): No purpose shall be held to be invalid by reason that a non-charitable or invalid purpose as well as a charitable purpose is or could be deemed to be included in any of the purposes to or for an application of the funds of the organisation or trust as directed or allowed.

(2): Any such fund shall be construed and given effect to in the same manner in all respects as if no application of the funds or any part thereof to or for any such non-charitable or invalid purpose has been or could be deemed to have been directed or allowed.[73]

70 Adopted from s. 6(3)(b) of the Singapore Council of Social Services Act, Cap. 321. For a list of these organisations, see the Schedule to the Act. The purpose here is to bring all the existing and future institutions under the supervision and control of the Council so that there is no overlap and greater administration can be achieved.

71 Adapted from *The American Restatement of the Law, supra,* n. 69, s. 375.

72 The test in *re Compton* [1945] Ch. 123 is expressly codified.

73 Adapted from s. 67 of the Trustees Act, Cap. 40.

Commentary

The reason for this proposal is that after reviewing the various classifications and definitions of charity in other parts of the world,[74] it is felt that none of them is suitable for adoption here in Singapore. However, some of these, together with some common law decisions, local statutes as well as some new provisions, are assimilated and adapted into our local context so that the existing structures like the Singapore Council of Social Services and the Community Chest will be preserved with automatic charitable status. The purpose here is not only to give a legal definition to the word 'charity' but also to standardise its meaning within all the local statutes such as the Charities Act, 1982, the Income Tax Act, the Property Tax Act and the Estate Duty Act.

The structure adopted is that a general definition is given in sub-section (1) stating that a charitable purpose must have two aspects; first, there should be a benefit and secondly, such benefit must be applicable to the community or a section of it. Subsections (2), (3) and (4) then proceed to define the terms 'benefit' and 'community' respectively. The underlying philosophy behind the proposal is that society is subsidising the charitable purposes as a result of the fiscal privileges and exemptions from some of the rules concerning trusts conferred upon them and thus, there should be a benefit being conferred back to the community. Hence, if the benefit is not for a sufficient section of the community, the purpose will fail to be classified as 'charitable'. This is intended to abolish the anomaly caused by the 'poor relations' cases and the ratio in *Oppenheim's* case[75] is adopted because a purpose for the benefit of a company or a family, no matter how large or numerous it may be, cannot constitute a public purpose and the taxpayers should not be asked to subsidise it.[76] It should be noted that what amounts to a "sufficiently large or indefinite class of persons" will have to be left to the facts of each case as a more specific definition will not be feasible.

The condition imposed by section l(4)(b) is that there must be no 'personal nexus' between the beneficiaries and the donor because the privileges may be abused by a company which may exploit such welfare benefits for its workers as part of their fringe benefits in order to entice its employees. It is felt that if a donor, whether he is a natural or a juristic person, wishes to contribute something to society, he should not restrict it to his relatives or his employees. Otherwise why should the rest of society subsidise this gift by exempting it from tax? The maximum possible restriction is to a section of the community; for example, it can be for 'poor Chinese students studying at the National University of Singapore.'

74 Some of the definitions proposed or enacted are:
(a) the United Kingdom War Damage Act, 1943, s. 69.
(b) the New Zealand Land and Income Tax Act, 1954, s. 2.
(c) the New Zealand Charitable Trusts Act, 1957, s. 38.
(d) the Indian Income Tax Act, 1961, (the Indian Parliament Act No. 43 of 1961), s.2(15).
(e) the Sri Lankan Trust Ordinance, s. 99(1) (this section is reproduced in Keeton & Sheridan, *The Comparative Law of Trusts in the Commonwealth & Irish Republic* (1976) at p. 246.
(f) Brunyate, "The Legal Definition of Charity" [1945] 61 L.Q.R. 268, 283-284.
(g) L.A. Sheridan, "Nature of Charity" [1957] 2 M.L.J. Ixxxvi, Ixxxviii.
(h) *Goodman Committee Report, supra,* n. 10 Appendix I at pp. 123-125.
(i) Picarda, *supra,* n. 7 at p. 12 and discussed in Chapters 1-14.

75 *Oppenheim* v. *Tobacco Securities Co. Ltd., supra,* n. 27.

76 *Per* Lord Cross in *Dingle* v. *Turner, supra,* n. 51 at 625.

The definition of 'benefit' is divided into six heads which is felt to be sufficient to encompass the scope of charitable purposes in Singapore. The first three categories are adopted from the first three heads of Lords Macnaghten's classification in *Pemsel's* case but each has been elaborated upon. In the first category of 'relief of poverty', the word 'poor' has never been defined by the courts but an individual need not be destitute in order to qualify as a poor person.[77] Since the word is only a relative term, it is submitted that an individual should be considered to be poor if he is in genuinely straitened circumstances or in conditions of need, hardship or distress, whether temporary or otherwise. In Singapore, social welfare benefits are minimal and funds should therefore be allowed to supplement them.

In the category of education, it is felt that any form of activities connected with schools or tertiary institutions should be charitable. However, charitable status should not be confined only to forma] education and it is envisaged that some activities like chess competitions[78] or even the general promotion of artistic taste[79] like the encouragement of music[80] and drama[81] should be classified as educational. Even the use of campaigns (which are actually propaganda to influence the public for or against a certain norm of social behaviour) such as the 'Anti-killer litter' campaign and the 'Stop spitting' campaign can be classified as educational provided that they are not political propaganda masquerading as education[82] which will be invalidated by proviso (b) of section 1(2).

Research can be divided into applied and academic research. The former is usually undertaken by the private or commercial sector and is customarily used to advance industrial or scientific technology. It should be noted that where a private company is involved, only the research project itself which satisfies the conditions stated will be granted the fiscal privileges and the rest of the company is still subject to the normal taxes. As such, the requirement that the result must be capable of being disseminated to the public may at least justify its fiscal subsidies. On the other hand, academic research is usually theoretical and abstract work which the public may not easily appreciate. It is, however, still essential for the progress of mankind and in order to prevent any abuses, it is felt that approval for such research should be given by the tertiary institutions of Singapore (namely the National University of Singapore, the Singapore Polytechnic, the Ngee Ann Polytechnic and the Institute of Education) since they are the best judges of the academic value of such research.

The definition of 'religion' is the most difficult as religious beliefs here are so diversified due to our multi-racial society where each race has various religious beliefs. Thus it is felt that 'religion' should not be confined to only forms of monotheistic belief and any particular system of faith and worship which involves the recognition on the part

77 *Tudor on Charities, supra,* n. 25 at p. 15.
78 In *re Dupree's Deeds Trusts* [1945] Ch. 16, it was held that the game of chess has 'educational' value.
79 *Re Allsop* (1884) 1 T.L.R. 4.
so See *IRC* v. *Glasgow Musical Festival Aessociation* [1926] S.C. 920.
81 *Re Shakespear Memorial Trust* [1923] 2 Ch. 398.
82 In *re Hopkinson,* [1949] 1 All E.R. 346, 350 Vaisey J. held that "political propaganda masquerading as education is not charitable."

of man of some higher unseen power as having control of his destiny which is entitled to reverence and worship[83] should be included as well. However, the line is drawn such that a gift for the promotion of ethics or for a higher standard of behaviour is not for the advancement of religion although it may be classified under one the other categories. A limitation imposed here is that the provision for the maintenance of any places of worship must not be restricted to any person or class of persons to the exclusion of everyone else. This is intended to preserve cases such as *Yeap Cheah Neo* v. *Ong Cheng Neo*[84] where the testatrix directed that a house should be erected by her executors and dedicated for the performance of religious ceremonies to her late husband and herself. Although this may serve to encourage filial piety among the Chinese, the observance of these ceremonies will benefit the family at the most but will not be of general public benefit. On the other hand, it is envisaged that activities such as the annual 'seventh (lunar) month festival of ghosts' can be included as religious since it basically comprises of prayers for the spirits of the 'after-life' without reference to any specific soul.

The next two categories of promotion of 'health' and 'security or other essential services' are both very important for the well being of society and the fact that benefits are being conferred upon the community will seldom be disputed. The category of prevention or treatment of social diseases is included as it is felt that such diseases are corrupting and degenerative if left unchecked. The category of 'security or other essential services' is not limited to the uniformed personnel but includes services like the provision of public utilities and so forth. Since the personnel of these services dedicate their lives towards the welfare of society, it is only equitable that the rehabilitation, resettlement or general improvement of their welfare should be deemed as charitable.

The last category is inserted basically to preserve the Singapore Council of Social Services which presently handles the organisations involved in the promotion of social, welfare, community or humanitarian work or service. This section is sufficiently wide enough to replace Lord Macnaghten's fourth head of 'other purposes beneficial to the community' and no further elaboration is needed here since there is a separate statute governing the Council[85] which has been in existence for some tune. Hence, discretion is given to the Council to approve and keep check of these organisations but the qualifications are that such organisations must not be affected by one of the vitiating factors listed in the proviso and that they must be beneficial to the community or a section of it.

The proviso is inserted for the main purpose of preventing abuses of the charitable privileges and to disqualify organisations whose purpose may legitimately be said to confer a 'benefit' upon society as provided under paragraphs (a) to (f) of section 1(2). This will be very important to check the growth of any religious cult or sect which may flourish as a result of the wide definition of 'religion'.

83 See the *Shorter Oxford Dictionary,* cited by Tudor on Charities, *supra,* n. 25.
84 *Supra,* n. 37.
85 The Council of Social Services Act, Cap. 321.

The prohibition of political objects is included to prevent political parties from claiming charitable status. This is because political ideology is very subjective and it would be wrong to force a taxpayer to subsidise a political object which he does not believe in. Also, there is another strong policy argument, enunciated by Lord Parker of Waddington in *Bowman* v. *Secular Society Ltd.* that:

> … a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that the gift to secure the change (in the law) is a charitable gift… .[86]

If a charitable purpose can clear all the hurdles enumerated in section 1, then the purpose should not fail merely because of the presence of a non-charitable or invalid purpose as well as a charitable purpose. Hence, the object of section 2 is merely to validate the charitable purpose and to apply such funds as if no invalid or non-charitable purpose is included.

V. *Conclusion*

Although the law of charity can be severely criticised, it is felt that what is really needed to rectify the situation is a statutory definition which will cause as little disturbance to society as possible. Therefore the proposal is to codify the common law which, at the same time, can incorporate all the existing legal machineries and statutes such as the Revenue statutes, the Charities Act, the Trustees Act, the Singapore Council of Social Services, the Charities Supervision Branch and so forth. In this way, a clear, comprehensive and yet flexible guideline can be established which will be accessible to the judges, lawyers, the Charity Commissioner, the trustees and any members of the public without having to wade through the 'charity muddle!'

LIM KIEN THYE *

[86] [1917] A.C. 406, 442, treated as approved by the JCPC in *Tribune Press, Lahore (Trustees)* v. *Income Tax Commissioners of Punjab, Lahore,* [1939] 3 All E.R. 469, 476.

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