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Income X Provisions And Its Impact On-Tax Exemption, Evasion And Avoidance On Charitable Trusts In India

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ABSTRACT:

Indian Tax system has been re-tuned as educative tax system to meet the global standard by ensuring Social, economical and legal justice through the effective tax provision for the tax payers. The tax provisions under Income Tax Act have set and ensure some core objective to reach the objectives of global tax system. Trust assessees are facing distinct challenges in navigating the complex tax landscape. Understanding these challenges is crucial for designing policies that empower taxpayers and facilitate compliance tax reforms often include initiatives to enhance taxpayer education and awareness about the core objectives of the tax provisions, exemptions, avoidance and evasions under educative tax global tax system. The trust are make use of the tax provisions in tax avoidance by investments, expenses, and income, in ways that reduce the amount of tax owed without breaking any tax laws.

The trust are make use of the tax provisions in tax avoidance by investments, expenses, and income, in ways that reduce the amount of tax owed without breaking any tax laws. Unlike tax evasion, which is illegal, tax avoidance takes advantage of exemptions, deductions, credits, and loopholes provided by tax regulations. While tax avoidance is lawful, aggressive tax avoidance schemes may sometimes attract scrutiny from tax authorities. The tax reforms and changes in the new section 12AB has ended the perpetuity regime for a Charitable Trust introducing a new scheme review on the Trust's operations and its eligibility to enjoy the benefit of exemption to ensure that the conditions of approval or Registration or notification are adhered to and not abused.

1. Introduction:

Indian tax system is relevant not only for revenue generation but also for its role in shaping economic policies, promoting social justice, ensuring market efficiency, and fostering good governance. It serves as a critical tool for achieving sustainable and inclusive growth in the country. The historical context provides insights into the complexities and intricacies of tax administration, laying the foundation for understanding contemporary compliance issues. Numerous factors contribute to the challenges of compliance in the Indian Direct Tax system. Corruption remains a pervasive issue, undermining enforcement efforts and eroding public trust. The substantial presence of an informal sector further complicates compliance, with a significant portion of economic activity escaping taxation. Weak legal systems and ambiguity in tax laws create loopholes for non-compliance, while high marginal tax rates may incentivize evasion. Additionally, limited awareness of tax provisions and accounting systems, coupled with tax exemption, avoidance and evasion.

Trusts assessees are face distinct challenges in navigating the complex tax landscape. Understanding these challenges is crucial for designing policies that empower taxpayers and facilitate compliance. From cumbersome filing procedures to navigating tax exemptions, deductions, concessions and rebates for the taxpayers leads tax exemptions, avoidance and evasions. However, improved compliance holds the promise of simplifying tax processes and enhancing the overall experience for taxpayers. Recommendations of the tax reforms committees aimed at alleviating these challenges can contribute to a more equitable and efficient tax system.

Tax reforms often include initiatives to enhance taxpayer education and awareness about the core objectives of the tax provisions, exemptions, avoidance and evasions under educative tax global tax system. Taxpayers including trust must have their rights and responsibilities, as well as the benefits of tax provisions under Income tax more particularly for trusts operating in India. Tax reforms committees in India have undertaken various studies and recommended to educate taxpayers about tax provisions for tax exemptions, deductions, concessions and rebates for the tax payers.

The concept of the trusts is a legal arrangement where a trustee holds property for the benefit of one or more beneficiaries. These trusts are broadly classified into public and private trusts. A public trust serves the general public or specific communities as beneficiaries and they are governed by the Charitable and Religious Trusts Act, 1920. Public Trusts can be classified as Charitable Trusts and Religious Trusts. These trusts qualify for income exemption under Section 11 of the Income-Tax Act. In contrast, a private trust benefits specific individuals or family members. Private trusts are classified as Revocable Trust, Irrevocable Trust, Discretionary Trust and Fixed Trust. They do not qualify for any exemptions, making its income taxable. The typical sources of income for trusts include donations, public contributions, capital gains, and rental income. Charitable trusts, established for religious or charitable purposes without commercial intent, receive various benefits under the Income-Tax Act, including exemption under Section 11.

Charitable are started with core objectives of relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any object of general public utility. However, if it involves carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application or retention, of the income from the said activity, the same will not be regarded as advancement of any object of general public utility.

Tax Provisions: The provision of income tax is defined as the estimates amount that a business or an individual tax payer expects to pay in terms of income taxes in the given year. It is the calculation of making adjustments to the net income by temporary and permanent differences, which are then multiplied by the applicable tax rate.

Tax Exemptions: Tax exemption is the reduction or removal of a liability to make a compulsory payment that would otherwise be imposed by a ruling power upon persons, property, income, or transactions. Tax-exempt status may provide complete relief from taxes, reduced rates, or tax on only a portion of items. Examples include exemption of charitable organizations from property taxes and income taxes, veterans, and certain cross-border or multi-jurisdictional scenarios. Tax exemption also refers to removal from taxation of a particular item rather than a deduction

Tax Deduction: Tax deduction refers to claims made to reduce your taxable income, arising from various investments and expenses incurred by a taxpayer. Thus, income tax deduction reduces your overall tax liability. It is a kind of tax benefit which helps you save tax.

Rebate: Tax rebate in case of individual resident in India, whose total income does not exceed Rs. 5,00,000 quantum of rebate shall be an amount equal to hundred per cent of such income-tax or an amount of Rs. 12,500, whichever is less.

Concession: A reduction made by the government in the amount of tax that a particular group of people or type of organization has to pay or a change in the tax system that benefits those people.

The trust are make use of the tax provisions in tax avoidance by investments, expenses, and income, in ways that reduce the amount of tax owed without breaking any tax laws. Unlike tax evasion, which is illegal, tax avoidance takes advantage of exemptions, deductions, credits, and loopholes provided by tax regulations. While tax avoidance is lawful, aggressive tax avoidance schemes may sometimes attract scrutiny from tax authorities. Tax evasion undermines the tax system, reduces government revenue, and is considered a serious offense punishable by fines, penalties, and even imprisonment. It differs from tax avoidance, which involves using legal methods and strategies to minimize tax liability within the framework of the law.

Table: No.01

Tax Provisions under Income tax Act for Charitable Trusts

Category of income	**Income subject to tax**	**Taxability**
Donations/voluntary contributions received	Voluntary contributions with a specific direction to form part of corpus of trust or institution	Exempt*
	Voluntary contribution without such specific direction	Forms part of income from property held under trust
Anonymous donations i.e., donations where the trust does not maintain record of identity/any particulars of the donor	Donation exceeding higher of: i) 5% of total donations received by trust or ii) Rs 1,00,000	Taxed at 30%
	Anonymous donation received by trust established wholly for religious and charitable purpose.	Taxable in the same manner as voluntary contributions (without specific direction) as above.
Income from property held under trust for charitable or religious purpose	Income applied for charitable or religious purpose in India	Exempt*
	Income accumulated or set aside for the application towards charitable or religious purpose in India	Exempt* to the extent of 15% of such income. This means at-least 85% of income from property to be applied for charitable and religious purpose in India as above and balance 15% can be accumulated or set aside.
Income from property held under trust created for charitable purpose which tends to promote international welfare in which India is interested	CBDT either by general or special order has to direct that such income shall not be included in the total income of trust	Exempt*

Capital gain from asset held under trust in whole	Net consideration is utilized fully for acquiring another capital asset	Entire capital gain is deemed to have been applied for charitable and religious purpose and hence is exempt*
	Net consideration is utilized partially for acquiring another capital asset	Capital gain utilized in excess of cost of old asset transferred is considered to have been applied for charitable and religious purpose and is exempt*

Source: https://cleartax.in/s/charitable-trusts-ngo-income-tax-benefits#authorBio

Only Charitable/ religious trust or institution registered under Section 12AA enjoys the exemption.

Exemption is not applied for Certain Cases of Income of Trusts in India. They are

1. Entire income from property held under trust for private religious purpose which does not benefit the public
2. Entire income of charitable Trust or institution established for the indirect benefit of any particular religious community or caste
3. Entire income, If income (wholly or partly) and property of the charitable or religious trust or institution is used for the benefit of specified person
4. Income of charitable / religious trust is not invested as specified
5. Value of medical or educational services made available by any charitable or religious trust running a hospital medical institution or educational institution to specified person
6. Any income being profits and gains of business unless business is incidental to the attainment of the objectives of the trust / institution and separate books of account are maintained in respect of such business.

The income of the trust is not covered by an exemption; the income will be taxed in a manner similar to an Association of Persons (AoP). Hence, for an income of up to Rs.2.5 lakh rupees, there will be no need to pay tax. However, it should be noted that the AoP tax-rates will be applicable only for income which is not covered by the exemption offered under the Act to charitable trusts. The trust may violate any of the conditions relevant to which it was granted registration under the Act. In such circumstances, the income of the trust which has forfeited the exemption will be taxable at the maximum marginal rate (MMR).

2. Review Of Literature:

The authors have carried out a review of literature relating to the tax provisions to social activities and its impact on tax evasions and avoidance more particularly trust in India. An attempt has been made to summaries the important studies and works keeping in mind the relevance of the present paper.

Joshi (2016) highlights the complexities and loopholes in India's tax treatment of charitable trusts, emphasizing the need for stronger compliance and clearer definitions to curb tax evasion and avoidance.

He focused on the dual role of charitable trusts in social welfare and tax planning, cautioning that aggressive tax avoidance may undermine public trust and the sector's credibility. His study contributes to the broader academic and professional discourse by identifying operational loopholes in tax compliance, Advocating for stricter audit mechanisms and clearer statutory definitions, highlighting the role of professionals in guiding trusts through evolving tax landscapes. His work complements other studies that call for reform in the governance of charitable trusts to prevent tax evasion and ensure that exemptions serve genuine public interest.

Singh and Gupta (2017) critically examine how India's tax provisions for charitable trusts can inadvertently facilitate tax evasion and avoidance, especially when regulatory oversight is weak or inconsistently applied**.** Authors recognised the patterns of tax avoidance among charitable institutions and emphasized the need for better governance frameworks and regular audits to curb misuse of tax benefits. Their study points to inadequate enforcement by tax authorities, especially in verifying the actual use of funds and the authenticity of charitable claims. They emphasize the lack of real-time monitoring and the reliance on self-reported financial statements, which can be manipulated.

Bhatia (2018) critically examines the misuse of tax exemptions by charitable trusts in India, highlighting how weak regulatory oversight and broad legal definitions contribute to tax evasion and avoidance. He examined the role of tax exemptions under Section 11 of the Income Tax Act and observed that while exemptions encourage donations, lack of stringent monitoring leads to misuse and tax evasion by some charitable trusts.

Mehta and Rao (2018) conducted an empirical study on donation patterns and found that tax provisions encourage compliance but also incentivize artificial structuring of donations to evade taxes. They explore the legal and regulatory challenges surrounding tax evasion by charitable institutions in India, emphasizing the need for stronger oversight and judicial clarity.

PreetiKalgutkar (2018) empirically analyzed on the income tax provisions awareness and tax planning of individual assessee and the effect of tax awareness, planning on wealth creation of individual assessee as well. For this study data has been collected from 100 individual assessee of 5 different kinds like, Teachers, Bank employees, Railway employees, Company workers, and Doctors. Primary data has been collected in the form of questionnaire and personal meets with individual assessee. It is concluded that, In order to save tax, an individual assessee invests their hard earned money on law prescribed investment avenues and which creates wealth in the hands of individual assesses for clamming tax provisions under Income tax Act.

Pritam B. Bhawar ,Shubham V. Shirsath (2018) focused on tax saving schemes adopted by individual assessee and to aim at studying the planning of individual income tax, the saving schemes available for individual to save income tax and to understand the difference between tax planning and tax evasion. This paper is carried on completely on secondary data and it is concluded by mentioning different available tax saving instruments.

Kumar and Sharma (2019) explored the challenges faced by Indian tax authorities in regulating charitable trusts and highlighted gaps in legal provisions that facilitate tax avoidance through improper accounting and undisclosed income.

Verma and Das (2020) examined the socio-economic implications of tax evasion by charitable trusts, emphasizing the loss of government revenue and erosion of public confidence in the non-profit sector. They analyse how charitable trusts in India exploit tax exemptions to facilitate tax evasion and avoidance, and propose legal and regulatory reforms to strengthen oversight and accountability.

Reddy (2020) analysed the impact of stricter compliance requirements introduced by the Finance Act 2017 on charitable trusts, noting a positive shift toward greater transparency but pointing out persistent loopholes exploited for tax evasion. Scholars explore the legal and regulatory shortcomings that enable tax evasion by charitable institutions in India, emphasizing the need for judicial clarity and stronger compliance mechanisms.

Sharma (2022) highlighted the impact of digitization in tax filing and monitoring on reducing tax evasion among charitable trusts, though challenges remain in verifying the authenticity of donations. He critically examines the evolving tax landscape for charitable institutions in India, emphasizing how recent amendments have increased compliance burdens while aiming to curb tax evasion and misuse of exemptions.

3. Objectives of the Study:

The objectives of the paper are:

1) To highlight the tax provisions applicable to charitable trusts under the Indian Income-Tax Act.
2) To analyse the impact of Tax provisions on Tax Exemption Evasion and Avoidance for Charitable Trusts.
3) To evaluate the effectiveness of existing tax provisions in tax exemption, evasion and avoidance by charitable trusts.
4) To identify the recommendations for improving tax compliance provisions in tax exemption, evasion and avoidance among charitable trusts in India.

4. Analysis and Discussions:

Income Tax Provisions leads to Exemption, Evasion and Avoidance for Charitable Trusts in India are analysed by using more than ten factors and finally selected ten factors they more reliability for the statement.

Sl. no.	Factors / variables	N	Mean	Std. Deviation
01	Charitable trust must meet several conditions: registration, the purpose of the trusts, and application of funds investment of funds and use of private benefits to get tax exemption.	500	3.46	1.481
02	If a trust is unable to spend the required 85% of its income, it can still claim an exemption From 9A deemed accumulation and Form 10 accumulation. Otherwise it leads tax evasion.	500	3.5	1.499
03	To claim tax exemption the trust must different tax tremens for corpus donation, voluntary contribution, Anonymous donations and business income.	500	2.87	1.368
04	Charitable trusts must fulfil several compliance obligations to maintain their tax-exempt status: ITR filling, audit of books and documentation.	500	3.13	1.479
05	The consequences of non-compliance, the trust fails to adhere to the tax provisions, it risks losing its exemptions and high rate of tax, cancellation of registration and Tax on accreted income.	500	3.43	1.497
06	The exemption under sections 11 and 12 shall be available only if the return of income is filed within the time limit under Section 139(1) or the belated return of income under Section 139(4).	500	3.55	1.424
07	The income or the property of the trust shall be deemed to have been applied for the benefit of an interested person to clime tax exemption as per income tax provision.	500	2.82	1.407
08	The exemption to trust will be withdrawn if any of the provisions of Section 13 are violated, even if other conditions of Sections 11, Section 12, and Section 12A are complied.	500	3.49	1.416

09	The trust to maintain tax exempt status, it must ensure all income used for the charitable purposes is properly classified and reported as per the income tax Act.	500	3.53	1.39
10	The trust registered u/s 12AA or 12AB of the Income Tax Act 1961 is exempt from tax subject to the fulfillment of certain conditions, otherwise it will taxable high rate of tax, accumulation of income and with penalty.	500	3.38	1.413
	Valid N (list wise)	500		

Source: primary data

The descriptive statistics provide a comprehensive understanding of the perceived role of tax provisions in tax exemption, avoidance and evasion under income tax Act. The mean scores for various aspects related to tax provisions roles range from 2.82 to 3.55, indicating varying levels of agreement among respondents regarding the tax benefits for the trusts.

The highest mean score (3.55) corresponds to the statement that "If a trust is unable to spend the required 85% of its income, it can still claim an exemption From 9A deemed accumulation and Form 10 accumulation. Otherwise it leads tax evasion," suggesting that trusts are acknowledge the crucial role of provisions in tax planning. Similarly, the exemption under sections 11 and 12 shall be available only if the return of income is filed within the time limit under Section 139(1) or the belated return of income under Section 139(4). (Mean = 3.50), as well as the trust to maintain tax exempt status, it must ensure all income used for the charitable purposes is properly classified and reported as per the income tax Act. (Mean = 3.53). These findings indicate that tax provisions are helping them optimize tax planning while ensuring tax provisions under Income Tax Act.

On the other hand, the lowest mean scores are observed to claim tax exemption the trust must different tax treatments for corpus donation, voluntary contribution, Anonymous donations and business income**.** (Mean = 2.87) and the income or the property of the trust shall be deemed to have been applied for the benefit of an interested person to clime tax exemption as per income tax provision. (Mean = 2.82). This suggests that while tax provisions are considered beneficial in reducing tax liability under tax provisions, there is a relatively lower reliance income source they received and benefits them using. This could indicate that many trusts are not getting benefits of tax provisions for tax exemption, avoidance and evasion under income tax Act

The standard deviations for most statements range between 1.39 and 1.50, highlighting considerable variation in responses. This suggests that while majority of trusts are agreed that tax provision under income tax Act are helping in tax exemption, avoidance and evasion.

5. SOME OF THE MAJOR FINDINGS OF THE STUDY:

1) A charitable trust can carry on business and utilise its profits there from for a charitable purpose, but a charitable trust cannot have as its purpose an activity that involves the buying and selling of goods and the making of profit. The business undertaking may be the means for effectuating a charity, but not a charitable object itself. The trusts conducted a charitable activities and made profit from that it will have to be taxed unless the trust uses the income from such activities for charitable purposes. Otherwise it is very clear that such profits evasion from the tax provisions in most of the cases in India.
2) Majority of the trusts activities of charging fees and issuing certificates of origin as also settlement of disputes among traders by arbitration are undoubtedly services of general public utility. But all these activities are amenable to tax as being carried on for profit, there being nothing to show that the Chamber was undertaking these jobs on a "no profit" basis. If the fee charged for doing so is more or less commensurate with the expense, the chamber had to incur, a minor surplus will not attract tax. Every type of service oriented activity where some charge is levied from the beneficiary and at the end of year some surplus is left behind, does not lose the benefit of section 2(15).
3) The Charitable trusts includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under "charitable activities, normally all the activities are exempted from tax bracket.
4) The core objectives tax provisions for trusts is to give tax exemption, the trusts who are carrying on business and earning incomes for which exemption was claimed on the basis that the purpose would fall under charitable purpose. The actual effect is reaching and going much beyond that leads tax evasion and avoidance in the normal circumstances.
5) In most of the charitable institution is for the benefit of the public and not for the mutual benefit of the contributors to the common fund. In any trusts actives otherwise will defeat the core objectives of the charitable. On the other hand, if the constitution of industry or trade association provides for payment or distribution of surplus among the members, it leads to tax elevation and tax avoidance.
6) The charitable trusts are not defined under the Income tax Act, 1961, the charitable purpose includes religious purpose of public nature also, though, sections 11 to 13 and 10(23C) use both the expressions charitable and religious purpose. Therefore, the trust for religious purpose is exempt under sections 11 to 13 if it is for the purpose of the public and not hit by the restriction under section 13(1)(a) which deals with income from property held under the trust for private religious purposes. In majority of the charitable trusts are doing and getting the benefits tax provisions.
7) The Income of a Charitable Trust is computed in a commercial sense and not as per the standard mechanism of computation of income prescribed under the Act. There are big difference books of

accounts in computing its total income for the assessment year. Therefore, an expense incurred to spend to earn an income is allowed as a deduction while computing the Trust's income. However, the law does not allow depreciation if the Trust has already claimed an asset's purchase as an application of income under section 11 of the Act.

6. SOME OF THE MAJOR SUGGESTIONS OF THE STUDY:

1) The core objectives of the charitable are several, some of which are charitable, and some are non-charitable, and the trustees have unfettered discretion to apply the income to any of the objects, the whole trust would fail and no part of the income would be exempted from tax. In such the trusts registration mush be questionable and needs more attentions from all angles.
2) The core objective behind the tax provision for the trust or institution has been validly created or established for charitable or religious purpose, the income derived by it from property held under trust or other legal obligation and applied to such purposes shall be exempt from tax in the manner laid down in section 11 of the Income-tax Act, 1961 provided certain prescribed conditions are satisfied. It leads taxable at higher rate with penalty in the hands of the trusts.
3) The honourable court has been upheld that the core objects are distributive; each and every one of the objects must be charitable in order that the trust is held to be a valid charity. The reason is that in such cases no definite part of the property or of its income is allocated to charitable purposes and it would be open to the trustees to apply the whole income to any of the non-charitable object. However, the fact that the income is applied only to charitable object is immaterial, for this books of accounts needs properly audited and reporting to the tax authorities in its tax returns.
4) In the all case of charitable trust, there is an exception to the general rule that there is no valid trust unless the objects thereof are specified. With regard to charitable trust, a great deal of latitude is permitted and the rule is that provided there is a clear intention to make a gift for charity, the trust is not allowed to fail for uncertainty. Indefiniteness as regards the specification of the objects is, therefore, regarded only as an indefiniteness in regard to the manner in which the trust will be administered and so if a clear intention to create a trust in favour of charity.
5) There was no mandate that the income must be spent on religious or charitable purposes. Therefore, the trust did not meet the requirements of section 11(1)(a) and the income of the trust was held to be not exempt from tax. The trusts allowed to accumulating up to 15% and rest must be applied to charitable purpose in India.
6) The trust's books of accounts showing the application of the income of a fund for a long period may determine the charitable purposes for which the fund is held. A charitable trust may be presumed from such circumstances as the receipt for a long period of a rent charge by a charity. When it's found applicability is not clear to decide the sources and application for the core objectives activities of the trust and suspects the tax evasion or avoidance.
7) When the core objectives of the trust are mixture of charitable and no charitable objects, there must be clear indication of obligation on the part of the trustees to apply compulsorily a definite portion

of the trust income for such charitable purposes. If this be left to the discretion of the trustees i.e. if a trustee is given discretion to apply the trust property for purposes some of which are and some are not charitable, the trust is void for uncertainty, it leads misuse of tax provisions.

8) This exemption was granted by section 4(3)(ii) of the Income-tax Act, 1922. Section 12(1) of the Income-tax Act, 1961 also granted similar exemption. But in the 1961 Act, a new sub-section (2) was inserted in section 12 of the Act to provide that where a voluntary contribution was made to a trust or a charitable or religious institution by another charitable or religious institution to which the provisions of section 11 were applicable, such voluntary contributions were deemed as income derived from property in the hands of the recipient trust.
9) The trusts are to claim exemption from income-tax under section 11 of the Act, a trust or institution which has been validly created or established must satisfy certain conditions which are enumerated in sections 12A and 13 of the Income-tax Act, 1961.
10) The income tax Act section under 12.12 Section 12A (b) of the Act read with the Rule 17B of the Income-tax Rules, 1962 provides that where the total income of the trust or institution exceeds Rs. 50,000 in any previous year, the accounts of the trust or institution for that year must be audited by a Chartered Accountant. The limit must increase year by year as changes in the income tax limit that may also help the trust to make use of the tax provisions.

7. Conclusion:

The income tax act under Sections 11 and 12 grant exemption in respect of income of charitable or religious trusts or institutions. In order to claim such exemption, inter alia, the trust or institution is required to make an application for registration under clause (a) of section 12A in the prescribed form and in the prescribed manner to the Commissioner within one year from the date of its creation or establishment and such trust or institution has to be registered under section 12AA. Where such application is made after one year, the Commissioner has the powers to condone such delay, if he is satisfied that the trust or institution was prevented from making the application within the specified time limit for sufficient reasons. If the Commissioner is so satisfied, the exemption under sections 11 and 12 shall apply to such trust or institution from the date of creation of the trust or establishment of the institution.

The tax reforms and changes in the new section 12AB has ended the perpetuity regime for a Charitable Trust introducing a new scheme review on the Trust's operations and its eligibility to enjoy the benefit of exemption to ensure that the conditions of approval or Registration or notification are adhered to and not abused. Therefore, under the new regime, it is advisable for a Trust to precisely interpret the new applicable law to continue enjoying benefits and progress its philanthropic objectives. The trusts are playing major role in overall development of the society by ensuring public welfare at the end.

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