

Enacting a Charity Law in Hong Kong: Implications for Civil Society Development

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- (1) The prevention or relief of poverty ;**
- (2) The advancement of education;**
- (3) The advancement of religion**
- (4) The advancement of health;**
- (5) The saving of lives;**
- (6) The advancement of citizenship or community development;**
- (7) The advancement of arts, culture, heritage or science;**
- (8) The promotion of religious or racial harmony;**
- (9) The promotion of equality and diversity;**
- (10) The advancement of environmental protection or improvement;**
- (11) The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;**
- (12) The advancement of animal welfare;**
- (13) The advancement of human rights, conflict resolution or reconciliation;**
- (13) Any other purpose that is of benefit to the community.**

Charitable Organizations as Part of Civil Society

- in many places worldwide, charitable organizations have formed a core component of civil society.
- a framework for regulating charitable organizations will have an impact on the development of civil society.

Civil Society

- the realm of organized social life that is autonomous from the state; it may pursue a wide variety of activities, including organized efforts to fulfill social needs; to express their interests, exchange ideas and information; to achieve mutual goals, make demands on the state, and hold state officials accountable.
- cultivates civility and citizenship – fosters public participation, community self-help efforts, social capital formation, the pursuit of social justice.
- produces counterknowledge and offers alternatives to state policies.
- as watchdog agencies monitoring state performance.
- social reformism – as movers of social change, through advocacy, awareness raising, or social movements.
- in Asia – important for democratization and democratic consolidation.

questions

- what role should the state assume in regulating and monitoring charitable organizations?
- what kind of self-regulatory and self-monitoring role should civil society play?
- What kind of monitoring role should the broader society and citizens play?

Charity Laws

- a necessary evil?
- it should be recognized that there is potential conflict of interests between the state and civil society.
- the purpose should be to provide a supportive legal framework for the healthy development of civil society, not to become a tool for controlling or repressing civil society.
- “national” values and traditions do matter, so does the nature of the political regime.

The engagement of charitable organizations in political activities

- case laws have stated that charities must not have political purposes.
- commonly recognized restrictions:
 - political activities – only allowed if they remain ancillary and not dominant means of carrying out charitable purposes.
 - partisan activities are not allowed.
 - prohibit procuring changes in laws or government policy.
- rationale for restrictions:
 - the court has no means of judging whether the proposed change in law will or will not be for the public benefit.
 - taxpayers' money should not be used to fund partisan activities.

common criticisms

- there is a lack of a coherent rationale and clear guidance from the courts on the boundary of political activities.
- the line between charitable objects and political objects is very difficult to draw.
- the law is out of touch with the reality, the development of society, and social expectations.

international contexts

- different countries and regimes have adopted different approaches toward the engagement of political activities by charitable organizations, from restrictive to permissive.
- extremely restrictive – adopted by authoritarian states.
- a restrictive approach – common law countries.
- a permissive approach – some civil law countries in Europe.

From campaigns to improve school meals to protecting the environment, from improving local health services to Make Poverty History more and more people are shunning political parties for single issue causes working to effect change in their local communities...

The voluntary sector has become the natural home for much of this activity. Some charity memberships far outstrip those of political parties and for many they form the legitimate voice for the disadvantaged, giving clout and leverage in the political system where none would exist otherwise. Trust in charities far outstrips the confidence placed in political parties. It is therefore little wonder that the Government is now looking to the sector to harness its ability to articulate the voice of citizens who no longer rely on the party monoliths to articulate their hopes and aspirations or protect their interests. Most notably campaigning by charities across a broad spectrum of issues at local and national level has energised and provoked public debate in a way that has left traditional politics in their slipstream.

- Advisory Group on Campaigning and the Voluntary Sector

Political Activities and Charitable Organizations in HK

- should we adopt a more permissive approach?
- the voluntary sector and charities have a long history of representing and giving a voice to the disenfranchised as well as generating public discourse in the absence of a democratic system.
- the features of the current political system, especially its functional constituency system in the Legislative Council and the Election Committee system (or the future Nominating Committee) both include sectors that are closely related to charitable organizations.

Charity Commission

- arguments in favor of the setting up of a charity commission:
- greater effectiveness in monitoring and regulating charitable organizations through a central registration system.
- greater accountability and accessibility to information.
- a centralized policy on charities to ensure greater consistency in matters such as fundraising.
- greater efficiency in the processing of application relating to fundraising activities.
- lower administrative costs

Charity Commission: A One-Stop Shop?

- questionable as to whether the regulatory power over charitable organizations can be given solely to one agency.
- the IRD can take up the role as the major regulatory agency, maintain a registered list of charitable organizations, handle audit and compliance, and make the registered list and financial reports accessible to the public.
- public concern – too much power being given to the Charity Commission? Alternatives?