

A.R. (T-9.)

INDEX.

Subject.	Part I— Reasons.	Part II— Recommendations.
	PAGE	PAGE
THE APPOINTMENT AND FUNCTIONING OF THE COMMITTEE ...	4	
HISTORICAL SURVEY ... ..	6	
WORKING OF EXISTING LEGISLATION ... ..	8	
I EXTENT OF APPLICATION ... ..	11	31
II DEFINITIONS ... ..	11	27
III CHARITY ... ..	12	27
IV CHARITY COMMISSIONERS ... ..	13	28
V REGISTRATION OF CHARITIES ... ..	14	29
VI ACCOUNTS AND AUDIT ... ..	14	31
VII POWERS OF CHARITY COMMISSIONERS AND INSPECTORS ... ..	15	32
VIII TRUSTEES—THEIR DUTIES AND POWERS ... ..	15	35
IX SAFEGUARDING OF PROPERTY ... ..	18	37
X <i>Cy-pres</i> ... ..	21	40
XI LICENCE FOR COLLECTION ... ..	21	41
XII ENLARGEMENT OF THE CLASS OF BENEFICIARIES ... ..	22	41
XIII DHARMADA ... ..	23	42
XIV APPEAL AND BAR OF LEGAL PROCEEDINGS ... ..	23	42
XV LIMITATION ... ..	24	43
XVI MISCELLANEOUS ... ..	25	43
XVII THE PUBLIC TRUSTS ADMINISTRATION FUND ... ..	25	44
Dissonant note by Mr. B. D. Lala ... ..		45
Do. Mr. B. N. Datar ... ..		45
Do. Mr. C. C. Shah ... ..		47

APPENDICES.

A. Questionnaire issued by the Committee ... ..	55
B. Names of persons who were invited to give evidence ... ..	56
C. Statement showing gross annual income of registered public trusts for the year ending 31st March 1947 ... ..	57
D. Statement showing classification of objects of registered public trusts as on 31st March 1947 ... ..	58
E. Statement showing the moveable assets of the registered public trusts as on 31st March 1947 ... ..	59

*Religious and Charitable Trusts.*

Investigation into the question of due and proper administration and management of—

Appointment of a Committee for—

**GOVERNMENT OF BOMBAY.**

**REVENUE DEPARTMENT.**

Resolution No. L.C. 58/46.

Bombay Castle, 15th January 1948.

**RESOLUTION.**

1. Government has decided that there should be an investigation by a Committee into the question of the administration and management of trusts and endowments, in the Province of Bombay, for public purposes :—

(i) of a religious nature intended solely for the benefit of the Hindu community (including Jains), and

(ii) of a charitable nature excluding those intended solely for the benefit of communities other than Hindus and Jains,

Government is, therefore, pleased to appoint a Committee of the following persons :—

- (1) The Honourable Mr. Justice S. R. Tendolkar, Puisne Judge, High Court, Bombay—Chairman,
- (2) Mr. C. K. Daphtary, Advocate General, High Court, Bombay,
- (3) Mr. Shantilal H. Shah, Deputy President, Legislative Council, Bombay,
- (4) Mr. J. R. Gharpure, Advocate, High Court, Bombay,
- (5) Mr. Bhogilal Lala, M.L.A., Ahmedabad,
- (6) Mr. C. C. Hulkoti, retired District and Sessions Judge, Dharwar,
- (7) Mr. B. N. Datar, M.A., LL.B., Bolgaum,
- (8) Mr. N. H. Pandia, M.A., LL.B., Bombay,
- (9) Mr. C. C. Shah, Solicitor, High Court, Bombay (who will also act as the member-Secretary to the Committee).

The Solicitor to Government in the Legal Department will act as the Joint Secretary to the Committee.

2. The Committee is requested to investigate the whole question of the due and proper administration and management of trusts and endowments, in the Province of Bombay, for public purposes :—

(i) of a religious nature intended solely for the benefit of the Hindu community (including Jains), and

(ii) of a charitable nature excluding these intended solely for the benefit of communities other than Hindus and Jains,

with special reference to the following :—

(a) prevailing abuses, malpractices and defects in the administration and management of such trusts and endowments ;

(b) measures necessary for—

(i) removing such abuses, malpractices and defects,

(ii) securing the effective supervision, regulation and control of the administration and management of such trusts and endowments ; and

(iii) safeguarding, co-ordination and the more beneficial use and application of the property and funds of such trusts and endowments, if necessary, by enlarging the scope of the doctrine of *cy-pres* and the definition of the term "Charity" ;

(c) suitable machinery for carrying out the measures in (b) above ;

(d) any other matter which the Committee deems relevant to the main investigation.

3. The Committee is requested to frame a draft Bill on the lines of their recommendations and to submit it along with their report for the consideration of Government as early as possible before the end of June 1948.

4. The head quarters of the Committee shall be at Bombay.

5. Non-official members of the Committee shall be eligible to draw travelling allowance at the rates admissible to officers of the first grade under the Bombay Civil Services Rules.

6. Sanction is accorded to the entertainment of a Steno-Typist on a pay scale of Rs. 95—5—140, and a peon on Rs. 23 per mensem (to be employed if and when required) in connection with the work of the Committee. This staff should be held eligible for dearness allowance and temporary additional pay.

7. The Superintendent, Government Printing and Stationery, Bombay, should supply the required stationery and standard forms, etc., and print questionnaire, etc., as and when required by the Committee. The charge on this account should be debited to "57-Miscellaneous—C-Special Commissions of Inquiry" for the purposes of *pro forma* account.

By order of the Governor of Bombay,

V. N. SARDESAI,

Secretary to Government.

Government Resolution, No. L.C. 58/46, Revenue Department, dated the 15th January 1948.

To

The Commissioners of Divisions,

All Collectors,

All District Judges,

The Chief Judge, Court of Small Causes, Bombay,

The Registrar, High Court, Appellate Side, Bombay,

The Director of Publicity,

The Accountant General (through the Finance Department),

The Finance Department,  
 The Home Department,  
 The Political and Services Department,  
 The Health and Local Government Department,  
 The Honourable Mr. Justice S. R. Tendolkar, High Court, Bombay,  
 Mr. C. K. Daphtary, Advocate General, Bombay,  
 Shantilal H. Shah, Esquire, Deputy President, Legislative Council, Bombay,  
 J. R. Gharpure, Esquire, Advocate, High Court, Bombay,  
 Bhogilal Lala, Esquire, M.L.A., Ahmedabad,  
 C. C. Hulkoti, Esquire, retired District and Sessions Judge, Dharwar,  
 B. N. Datar, Esquire, M.A., LL.B., Belgaum,  
 C. C. Shah, Esquire, Solicitor, High Court, Bombay,  
 N. H. Pandia, Esquire, Solicitor, High Court, Bombay,  
 The Solicitor to Government, Legal Department.

No.                      of 1948.

Copy forwarded for information and guidance to

*Religious and Charitable Trusts.*

Investigation into question of proper  
 administration and management of—  
 Appointment of Committee for—

GOVERNMENT OF BOMBAY.

REVENUE DEPARTMENT.

Resolution No. L.C. 58/46.

Bombay Castle, 19th April 1948.

RESOLUTION.—Government is pleased to modify the orders contained in paragraphs 5 and 6 of Government Resolution, No. L.C. 58/46, dated the 15th January 1948, as follows :—

*Paragraph 5.*—The non-official members of the Committee should draw travelling allowance as indicated in Government Resolution, Finance Department, No. 3339/33, dated the 6th January 1948, viz. :—

- (i) for a journey performed by railway one and half second class return fares
- (ii) mileage allowance for a journey performed by road or steamer, and daily allowance as for a journey on tour admissible to a Government servant of the first grade :

Provided that a member, who while travelling by rail actually travels by the class next above the one to which he is entitled and certifies that he has so travelled, because he is accustomed to travel by such higher class, may be allowed to draw a single railway fare of that class *plus* the extra fare or fares at the rate for the class by which he is entitled to travel.

*Paragraph 6.*—In lieu of the post of a steno-typist, Government is pleased to create two posts of Reporters—one for a period of about 3 months and the other

for about 15 days with effect from the date of appointment. These posts should be filled in by the Reporters, deputed by Bombay Legislative Department, who should draw their grade pay *plus* special pay equal to 20 per cent. of their pay.

By order of the Governor of Bombay,

V. N. SARDESAI,  
Secretary to Government.

Government Resolution, Revenue Department, No. L.C. 58/46, dated the 19th April 1948.

To

The Commissioners of Divisions,  
All Collectors,  
All District Judges,  
The Chief Judge, Court of Small Causes, Bombay,  
The Registrar, High Court, Appellate Side, Bombay,  
The Director of Publicity,  
The Accountant General (through the Finance Department),  
The Finance Department,  
The Home Department,  
The Political and Services Department,  
The Health and Local Government Department,  
The Honourable Mr. Justice S. R. Tendolkar, High Court, Bombay,  
C. K. Daphtary, Esquire, Advocate General, Bombay,  
Shantilal H. Shah, Esquire, Deputy President, the Bombay Legislative Council,  
Bombay,  
J. R. Gharpure, Esquire, Advocate, High Court, Bombay,  
Bhogilal Lala, Esquire, M.L.A., Ahmedabad,  
C. C. Hulkoti, Esquire, retired District and Sessions Judge, Dharwar,  
B. N. Datar, Esquire, M.A., LL.B., Belgaum,  
C. C. Shah, Esquire, Solicitor, High Court, Bombay,  
N. H. Pandia, Esquire, Solicitor, High Court, Bombay,  
The Solicitor to Government, Legal Department,  
The Secretary, Bombay Legislative Department.

No. of 1948.

Copy forwarded for information and guidance to

#### THE APPOINTMENT AND FUNCTIONING OF THE COMMITTEE.

1. By Government Resolution, Revenue Department, No. L.C. 58/46, dated the 15th of January 1948, the Government of Bombay appointed a Committee to investigate into the question of the administration and management of trusts and endowments, in the Province of Bombay, for public purposes :—

(i) of a religious nature intended solely for the benefit of the Hindu community (including Jains), and

(ii) of a charitable nature excluding those intended solely for the benefit of communities other than Hindus and Jains.

The Committee was requested to investigate the whole question of the due and proper administration and management of trusts and endowments, in the Province of Bombay, for public purposes as set out above with special reference to the following :—

(a) prevailing abuses, malpractices and defects in the administration and management of such trusts and endowments ;

(b) measures necessary for—

(i) removing such abuses, malpractices and defects,

(ii) securing the effective supervision, regulation and control of the administration and management of such trusts and endowments, and

(iii) safeguarding, co-ordination and the more beneficial use and application of the property and funds of such trusts and endowments, if necessary, by enlarging the scope of the doctrine of *cy-pres* and the definition of the term "charity" ;

(c) suitable machinery for carrying out the measures in (b) above ; and

(d) any other matter which the Committee deems relevant to the main investigation.

The Committee was also requested to frame a draft Bill on the lines of the recommendations and to submit it along with the Report for the consideration of Government before the end of June 1948.

2. A preliminary meeting of the Committee was held on the 3rd of February 1948, when it was decided that the Committee should frame and issue a questionnaire and proceed to collect information about trusts registered under the Bombay Public Trusts Registration Act, 1935. It was also decided that complete search should be taken of all the records of Civil Courts in order to find out particulars about all suits filed under section 92 of the Civil Procedure Code as well as particulars of the application of the doctrine of *cy-pres*. It was also decided to take evidence of persons connected with or otherwise interested in the due and proper administration of trusts and endowments. A questionnaire was accordingly settled on the 7th of February and issued to the public along with a Press Note on the 16th of February. Annexed hereto as Appendix A is a copy of the questionnaire. On the 24th of February the Chairman broadcast from the Bombay station of the All India Radio on the work of the Committee, inviting public co-operation in that work. Answers to the questionnaire were invited up to the end of March ; and those that were received were considered at meetings of the Committee held on the 4th and 6th of April. The Committee's attention had, by this time, been drawn to the fact that the questionnaire had been issued in English only. The Committee, therefore, decided to issue copies of the questionnaire in all the regional languages of the Province, namely, Marathi, Gujarati and Kannada, and to extend the time for sending answers to the questionnaire to the 30th of April 1948. Complaints had also been received that the public had not been sufficiently informed about the work of the Committee by reason of the fact that its activities or its questionnaire had not received sufficient publicity. Accordingly, at the desire of the Committee, the Chairman held a Press Conference at the Secretariat on the 10th of April, at which the nature of the work entrusted to the Committee and the co-operation it sought from the public were explained. Subsequently several more answers to the questionnaire were received by the Committee. From the 19th to the 24th April the Committee recorded evidence of various persons.

3. The Committee also decided that sub-committees should visit and inspect religious endowments. Such sub-committees visited Chinchwad, Alandi, the Nidsosi Math, the old Mahableshwar temple at Gokarna, Yallamma, Shree Ranchod Rajji at Dakore, Shree Swami Narayan temple at Vadtal and the Hattising temple at Ahmedabad. The full Committee visited and inspected the temples at old Mahableshwar, and thereafter held meetings at Mahableshwar from the 27th to the 31st May to arrive at tentative conclusions. The Committee then adjourned to Bombay where it continued its work on the 6th and 7th June. Thereafter evidence of a fresh batch of witnesses who were unable to come on the previous occasion was recorded on the 11th of June; and the Committee finally met on the 12th June to finalise their decisions. The Report so finalised was circulated to absent members, and on the 26th of June the Committee met and signed their Report. A list of the persons who were examined as witnesses is hereto annexed as Appendix B.

4. A search of the records as decided upon was taken by Mr. Gharpure in the Marathi speaking districts of the Province, by Mr. Datar in the Kannada speaking districts, by Mr. Randhir Desai at Surat, Mr. M. C. Mehta at Ahmedabad, by Mr. C. R. Sarajya at Nadiad, and by Mr. V. G. Wagle, who had been specially appointed by Government in that behalf, in Greater Bombay; and the material collected as a result of this search has been of great value to the Committee and will be found contained in the files that are being forwarded with this Report. This material was sifted and analysed and statements prepared therefrom under the directions of the Chairman by Mr. Wagle, which will also be found included in the files that have been sent along with this Report. This formed part of the material on which some of our decisions have been based.

5. In arriving at our conclusions, an endeavour has been made to arrive at the greatest common measure of agreement. This necessitated compromise by every member on certain points, and the Report, therefore, represents the greatest common measure of agreement in the Committee, and not to its full extent the individual opinion of any member. Despite such endeavour, however, some members of the Committee have found themselves unable to agree to some of the proposals which found favour with a large majority of the Committee. Since this involved matters of principle or of conscience, they have felt constrained to record their dissent on such matters.

The Committee desires to record its appreciation of the very valuable assistance rendered to it by Mr. V. G. Wagle and by its non-member Secretary, Mr. R. D. Nigudkar.

#### HISTORICAL SURVEY.

6. It would be useful to preface our Report by a brief review of the position regarding the supervision and control exercised over public charitable and religious institutions in India up to the present time. As pointed out by A. Ghosh in his *Law of Endowments*, 1st edn., at p. 502, it is quite possible that such control was exercised even prior to 300 B. C.; but there is clear historical evidence to show that at least since the time of Ashoka (257 B. C.) Hindu kings exercised supervision and control over charitable and religious institutions. In 256 B. C. Ashoka appointed censors of the law of piety (Dharmamahamatra); and in 242 B. C. he published a complete series of seven pillar edicts. These traditions of royal control continued; and there is evidence to show that the Maratha Dynasty and the Peshwas exercised such control even to the extent of fixing by what were known as *Behadas* the actual quantities of articles that should be used for the worship in the temples both daily

and on ceremonial occasions. Under the British regime this control was continued. Regulation XIX of 1810 provided for such control in the Presidency of Bengal, Regulation VII of 1817 provided for similar control in the Presidency of Madras, and Regulation XVII of 1827, which applied to Bombay, gave to the Collector visitorial powers enabling him to enforce an honest and proper administration of religious endowments. In 1842, arising out of Lord Ellenborough's action in restoring the doors of the famous temple at Somnath which had been removed to Gazni, there was a debate in the House of Commons urging upon the Government of India to observe a strict policy of non-intervention in religious matters. This policy was accordingly adopted in practice in India from that year, despite the fact that the Regulations referred to above continued to be in force. Ultimately, the Religious Endowments Act, being Act XX of 1863, was enacted, whereby Government divested itself of all powers of control over religious endowments by transferring to committees appointed under the Act the powers that were thereto exercised by the Board of Revenue and the local agents. Provision was also made by the Act for suits being filed for breaches of trust against the trustees by any person interested. This Act was made applicable only to Bengal and Madras in the first instance; but by Act VII of 1865 it was extended to North Kanara in the Bombay Presidency, as this district originally formed part of the Madras Presidency. Although this Act did not refer to Regulation XVII of 1827 and left it untouched, it was held by the courts that having regard to the policy of the Act, the powers exercised by the Collectors under this Regulation in the whole of the Bombay Presidency had come to an end. It is not of much consequence to consider whether this was the correct view; but it was in fact acted upon. We next have the Official Trustees Act, being Act XVII of 1864 (now Act II of 1913) which provided for the creation of the office of Official Trustee, in whom property could be vested in trust for charitable purposes other than religious. As the provision for suits made in the Religious Endowments Act, 1863, was found to be wholly inadequate, by Act XX of 1877, section 539 was inserted in the Civil Procedure Code, which enabled suits to be filed in respect of various matters specified therein relating to public religious and charitable trusts with the previous consent of the Advocate General. This section is now section 92 of the Civil Procedure Code, 1908. Under section 93 the powers of the Advocate General under section 92 are exercised outside the Presidency Town by the Collector or by any other officer whom the Local Government may appoint in this behalf.

7. We next have the Charitable Endowments Act, being Act VI of 1890. This Act does not apply to trusts for religious teaching or worship but applies to trusts for other charitable purposes. It empowers the Governor-General in Council to appoint a Treasurer of Charitable Endowments for the territories subject to any Local Government. Such a Treasurer has been appointed for the Province of Bombay and property can be vested in him for charitable purposes. Provision is made in the Act enabling the Local Government to frame schemes for the administration of property vested in the Treasurer. The next piece of legislation is the Charitable and Religious Trusts Act, being Act XIV of 1920. Under this Act, any person interested in a public, religious or charitable trust could apply to a competent court to direct the trustees to supply him with particulars relating to the trust and to direct that accounts of any such trust may be examined and audited. It also enabled the trustees to obtain directions of the court on certain matters relating to the management and administration of trust property. We lastly have the Bombay Public Trusts Registration Act, being Act XXV of 1935. This Act applied, in the first instance, to public trusts which were solely for the benefit of the Hindu community or any section thereof and which had an annual gross income of not less than Rs. 1,000, and was extended in August 1937 to Jains.

The Act provided for registration of such trusts and for the audit and filing of accounts thereof; but the provision relating to audit and filing of accounts did not apply to any public trust governed by the Religious Endowments Act, 1863, or in respect of which a scheme had been settled by a court under section 92 of the Civil Procedure Code, 1908. Under powers reserved to them by sub-section (2) of section 2 of the Act, the Government of Bombay on the 4th of August 1947 have extended the said Act to all public trusts having an annual gross income of not less than Rs. 1,000 other than those to which the Mussalman Wakf Act, 1923, and the Parsi Public Trusts Registration Act, 1936, apply.

8. We have in this survey omitted all reference to legislation dealing with public religious or charitable trusts which are not within the scope of the work of this Committee.

#### WORKING OF EXISTING LEGISLATION.

9. We will next proceed to consider how far the provisions of existing legislation have served the purpose of securing the due administration of public religious and charitable trusts and endowments. The Religious Endowments Act, 1863, provided for the appointment of temple committees, but the powers and functions of these committees were not defined with any precision. Under the Act, six temple committees have been appointed in the Karwar district for the talukas of Karwar, Sirsi, Kumta-Ankola, Honavar, Siddapur and Halyal-Supa. The working of this Act has been pronounced to be unsatisfactory by every one entitled to express an opinion thereon. The Civil Judge of Karwar, who is also the Registrar under the Public Trusts Registration Act, has stated in his report to us that the Act should be repealed and more rigorous control over the administration of trusts and endowments should be provided. The Collector of Karwar is of opinion that—

“The administration is far from satisfactory..... Even the service or puja is not properly performed in most cases and temple property is alienated for no legal necessity. The Committee cannot enforce audit of the accounts at the hands of the auditors..... In the result, freedom of religion and worship has come to mean freedom for mismanagement of these trusts.”

The President of the Temple Committee of Karwar has stated—

“The Act is very defective and too antiquated..... The interest taken by several members of the committee is very little. On several occasions, meetings have to be adjourned for want of quorum. No power is given to the committee to levy funds from the temples to enable the committee to discharge the duties of supervision and control of the temples. There is no provision requiring the committee to have the accounts submitted by the trustees audited by Government auditors. The result is that the accounts submitted to the committee by the trustees are simply filed without being scrutinised or audited..... The trustees have gone to the length of mortgaging temple lands for debts alleged to have been incurred for temple purposes without even consulting the temple committee.”

He proceeds to suggest—

“The Religious Endowments Act should be repealed and replaced by another Act enacted on the lines of the Madras Religious Endowments Act.”

The President of the Temple Committee of Kumta-Ankola, who has submitted a note and who also met the sub-committee which visited the Gokarna temple,

is also of opinion that the Religious Endowments Act should be repealed and legislation providing for better control of religious endowments should be enacted. Lastly, the District Judge of Karwar in a note submitted to the Chairman states—

“The Act leaves in doubt as to what exactly the powers of the temple committees are ..... The committees have not been doing any work except appointing the trustees in various temples.....They do not superintend or control the affairs of any temple in any manner. Even though the temple affairs are scandalously managed, the temple committees do not even care to inquire or to set the matters right by removing any trustees.....Section 8 (2) of the Act contemplates the framing of rules by the Provincial Government for election of a new member to a vacancy caused in the temple committee. When applying the Act to North Kanara in 1865, the Provincial Government seems to have overlooked this point and omitted to frame any rules in this behalf..... Under the Act the court cannot formulate or draw up a scheme for the better management of the temples. Only three suits have been filed under section 14 of that Act since the Act was enacted.”

The District Judge concludes :—

“In short, the Act in question requires to be re-enacted to suit modern conditions. It has already been done in Madras.”

10. Regarding section 92 of the Civil Procedure Code, no doubt numerous suits have been filed both in Bombay and in the mofussil under that section. We have had searches taken of such suits for the last 10 years and they have brought to light numerous abuses, malpractices and defects in the management and administration of public trusts. It is generally agreed by all who have experience of litigation under section 92 that the remedy provided is cumbrous, dilatory and expensive. Getting the requisite sanction for filing a suit is in itself a matter which involves a great deal of delay in that the Advocate General, who is a busy individual, desires himself to investigate into the allegations before he grants sanction ; and, as such investigation takes place only at his convenience, cases are not unknown where a period of a year or over has elapsed before sanction was granted. Indeed, there are cases on record where an application for sanction made to the Advocate General has remained pending and has been dealt with by two or three successive Advocates General. Moreover, the Advocate General refuses to sanction any suit or to institute a suit himself unless the parties moving him guarantee not only the costs of such litigation but also the costs that may ultimately become payable to the other side if the suit failed. This necessarily involves that a person who has not the requisite financial backing cannot bring to court even a case of a gross breach of trust. It is the experience of the Advocate General that in most cases where such suits are filed, although of course they are in respect of an alleged breach of trust, parties moving him are actuated by motives other than those of securing the better administration of trusts or bringing the guilty trustees to book. In the mofussil, where sanction is granted by the Collector, the practice has been for the Collector to send any application for sanction to the Mamlatdar for investigation, and it is on the report of the Mamlatdar that the Collector grants or withholds sanction. This procedure also involves great delay and not inconsiderable expense. In our opinion, the time has come to provide some machinery more speedy and less expensive for obtaining the reliefs which can now be obtained under section 92 of the Civil Procedure Code.

11. We next have the Charitable Endowments Act, 1890. The treasurer of Charitable Endowments in Bombay has now in his hands 380 charities, and we have no reason to suppose that they are not well-managed. If, however, our

recommendations regarding the creation of Charity Commissioners are accepted, Government may consider whether all the charities which are now vested in the Treasurer of Charitable Endowments should not be vested in the Charity Commissioner so as to bring all charities under unitary control.

12. We next have the Charitable and Religious Trusts Act, 1920. So far as we have been aware, this Act has not been resorted to to any very great extent in any part of this Province by the public; but it has occasionally been resorted to by the trustees for the purpose of obtaining directions of the court regarding the management and administration of trust property.

13. We lastly have the Bombay Public Trusts Registration Act, 1935. This is a timid measure accurately described on the floor of the Legislative Assembly as intended "to cause no irritation and to excite no opposition." It only provides for registration and the keeping and auditing of accounts of public trusts. The Registrars under the Act are Civil Judges in the mofussil and a Judge of the Court of Small Causes in Bombay, all of whom are burdened with other judicial duties. Moreover, there is no machinery whereby they can themselves investigate or take action where a trust is disputed, nor are any powers conferred upon them to correct or to take any action in respect of irregularities or even breaches of trust which come to their notice. There is no machinery provided under the Act to enforce payment even of the contribution to the Trust Administration Fund except perhaps a prosecution under section 21 of the Act for failure to comply with the order of the Registrar. In fact, three trusts registered in North Kanara as far back as 1940 have according to the Registrar, failed to pay their contribution right up-to-date. When a sub-committee visited Karwar, they chanced to visit the Dattatraya Math at Bad. They gathered from local enquiries that the math has endowments which yield an annual income of Rs. 10,000 and is managed by a local committee. Although this math stands in the very heart of Karwar, it is not even registered under the Bombay Public Trusts Registration Act. It is safe to suppose that there are many similar institutions which have escaped registration.

14. We have, therefore, come to the conclusion that the time has come for the repeal of the Religious Endowments Act, 1863, as well as of the Bombay Public Trusts Registration Act, 1935, and for the enactment of more comprehensive legislation. But since our terms of reference do not extend to all public trusts which are now governed by the Bombay Public Trusts Registration Act, we are not in a position to recommend the entire repeal of that Act which will continue in force with regard to public trusts not covered by our recommendations.

15. Annexed hereto as Appendix C is a statement showing the number of trusts registered with the different Registrars under the Bombay Public Trusts Registration Act, 1935, up to the end of March 1947, together with their gross annual incomes, the total whereof is about a crore of Rupees. A table showing the classification of the trusts according to objects is annexed as Appendix I. We are satisfied that numerous trusts have not been registered, and of course smaller trusts with an income of less than Rs. 1,000 are not required to be registered. In addition to these, there are societies registered under the Societies Registration Act. It has been recently held by the—high Court that the Bombay Public Trusts Registration Act, 1935, does not apply to societies. In our opinion, any legislation dealing with public religious and charitable trusts ought to include within its scope at least the properties held by such societies, whether they are vested in trustees or in the managing committees of the societies, under the provisions of the Societies Registration Act. However, as very many of such societies are societies from the benefits of which the Hindu community is excluded, they are outside our terms of reference, and we have felt ourselves unable to make any recommendations in respect of registered societies as a whole.

16. We have in Part II set out our recommendations separately and we will proceed to state our reasons for the recommendations so as to make plain their scope and purpose. We have felt ourselves unable to accept responsibility for drafting a Bill on the basis of our recommendations as required by Government. In the first instance, Government ought to take their decisions on our recommendations. Secondly, we feel that the drafting of legislation requires special training, and the appropriate department of Government must accept responsibility for it. Moreover, the Chairman, occupying the judicial position that he does, has found himself unable to be a party to drafting a Bill the validity or effect of which may fall to be determined by him judicially. However, we have, in framing our recommendations, put them in a form which might be found to be convenient for the purpose of basing any legislation thereon.

#### REASONS FOR RECOMMENDATIONS.

##### *Extent of Application.*

17. Paragraph 1 (i) reproduces the terms of reference of the Committee, the recommendations being of necessity restricted to these terms of reference. Paragraph 1 (ii) draws attention to the only two paragraphs of our recommendations which refer to registered societies. In paragraph 2 we have provided that these recommendations shall not, in the first instance, apply to maths. The Committee wrote letters to the Collectors of all districts requesting them to supply the Committee with the names of all maths within their districts with a view that full information in regard to these maths could be procured. However, up to the time of preparing this report, only two Collectors had supplied such information, while three other Collectors had replied that there were no maths in their districts. There are a few maths which are registered under the Bombay Public Trusts Registration Act or in respect of which a scheme has been settled by a competent court. With regard to these, information was available to the Committee. The managers of two maths submitted replies to the questionnaire issued by the Committee and a representative of one math was examined as a witness before the Committee. A sub-committee also visited a math at Nidsosi near Belgaum. As a result of the information available to the Committee by these means, the Committee is satisfied that there is not sufficient data before it to suggest any comprehensive legislation with regard to maths. These institutions are not run merely on income from endowments but to a large extent from donations in cash or kind offered by the followers of the math from day to day. The conditions with regard to the maths of which the Committee had information in themselves differed from one another. Collecting more complete information about all the maths would have involved an amount of delay in the preparation of this report which the Committee, Mr. Datar dissenting, considered to be undesirable or inexpedient, and, in any event, no members of the Committee were in a position to go round and collect such information. The Committee has, therefore, felt it advisable to provide that the provisions shall apply in the first instance only to maths which are registered under the Bombay Public Trusts Registration Act, 1935, or in respect of which a scheme has been settled by any court; and the Provincial Government may extend all or any of the provisions of the proposed legislation to any other math or maths, after collecting complete information in respect of such maths through official or non-official sources. The procedure to be followed in extending the provisions in this manner is set out in paragraph 3.

#### DEFINITIONS.

18. Chapter II of our recommendations contains a few definitions. They do not require much comment. They are mainly intended to economise words.

19. With regard, however, to the definition of "Religious endowment" contained in paragraph 4 (e), we may state that it is intended to include not only what is commonly known as an endowment but also the institutions in connection with which the endowment is made. For example, if there is a religious endowment for the purposes of a temple, the temple is included in the definition of "Religious endowment."

*"Charity"*.

20. Chapter III deals with the definition of "Charity". We have given anxious consideration to the question of enlarging the scope of the definition. The accepted definition in India to-day is the definition adopted by the English courts. In England, charitable purposes were, for the first time, set out in 43 Eliz., Ch. IV. The classical definition in England is that given by Lord Macnaghten in *Commissioners for Special Purposes of Income-tax v. Pemsel* (1891) A. C. 531 at p. 583. It is in these terms :—

"Charity in its legal sense comprises four principal divisions : trusts for relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed every charity that deserves the name must do either directly or indirectly."

The fourth division mentioned in this definition was restricted by subsequent decisions ; and Lindley C. J. in *Re. Macduff* (1896) 2 Ch. 451 at p. 466 stated :

"I am certain Lord Macnaghten did not mean to say that every object of public general utility must necessarily be a charity. Some may be and some may not be."

The definition was also subsequently made subject to two further requirements by judicial decisions. Those requirements are that only those purposes are charitable which are of a public nature and capable of administration by the court. Under the latter requirement trusts for objects which the courts consider as uncertain have been held to be void for uncertainty.

21. We are of opinion that the four divisions of charity set out by Lord Macnaghten are fundamentally right, and the subsequent requirement that the purpose should be of a public nature is, to our mind, essential. But we do not see why every purpose which is beneficial to the community should not be held to be charitable. That such was the view of the Indian Legislature itself appears from the definition of charitable purposes given in section 2 of the *Charitable Endowments Act, 1890*. That definition is :

"In this Act, 'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility." We have, therefore, made it plain in the proposed definition, paragraph 7 (a), that every trust for the benefit of the community or any section thereof shall be valid charity.

22. With regard to the requirement that the trust should be capable of administration by the court, the principle has led to the extraordinary consequence in India that trusts for "dharma", "dharmada", "sarakam", "punyakarya", "punyadan" or any other purpose expressed in equivalent or similar words in any language have been held to be void for uncertainty. As has been pointed out in a dissenting judgment by Subrahmanya Iyer J. in *Parthasarathy v. Tiru-*

Tiruvengad (30 Mad. 340), the term "dharma" has a perfectly well settled meaning in Hindu Law and denotes objects indicated by the terms "Ishta" and "Poorta" which themselves have been explained in great detail by commentators who are recognised as authorities on Hindu Law. We are, therefore, clearly of opinion that trusts for such objects should fall within the definition of "charity"; and if it be necessary to define the purpose with greater precision, that function may be discharged by the Charity Commissioner.

23. In paragraph 5, which gives the definition of "charity" we have, in substance, retained Lord Macnaghten's definition with the further addition of the requirement that the trust should be a public trust. In paragraph 6 we have thought it necessary to specify a few purposes which are charitable. Item (a), which mentions the first of such purposes, is "encouragement of sport". It has been held to be not a charitable purpose by the English courts [see (1895) 2 Ch. 649 and 99 Law Times 604], although encouragement of sports connected with educational institutions has been held to be charitable as conducing to the advancement of education. We see no reason why encouragement of mere sport should not be a charitable object. For example, a gift to enable a team to be trained or sent abroad to take part in Olympic games should, in our opinion, be valid charity. Items (b), (c) and (d) in this paragraph are taken with verbal alterations from the Statute of Elizabeth, and the object of doing so is to direct attention of donors to such charities which we find do not figure amongst the registered public trusts but which, in our opinion, are desirable objects of charity. Items (e) and (f) are objects recognised by Hindu Law as falling within the definition of "Poorta", and objects set out in item (g) are, as we have pointed out above, both "Ishta" and "Poorta" under the Hindu Law. The desirability of objects (h) and (i) is self-evident.

24. Regarding paragraph 7, sub-clause (a) may appear to be redundant in view of the definition, but has been specifically inserted in order to make certain that the opinion expressed by Lindley, C. J. in *Re Macduff* referred to above is not resuscitated. Sub-clauses (b) and (c) are designed to get over certain judicial decisions which, in our opinion, should not be allowed to stand. We do not see why where there is a trust for purposes, some of which are charitable and others are not, the trust should fail. Sub-clause (d) has been put in to get over the decisions that if there is bequest for charitable purposes to societies or institutions which do not exist or cease to exist and there is no general charitable intention, the legacy will lapse. The determination of a general charitable intention is often a matter of difficulty. When the bequest is for a charitable purpose to a society or institution, in our opinion, the accident that the society or institution named does not exist or has ceased to exist should not prevent the charitable desire of the testator from being carried out, whether or not a general charitable intention is manifest.

#### CHARITY COMMISSIONERS.

25. Chapter IV deals with Charity Commissioners who, we suggest, should be appointed. So far as we are aware, Charity Commissioners have not been appointed in any part of India, although there is a Bill before the Madras Legislature to appoint Commissioners having powers in regard to Hindu religious endowments only. Charity Commissioners have existed in England since 1853 when they were appointed under the Charitable Trusts Act of that year. In England, they form a Board and it is provided that they shall not exercise their powers individually; but at least two of them will sit together as a Board (see section 6 of the Charitable Trusts Act, 1853). In recommending the appointment of Charity Commissioners

in Bombay, we have thought fit to depart from this practice in England. All matters relating to charities are today dealt with, in the first instance, by a single Judge throughout the Province; and we see no reason why it should be necessary to provide that two Charity Commissioners shall sit together in order to dispose of the same matters, particularly when we have provided that the persons to be appointed as Charity Commissioners and their Deputies shall be persons qualified to be District Judges or solicitors of ten years' standing. Although the latter are under the present law not qualified to be District Judges [see section 254 (2) of the Government of India Act, 1935] we think they are equally well qualified to be Charity or Deputy Charity Commissioners.

26. Regarding the exercise of powers by the Deputy Charity Commissioners, we have conferred upon them all powers relating to registration, audit and other administrative powers; but with regard to judicial powers we have adopted the scheme of conferring powers on the Charity Commissioner and enabling him to delegate such of these powers as he thinks fit to his Deputies. The merit of this scheme is that there may be Deputy Charity Commissioners of varying ability and experience; and it should be possible for the Charity Commissioner to allocate such duties to them as they may be in a position to discharge efficiently for the time being and extend the delegation of powers as and when they get more experience. But it is intended that all powers of the Charity Commissioner should, in fact, be exercised ultimately by the Deputy Charity Commissioners in regional areas, subject to the general right of the Charity Commissioner to exercise control over the Deputies.

27. Regarding Inspectors whose appointment we have suggested we may point out that Inspectors were appointed in England under the Charitable Trusts Act, 1853. Their powers were extended under the Charitable Trusts Act, 1855, and they were substituted by Assistant Commissioners, under the Charitable Trusts Act, 1860. It is, in our opinion, essential that such Inspectors should be appointed because without them the Charity Commissioners shall have no machinery to enable them to collect the requisite information for the purpose of discharging their functions. The powers which we propose should be conferred on the Inspectors will be found in paragraphs 53 to 57 in Chapter VI.

#### REGISTRATION OF CHARITIES.

28. Chapter V deals with the registration of charities, and, in substance, re-enacts the provisions of the Bombay Public Trusts Registration Act, 1935, in that behalf. There is no departure of any great importance from these provisions.

We have in paragraph 29 (vi) thought it necessary to provide for some address to which communications in connections with the trust could be sent, for we have found as a result of addressing over a hundred letters to trustees at their addresses given to the Registrar of Public Trusts that many of them cannot be traced on these addresses at all.

#### ACCOUNTS AND AUDIT.

29. Chapter VI deals with accounts and audit and in that respect enlarges the scope of the provisions made in the Bombay Public Trusts Registration Act, 1935. Charities with an annual income of Rs. 1,000 or less were excluded from the provisions of the Bombay Public Trusts Registration Act, 1935. They are now included, but since an audit by certified auditors may involve an expense disproportionate to their income, we have recommended that their accounts may be audited by some other person approved by the Deputy Charity Commissioner. We have

also provided for concurrent audit or audits at shorter intervals than a year in respect of charities, the income whereof exceeds Rs. 15,000 a year. An important departure from the provisions of the Bombay Public Trusts Registration Act, contained in paragraphs 40 to 42 is that the auditor shall be under a duty to send a copy of the balance sheet, the statement of Receipts and Expenditure and his report to the Deputy Charity Commissioner, and the trustees shall be bound to report to the Deputy Charity Commissioner the action taken by them on the report. In paragraph 43 we have included a clause which finds a place in the Madras Hindu Religious Endowments Bill, 1947, being clause 60 sub-clause (3) thereof. The object is to give the Deputy Charity Commissioner power to order that a Trustee shall make good any loss caused to the trust by reason of his conduct.

#### POWERS OF THE CHARITY COMMISSIONER.

30. Chapter VII deals with the powers of the Charity Commissioner and the Deputy Charity Commissioners, in addition to the powers which have been conferred upon them in other sections of our recommendations. These powers fall under three categories—administrative, inquisitorial and judicial. The powers set out in paragraphs 44, 45 and 46 are of an administrative character; and have been conferred on Deputy Charity Commissioners. The powers set out in paragraph 47 are judicial and have been conferred on the Charity Commissioner. In addition to these powers, powers have been conferred on the Charity Commissioner to sanction the filing of a suit or to file a suit himself against any person who claim adversely to the trust. These provisions are to be found in paragraphs 50, 51 and 52. The Charity Commissioner can under paragraph 15 delegate all or any of his powers to Deputy Charity Commissioners. Paragraphs 53 to 57 have substantially been borrowed from the English Charitable Trusts Act, 1853, as modified by subsequent Acts, and include inquisitorial powers.

#### TRUSTEES—THEIR DUTIES AND POWERS.

31. Chapter VIII deals with trustees—their duties and powers. Paragraph 58 (i) has been inserted because it has been found that where there is a sole trustee or even two trustees there is a greater chance of misappropriation of trust property. Paragraph 58 (ii) is intended to provide that the management of trust funds does not of necessity get into the hands of non-trustees. Paragraph 58 (iii) is a very important clause which prevents trustees from utilising trust funds for objects which according to the progress of times have ceased to be considered as objects of public utility or benefit. We are satisfied from the answers to the questionnaire received by us and from the evidence recorded before us that certain objects have ceased to be considered to be of public utility or benefit by a vast majority of the population, but there was a sharp difference of opinion as to whether the Legislature should determine what such objects are. Moreover, with changing times, other objects may cease to be of public utility or benefit, and rather than leave it to the Legislature to set out and amend a list of such objects, we have thought it fit to provide in paragraph 58 (iii) (a) that it should be open to the Charity Commissioner by order to declare that any purpose has ceased to be of public utility or benefit. Such order would be subject to appeal as provided in paragraph 114. Paragraph 58 (iii) (b) contemplates cases where, although the purpose may in itself be legitimate, it is otherwise adequately provided for. For example, there have been trusts for the feeding of sadhus at places like Nasik. The amount provided for this purpose is so great that there are not enough sadhus to feed. In such a case, it would be open to the Charity Commissioner, by serving an order on the trustees of any trust, to declare that such purpose has been adequately provided for otherwise and that they shall not spend any trust funds on such purpose.

32. Paragraphs 60 to 63 deal with the fixing of the expenditure of religious institutions by the Deputy Charity Commissioner periodically. These proposals may, at first sight, appear to be novel, but in fact they are not so. Prior to 1847 the State exercised control over religious institutions, and we have seen "Behadas" relating to the temples of Mahableshwar and Alandi, setting out a very great length and in minute detail the expenses that should be incurred on both "nitya" and "naimittika" ceremonies in connection with these temples. Provisions for fixing the budget also appear in several schemes settled by court.

33. Paragraph 64 provides for setting apart a Depreciation Fund and a fund for current repairs compulsorily. We have found that in the Religious Institutions that we have visited no depreciation fund is maintained; and when the time comes for rebuilding or reconstruction, monies might have to be borrowed on mortgage of trust properties thus endangering the very existence of the trust. In the case of other charities also, the search that we have taken has revealed that numerous applications have had to be made to court for raising loans for the purpose of major repairs, rebuilding and reconstruction. This, in our opinion, ought to be avoided by providing a sufficient Depreciation Fund before any amount is spent out of the trust funds for any purpose. Paragraph 65 provides for setting apart a fund for current repairs. Paragraphs 66 and 67 are consequential.

34. Paragraphs 68 and 69 have been inserted in order to provide that surplus funds accumulated in the hands of trustees at present should, in the first instance, be set apart for being utilised on the present needs of such trusts. We are satisfied that there are very large accumulations at present. We attach great importance to the proviso to paragraph 68. We consider that, wherever possible, there should be a public garden around or near every religious institution and that amenities for pilgrims which are at present very meagre, as we found at most of the religious institutions which a sub-committee visited, should be improved. Paragraph 70 provides for the balance of accumulations being used for charitable purposes. Paragraph 71 prevents accumulation of a surplus in future exceeding the gross annual income of the previous year. It has been found that several trustees have developed what may be loosely described as a proprietary or hoarding instinct and accumulate large funds in their hands which remain unutilised. The proviso has been inserted in order to enable trustees to accumulate for seven years for a specified charitable object. For example, if the trustees desired to build a hostel and seven years' accumulations alone could enable them to build one, the Deputy Charity Commissioner may allow them to accumulate for that purpose. Paragraph 72 provides that they should utilise such funds for any public religious or charitable object with the prior approval of the Deputy Charity Commissioner, and paragraph 73 enacts that if trustees fail to utilise accumulations, the Deputy Charity Commissioner may direct them to utilise them for any particular object or objects.

35. With regard to these provisions for use of surplus funds, they apply equally to religious and non-religious trusts. In the case of religious trusts, courts have, in the past, sanctioned the use of surplus funds for secular objects; and before us no Hindus, except Jains, have urged that surplus funds of religious endowments should not be used for secular objects. However, a small section has urged that when they are so used they should be used for objects which fa

within the definition of "Ishta" and "Poorta" under Hindu Law. Having regard to this suggestion, we have thought it right to keep the discretion in the trustees to decide for what particular charitable object the surplus should be used.

36. The Jains, however, who have answered our questionnaire and have given evidence before us have strongly urged that no surplus of any religious trusts or endowments should be used for any secular objects. They have maintained that the properties of such trusts are "Devadravya" and cannot be utilised for any purposes other than those of "Deva". Numerous texts were cited before us in order to prove that Jain religion has enjoined that "Devadravya" shall not be used for any other purpose. A section of the Jain community, which also gave evidence before us and represents no doubt a revolt against the accumulation of surplus funds in the name of "Devadravya", attempted to maintain that there is no such religious injunction. It has not been possible for us to go into the question as to whether there is or there is not a religious injunction against the use of these funds for non-religious purposes. But Muni Jinvijayji, Director of the Bhartiya Vidya Bhavan, who gave evidence before us, pointed out the historical background out of which the theory of "Devadravya" was evolved. He pointed out that certain sadhus who lived in temples which were called "chaityas" had the management of the temples and their properties in their hands. These sadhus were called "chaityavasis". Several disputes arose between these sadhus and their disciples regarding the enjoyment of properties attached to the temples. It is as a result of these quarrels that a section arose among the Jains which maintained that sadhus should not be allowed to live in "chaityas" at all and that the Jain religion did not permit the temples being used for this purpose. Two groups were thus formed amongst sadhus—"chaityavasis", i.e., those who lived in temples, and those who did not believe in residing in temples. The latter class started condemning the "chaityavasis" on the ground that they were using "Devadravya" for their own benefit. That is how the theory of "Devadravya" came into existence. This historical background affords a rational explanation of the theory. However, in our opinion, it is not of much importance to decide whether the strict injunctions of Jain religion prohibit or attempt to prohibit the use of "Devadravya" for secular objects. We consider it a crime against society to allow large accumulations of trust funds to lie idle and unused. We can have no objection to their being used for religious purposes if such purposes were available. Mr. Kasturbhai Lalbhai, who gave evidence before us, strongly urged that, although the funds in the hands of Jain religious trusts appeared to be very large, Jain temples were monuments of ancient architecture and had to be preserved at any cost. He pointed out that the renovation of the famous temples at Mount Abu would, according to an estimate obtained by him from competent architects today cost Rs. 22 lakhs. A sub-committee visited the Hutheesing temple at Ahmedabad which is a thing of architectural beauty; and we have little doubt that the temple at Ranekpur and Mount Abu, which we were invited to visit but could not, are architectural treasures of which the whole of India may be proud. We accept entirely the necessity for preserving such architectural treasures in their full glory; and we see no objection to the funds accumulated in the hands of Jain religious trusts being even set apart for such purpose to the extent necessary. That is why we have proposed in paragraph 68 that a survey should be made of all the present needs of the trusts and any amount out of the accumulated surplus may be set apart for any purposes which the Charity Commissioner considers proper. Subject to this, reservation, however, we are emphatically of opinion that the trustees of Jain

religious trusts should not be treated on any other footing than the trustees of other religious trusts and they should not be allowed to accumulate surplus funds in their hands and keep them unused in the name of religion.

37. Paragraph 74 enables the Charity Commissioner to discharge a trustee on his own application. Paragraphs 75 to 78 reproduce, in substance, the provisions of section 7 of the Charitable Endowments Act, 1920.

### *Safeguarding of Property.*

38. Chapter IX deals with the safeguarding of property. The major abuses regarding the administration and management of trusts relate to the misappropriation of property belonging to the trusts. Such property may be immoveable or moveable. In the case of immoveable property there are numerous cases in which the trustees have sold, mortgaged or given on a long lease properties belonging to the trust without any authority and without the sanction of the Court. Such transactions become possible because the properties stand in the name of individuals and not of the trust, and no person dealing with it can discover, even with the exercise of due diligence, that they belong to a trust. We have, therefore, thought it fit to recommend that provision should be made for the passing of an order by the Deputy Charity Commissioner in respect of every immoveable property held by a public religious or charitable trust that such property belongs to a trust. A similar order should be made by the Deputy Charity Commissioner when any dealing with the property is authorised by him. If such order was registered with the Registering Officer, any person could, with the exercise of due diligence, discover that the property belonged to a trust and it would then be appropriate to provide, as we propose should be provided, that every person dealing with such property shall be deemed to have notice of all orders filed with the Registering Officer and that no mortgage, exchange, sale or lease of the property shall be valid except under an order in writing from the Deputy Charity Commissioner. We have thought it fit, however, to exempt leases up to three years from the operation of this provision as the trusts hold large properties which are let out on monthly or annual tenancies, and it would create a large volume of work if every lease had to be sanctioned.

39. Regarding the investment of trust funds, it will be seen from the statement of moveable assets of registered trusts which is annexed as Appendix E that in many cases a large amount of cash is left in the hands of the trustees or in the banks. We consider that this is undesirable, and we have, therefore, recommended that no trustee should be allowed to retain an amount exceeding more than a month's gross average income of the trust with himself and more than a year's gross income in any bank or banks taken together.

40. There is at present no provision under the law in India for the investment of funds belonging to public religious or charitable trusts. The Indian Trusts Act, 1882, section 20, which contains a list of securities in which trust funds may be invested, does not apply to such trusts but only applies to private trusts. We consider it essential that trustees of public religious and charitable trusts should also be required to invest trust funds in any of the securities set out in this section except in sub-clause (f) thereof. In paragraph 87 we have reproduced these provisions with some alterations to suit altered conditions. Sub-clause (f) of section 20 of the Indian Trusts Act, 1882, authorises investment in any security expressly

authorised by the instrument of trust or by any rule which the High Court may prescribe. It appears to us that neither the creator of the trust nor the High Court is in a position to prescribe a mode of investment for trust funds which should give almost complete security of capital and the prospect of a reasonably stable rate of yield over a fairly long period. This is a matter for very careful examination by financial experts. At one stage of our discussions we were inclined to recommend that to the list of securities given in section 20 of the Indian Trusts Act, 1882, the following further forms of investment should be added:—

(1) First Preference shares of public limited companies which have for a continuous period of five years declared dividends;

(2) Debentures of such public companies as may from time to time be approved by the Charity Commissioner;

(3) Any other mode of investment which the Charity Commissioner may by general or special order sanction.

But upon a demi-official reference to Sir Chintaman Deshmukh, the Governor of the Reserve Bank of India, he was good enough to point out that during the last 30 years the number of companies which issued debentures for Rs. 10 lakhs and over was 40, out of which 21 went into liquidation. He further pointed out that industrial concerns now prefer to accept fixed deposits for financing requirements for which funds used to be found previously by the issue of debentures. He further pointed out that although preference shares were more attractive than debentures from the point of view of return, they were less secure, and he drew our pointed attention to the fact that the Tata Steel Preference Shares which are now considered to be a very sound investment were for some considerable period at a very large discount. In his opinion, debentures and preference shares are of doubtful value as trust securities. We attach great importance to his expert opinion, and we have revised the *prima facie* impression we had formed as to the value of debentures and preference shares as modes of investment. This only illustrates the inadvisability of allowing the mode of investment to be determined either by the creator of the trust or by the Charity Commissioner or even by the High Court. However, in the case of the creator of the trust it may well happen that he may want trust funds to be invested in his own business or in some business in which he is directly interested. If that were prevented, it may be that, to a certain extent, the sources of charity may dry up. We have, therefore, provided that any mode of investment authorised by the instrument of trust may be valid during the life-time of the settlor and for a period of five years thereafter, and in case of a will for a period of five years after the death of the testator. If it is intended that it should be open to the Charity Commissioner to add to the list of authorised securities, we are of opinion that the Charity Commissioner should be under an obligation to obtain the prior consent of the Governor of the Reserve Bank of India, who would be in a position to advise him in this respect.

41. It will also be seen from the statement Appendix E that monies belonging to public trusts have, in many cases, been invested in private *pedhis* also in the purchase of gold and silver. Out of moveable assets of registered trusts amounting to about Rs. 8½ crores, the investments in private *pedhis*,

amount to about Rupees one crore and twenty lakhs. It has not been possible to ascertain the investments in gold and silver because they have been shown in the records in many cases along with other jewellery belonging to the trust. But to take only one instance, the Sree Godiji Maharaj Jain Temple and Charities in Bombay have invested a lakh and seventy-five thousand rupees in silver. The total value of Jewellery and bullion held by the registered trusts is about Rs. 53,55,000. It appears that some schemes sanctioned by the court have allowed the investment of trust funds in gold and silver. This is particularly so in the case of Jain religious trusts. In our opinion, such investment—if it can be called an investment at all—ought to be sternly discouraged. As matters have turned out, gold has appreciated, but it may well have depreciated. Moreover, gold, except when it is resold, can bring in no yield at all. Investment in gold is, in our opinion, a form of speculation which trustees should not be allowed to indulge in. Investment in private pedhis is still more undesirable and ought sternly to be discouraged. Large amounts have been lost to charities by reason of their being invested in private pedhis on the facile plea of getting a better return for the investment. This, in our opinion, is false economy. However, it may well happen that investment in a private pedhis or investment in gold or silver is sanctioned by the instrument of trust or by a scheme settled by a court. Even in such cases, we are of opinion that this form of investment should be made unlawful except that the provisions of the instrument of trust or the scheme in this regard may be allowed to have effect for a short period as provided.

42. The unauthorised dealings by trustees with trust securities have been far too numerous. These have been possible because trust securities are negotiable by endorsement; and we have, therefore, thought it necessary to provide that whenever securities are capable of being converted into stock, the trustees should be under an obligation to have them so converted.

43. After the Stock is so converted, transfer of that Stock or reconversion of it into securities could be prevented by enabling the Deputy Charity Commissioner to give a direction to the proper authority not to transfer or reconvert it without the permission in writing of the Charity Commissioner or a Deputy Charity Commissioner. The provisions which we have made in our recommendations in this regard are the provisions suggested to us by Sir Chintaman Deshmukh, the Governor of the Reserve Bank of India.

44. However, provision for converting securities into Stock does not exist except in the case of securities of the Central and Provincial Governments and the Bombay Port Trust. It seems to us, therefore, to be necessary to devise some method whereby unauthorised dealings by trustees with such securities can be effectively prevented. We have, therefore, suggested that such securities should be stamped by the Deputy Charity Commissioner with a stamp "trust security" and should thereupon cease to be negotiable without a certificate in writing from the Charity Commissioner or a Deputy Charity Commissioner. Provision would, of course, have to be made for the cancellation of such stamp when the securities have been sold with the consent of the Charity Commissioner or the Deputy Charity Commissioner.

45. Paragraphs 95 to 100 deal with the income of property. The search that we have caused to be taken has revealed the fact that the trustees allow large arrears of income to accumulate, in some cases in the hands of their friends and relations, and ultimately write them off as irrecoverable. We consider that

this state of things must immediately be remedied. We have, therefore, made it obligatory on the trustees not to allow income to remain in arrears for more than six months in the case of agricultural lands and three months in the case of other immoveable property, and to report to the Deputy Charity Commissioner every case in which it remains in arrears beyond that period. We have also provided that if the Deputy Charity Commissioner does not, upon such a report, direct that no action need be taken for recovery of the income, it shall be the duty of the trustees to take legal proceedings. Failure to do so entails the consequence that the trustees become personally liable. We have also provided that the trustees shall have no power to write off any dues or compromise any claim in respect thereof without the sanction of the Charity Commissioner. We have lastly provided that if a trustee fails to comply with any of these provisions, the Charity Commissioner may, by an order in writing require him to pay the amount which has been lost to the trust.

#### *Cy-pres.*

46. Chapter X deals with the doctrine of *cy-pres*. We have carefully considered the question of "enlarging the scope of the principle of *cy-pres*", a somewhat unhappy expression. *Cy-pres* means as nearly as possible to that which has failed; and the principle has been applied in cases where the original object of charity has failed either because it has become impossible or impracticable to carry it out or because it is contrary to public policy to do so. But in applying the principle, the funds have to be applied to an object as nearly as possible to the original object which has failed. However, in practice courts have often enough taken a certain amount of liberty with this principle. As long ago as 1844, in *Ironmonger's Co. v. Attorney-General* (10 C. L. & F. 908), where a testator had bequeathed an estate to apply a moiety of the income thereof to the redemption of British slaves in Turkey or Barbary, the income was directed by the Court of Chancery to be applied in supporting and assisting charity schools in England and Wales, an object which cannot, by any stretch of imagination, be considered to be anywhere near the original object of charity. In India, during recent years, the search that we have caused to be taken of the application of the *cy-pres* doctrine has brought to light the fact that surplus funds of religious institutions have been directed to be applied for education and medical relief, and surplus funds of *sadavarts* and *annachatras* have been directed to be applied for helping the poor and needy as well as for education and medical relief. Funds set apart for giving feasts and caste dinners have also been applied for similar objects. Without questioning in any manner the legality of these decisions, which has in fact been questioned before the Committee, it appears to us to be appropriate to provide specifically that whenever an occasion arises for the application of the doctrine of *cy-pres*, it should be open to the Charity Commissioner to consider the comparative advantages of various charitable objects and to adopt that which seems to him to be most beneficial notwithstanding the doctrine of *cy-pres*. Such a view was expressed by Cozens Hardy M. R. in *In re: Weir Hospital* (1910; 2 Ch. 124) although, of course we are aware that this is not in consonance with the accepted view.

#### *Licence for collection.*

47. It has been urged before the Committee that collection of charity by unauthorised persons should, in some manner, be prevented. It is common experience that numerous individuals go round in the name of charitable institutions

or ostensibly to aid charitable causes and collect monies from the unwary public. Nobody knows what happens to such collections. We see a great deal of force in the suggestion and we are of opinion that a system of licensing should be introduced, and no individual, except in cases of personal distress, should be entitled to collect any monies for charity without obtaining a licence in that behalf from the Charity Commissioner or the Deputy Charity Commissioner. Such licence should be granted, as a matter of course, at the instance of any registered trust or society to any individual duly nominated by the trustees of such trust or by the Managing Committee of such society. In the case of other collections, the Charity Commissioner or the Deputy Charity Commissioner shall issue such a licence upon being satisfied that the collection is proposed to be made *bona fide* for a charitable purpose, and upon satisfying himself the collections will be used for the purpose for which they are intended. The Charity Commissioner or the Deputy Charity Commissioner could then control the disbursements of such collections and see that they are not misappropriated.

*Enlargement of the class of beneficiaries.*

48. It has been urged before the Committee that all charities which are open to any section of the Hindu community should by legislation be made open to the entire Hindu community and that charities hereafter created should also be subject to the same rule. We are agreed that the ultimate ideal should be that there should not be any public charitable trust restricted to a section only of the Hindu community, and that all trusts should be open to the entire Hindu community but in the conditions which obtain at present we do not consider that the ideal is attainable in the immediate future. We cannot shut our eyes to the fact that large sections of the Hindu Community are educationally or economically backward; and any attempt to prevent sectional charities or make them available for all is likely to be interpreted as an attempt to keep those who are backward today permanently backward. There is thus today a legitimate sphere in which sectional charities may work for the educational or economic uplift of particular sections of the community.

49. We are, however, of opinion that there are some forms of charity in respect of which no justification can be found for restricting them to sections of the Hindu community only. For example, there are institutions which give medical aid or relief, such as hospitals, maternity homes, ambulance units, sanatoriums, etc. We are of opinion that where such aid is given today out of a public charitable trust to any section of the Hindu community it should be made obligatory on the trustees to extend the benefits of such aid to the entire Hindu community. Similarly, any trust for the benefit of the blind, the deaf or the mute which is open to any section of the Hindu community should also be compulsorily thrown open to the entire Hindu community. But as a transitional measure, provision may be made for the trustees to reserve any portion of beds not exceeding 70 per cent. in a hospital or a maternity home or a sanatorium to members of a section or sections taken together of the Hindu community only so long as the benefits are open to all Hindus. We are also agreed that all dharamshalas which are intended for the use and benefit of any section of the Hindu community should be thrown open to the entire Hindu community, with this reservation that where a sanatorium or dharamshala is intended for vegetarian Hindus only no Hindu should be allowed to take non-vegetarian food therein. These provisions should also apply to Registered societies.

50. We are also of opinion that it should be open to the trustees of any sectional charity to extend the benefits of such charity to a wider section of the community or to the whole of the Hindu community with the consent previously obtained of the Charity Commissioner.

*“ Dharmada ”.*

51. Another question that was agitated before us, and has no doubt agitated the legislators and the public during the last fifty years is the question of “dharmada.” “Dharmada” is usually of two kinds. It is usual for many businesses to set aside a portion of their profits every year and to credit it to a “dharmada” account, out of which disbursements are made allegedly for charitable objects but actually at the sweet will of the owner of the business for any object. The other kind of “dharmada” is a collection made on purchase or sale of commodities in conformity with local trade usages. This amount is collected by the merchant who brings about the transaction of sale or purchase and is credited in his books as “dharmada” and similarly spent. It appears to us that the first class of “dharmada” cannot be considered to be a trust, because the owner or owners set aside a portion of their profits. There is no obligation on them to set it apart, nor is it set apart for any specified purpose; and if any attempt was made to regulate the use of this particular kind of “dharmada” it is fairly certain that no such accounts would be opened or profits set apart. But this reasoning does not apply to the other class of “dharmada.” Money collected on transactions of sale or purchase is, to our mind, in the hands of the person who collects it trust money; and we are, therefore, of opinion that although such a trust need not for the moment be registered as a public trust, still it should be brought under some kind of control of the Charity Commissioner. We have accordingly provided in Chapter XIII that there should be an obligation upon every person who collects such amounts to report to the Deputy Charity Commissioner that he makes such a collection, stating the basis on which such collections are made and to make a return to the Deputy Charity Commissioner every year of the receipts and disbursements of such an account. The person would also be under an obligation to spend the monies so collected on public charitable purposes, and the Deputy Charity Commissioner shall have power, in case any portion of the money is used for other purposes, to order such person to make it good.

*Appeals and Bar of Legal Proceedings.*

52. Chapter XIV deals with appeals and bar of legal proceedings. It must be pointed out that in England there is an appeal to the High Court against the decision of the Charity Commissioners under section 8 of the Charitable Trusts Act, 1860, with the leave of the Attorney-General or of the Board of Charity Commissioners only. In our opinion, provision for such leave of the Charity Commissioner would in effect negative the right of appeal; and we do not think the Advocate General should be burdened any more with any duties in relation to charity. We have, therefore, provided an unrestricted right of appeal against all judicial orders but instead of providing an appeal to the High Court in its appellate jurisdiction, we have provided an appeal to the District Judge in the mofussil and to a single Judge of the High Court in Greater Bombay. However, since many trust funds have, in the past, been misspent in litigation, we have

considered it to be in the interest of the trusts as a whole not to allow a right of appeal in cases of trusts whose gross annual income does not exceed Rs. 1,000. We have further thought it fit to provide that frivolous appeals should be discouraged by requiring that the court should ask for security for costs. The powers of court in appeal have been set out in paragraph 117, and include all the powers that a court of appeal ordinarily enjoys. We have further provided that in any matter involving a question of law, there may be a further appeal by leave of such court to a Division Bench of the High Court.

53. Paragraphs 119 and 120 relate to the bar of legal proceedings. It is intended that in respect of matters which the Charity Commissioners are under these provisions entitled to decide and determine, civil courts should have no jurisdiction except in the manner provided specifically in our recommendations.

#### *Limitation.*

54. In paragraph 121 we have recommended that the provisions of section 10 of the Indian Limitation Act, 1908, which applies to suits against express trustees should be made applicable to constructive trustees as well. We see no essential difference between a constructive and an express trustee in this behalf; and as in the case of numerous public trusts and endowments, particularly religious, there are constructive and not express trustees, it appears to us advisable to provide that no period of limitation should apply to suits against constructive trustees of such public religious or charitable trusts. Section 10, however, applies to all trusts and not only to public religious or charitable trusts. As we are not dealing with private trusts, the question as to whether this section should be amended so as to apply to constructive trustees in the case of private trusts is a matter not within the scope of our reference and on which we express no opinion.

55. Regarding paragraph 122, it has been suggested to us that an unauthorised alienation of trust property should be capable of being set aside at any time and no limitation should apply for a suit to set aside the same. At present Article 134 in the Second Schedule to the Indian Limitation Act, 1908, applies to such suits, and the time thereby limited is 12 years from the date of alienation. It appears to us that if the provisions which we have recommended for registering orders passed by the Charity Commissioner that a property belongs to a public trust are carried out, no hardship will be involved by providing that an alienation of such property by trustees without the requisite permission of the Charity Commissioner should be void, and that no period of limitation should apply to such a suit. We have accordingly recommended that Article 134 of the Indian Limitation Act, 1908, should cease to apply to such suits and a specific provision be made that no period of limitation applies. This change in the law will not affect any accrued rights, for it has been ruled by Their Lordships of the Privy Council in *Ganga Govind Mandal v. the Collector of Twenty-Four Parganas* (11 M.L.A. 345 at page 361) that a right not sued for within the period of limitation prescribed for the suit is extinguished and cannot be revived by the passing of any subsequent legislation.

56. In paragraph 123 we have suggested periods of limitation for appeals allowed under these provisions.

*Miscellaneous.*

57. Chapter XVI contains miscellaneous provisions. Paragraphs 124 and 125 deal with the repeal of existing provisions of law. Whether the Charitable Endowments Act, 1890, should or should not be repealed is a matter for the decision of Government. If it is, provision shall have to be made for vesting the trusts which are to-day vested in the Treasurer of Charitable Endowments in the Charity Commissioner.

58. Paragraph 126 contains provision for working out the schemes already settled by a court. These provisions are in their nature self-explanatory. Paragraph 127 contains, in our opinion, a very important provision. Under many wills in India, some bequest is left for charity; and there is at present no machinery to find out what bequests were so left and how they have been dealt with. We, therefore, consider it necessary to make it obligatory upon every executor to intimate to the Charity Commissioner that such a bequest has been left, and also to intimate to him thereafter what action, if any, the executor has taken to give effect to it. In order to ensure that this will be done, we have provided in paragraph 128 that no court shall issue probate or letters of administration with the will annexed unless a copy of the will has been supplied to the Charity Commissioner or Deputy Charity Commissioner.

59. Paragraph 129 has, in substance, been taken from section 78 of the Madras Hindu Religious Endowments Act, 1926. Great importance was attached to this provision by the President of the Hindu Religious Endowments Board appointed under the Act in Madras, who was good enough to come down to Bombay on our invitation to give evidence before the Committee. It provides a summary and speedy remedy for putting a trustee in possession, and leaves it to the displaced person to take proceedings, if he so desires, to establish his title.

60. Paragraph 130 prescribes a penalty for non-compliance with any of the provisions of any Act that may be passed in consequence of these recommendations. Such provisions are at present to be found in sections 20 and 21 of the Bombay Public Trusts Registration Act, 1935.

61. Paragraph 131 confers rule-making power on the Local Government. If it is intended that specific matters with regard to which rules can be made should be set out with any particularity, a list thereof could be made out; but we do not consider it necessary to give any such particulars. They are all included in the words "for the purpose of carrying into effect the provisions of this Act." Paragraph 132 reproduces the provisions of section 6 (5) of the Bombay Public Trusts Registration Act, 1935. Paragraph 133 provides that any moneys ordered to be paid by the Charity Commissioner shall be collected as if they were arrears of land revenue.

*The Public Trusts Administration Fund.*

62. Under the Bombay Public Trusts Registration Act, 1935, the Public Trusts Administration Fund was brought into being, and contributions were levied from the several trusts for the purpose of defraying the expenses of the machinery set up for registration of public trusts. Similar provisions have been made in

the Mussalman Wakf (Bombay Amendment) Act, 1935, and the Bombay Parsi Public Trusts Registration Act, 1936, and in corresponding Acts in some other Presidencies in the Dominion of India. However, no such contribution is levied on public trusts in England where the expenses of Charity Commissioners are borne by the State. The institution of Charity Commissioners which we recommend should be established is, in our opinion, a social service of very high value, and the State ought to find funds for maintaining such machinery. If however, it is decided that contributions should be levied from the various trusts for the purpose of raising the requisite finance, then we suggest that all trusts the gross annual income whereof is less than Rs. 1,000 should be completely exempted from any contribution, and that a central fund, and not regional funds, should be formed for public trusts administration. This fund may, in the first instance, be allowed to borrow monies from the Local Government in order that the contributions levied on the trusts may not exceed the actual cost of administration. We have, in our recommendations, made no provision for the levy of such contributions. But even if it is decided to levy them, provision could be made analogous to section 14 of the Bombay Public Trusts Registration Act, 1935.

63. In paragraph 134 we have recommended that the existing Public Administration Fund in the several districts and areas of the Province of Bombay should be amalgamated and kept as a reserve at the disposal of the Charity Commissioner. As we have recommended that all proceedings which were heretofore filed under section 92 of the Civil Procedure Code, 1908, may, in future, be filed by the Charity Commissioner, and as we have further suggested that the Charity Commissioner should be a party to all litigation which in any manner concerns the interests of the charity, there ought to be some fund at his disposal out of which he can meet the expenses of such litigation. The existing Public Trusts Administration Fund will, in our opinion, be a suitable reserve for such purpose. Any amounts received by the Charity Commissioner towards his costs from any other party should be added to this fund from time to time. At the end of March 1947 the fund stood at the figure of Rs. 2,93,373-3-9.

## PART II—RECOMMENDATIONS.

### I. *Extent of Application.*

1. (i) These provisions shall apply to all trusts and endowments for public purposes—

(a) of a religious nature intended solely for the benefit of the Hindu community, and

(b) of a charitable nature excluding those intended solely for the benefit of communities other than Hindus.

(ii) Paragraphs 105 and 107 shall also apply to societies registered under the Societies Registration Act, 1860, for charitable purposes excluding those intended solely for the benefit of communities other than Hindus.

2. They shall not, in the first instance, apply to maths, except those which are registered under the Bombay Public Trusts Registration Act, 1935, or in respect of which a scheme has been settled by any court.

3. The Provincial Government may by notification in the *Bombay Government Gazette* extend any or all of these provisions to any other math or maths subject to such restrictions and modifications as they think fit:

Provided that before issuing such notification the Provincial Government shall publish in the *Bombay Government Gazette* a notice of their intention to do so, fix a reasonable period for persons interested in the matter to show cause against the issue of such notification and consider objections, if any, to such notification being issued.

## II. Definitions.

4. Unless repugnant to the subject or context, in these recommendations the following words shall have the meanings hereinafter assigned to them :

(a) "The Deputy Charity Commissioner" means a Deputy Charity Commissioner within whose regional area a particular charity is registered.

(b) "Gross annual income" of a trust includes not only income from property but also all other sums available to the trust for current expenditure.

(c) "Hindu" includes a Jain, a Sikh, a Buddhist or a person professing any other religion of Hindu origin.

(d) a "Math" means an institution primarily for the promotion of the Hindu religion presided over by a person whose duty it is to engage himself in imparting religious instruction or rendering spiritual service to a body of disciples or who is or claims to be the head of such a body, and includes places of religious worship or instruction which are appurtenant to the institution.

(e) "Religious endowment" or "Endowment" means all property belonging to or given or endowed for the support of any religious institution or given or endowed for the performance of any service or charity connected with any such institution, and includes the institution concerned and also the premises thereof.

(f) "Religious institution" means a place by whatever designation known (whether as a math, temple or otherwise) which is used as a place of public religious worship and which is dedicated to or for the benefit of or used as of right by the Hindu community or any section thereof as a place of religious worship.

(g) "Trust" means any public religious or charitable trust or endowment.

(h) "Trustee" means a person in whom either alone or in association with other persons the property of the trust is vested; and in the case of a religious institution or endowment, a person in whom the administration of such institution or endowment is vested, although the property may be vested in an idol, and in either case includes a person who is liable as if he were a trustee.

## III. Charity.

5. Charity comprises of public trusts for any one or more of the following four purposes: (i) the relief of poverty; (ii) the advancement of education; (iii) the advancement of religion; and (iv) any other purpose beneficial to the community or any section thereof not falling under any of the preceding heads.

6. Without prejudice to the generality of the definition and notwithstanding any judicial decisions to the contrary, trusts for the following purposes shall be construed to be valid charity :—

(a) Encouragement of sport;

(b) Marriages of poor maidens;

(c) Aid to young tradesmen, handicraftsmen or members of any profession during the first five years of their career;

(d) Rehabilitation of released prisoners;

(e) Construction of works for the storage of water, tanks, wells, etc.,

- (f) Construction of public roads, culverts and bridges ;
- (g) Dharma, dharmada, sarakam, punyakarya, punyadan or any other purpose expressed in equivalent or similar words in any language ;
- (h) Preservation of ancient monuments ; and
- (i) Afforestation and planting of trees in public places.
7. Notwithstanding any judicial decisions to the contrary,—
- (a) every trust for the benefit of the community or any section thereof shall be a valid charity ;
- (b) where there is a trust for "charitable and/or other purposes" and some or all of the other purposes are or may possibly be non-charitable the trust shall not be void ; but it shall be a good and valid trust for charitable purposes only, the entire trust funds being applied for such purposes ;
- (c) where there is a trust for specified purposes, some of which are charitable and others are not, and the trustees or some other person or persons are given the discretion to decide for what purpose the trust fund shall be utilised, the trust shall not be wholly void on that account but shall be void only with regard to non-charitable purposes and shall be valid and effective with regard to the purposes which are charitable, the entire trust funds being applied for such purposes ;
- (d) where there is a grant or bequest for charitable purposes to societies or institutions, if such society or institution was either not in existence or had ceased to exist at the time when the grant or bequest takes effect, the grant or bequest shall not lapse but shall be used for some charitable purpose to be determined by the Charity Commissioner.

#### IV. *Charity Commissioners.*

8. There shall be a Charity Commissioner for the Province of Bombay, such number of Deputy Charity Commissioners as the Local Government may decide for regional areas, and two or more Inspectors.

9. The Charity Commissioner and the Deputy Charity Commissioners shall be persons qualified to be appointed as District Judges under the law then in force, or solicitors of 10 years' standing, and shall be appointed by the Local Government upon the recommendation of the High Court, initially on probation for one year.

10. The Inspectors shall be persons qualified to be appointed as Civil Judges, possessing knowledge of book-keeping and accounts. Every such Inspector shall have to pass an examination in any one of the three principal languages of the Province, namely, Marathi, Gujarati and Kannad, (such language not being his mother tongue) within six months of his appointment.

11. The Charity Commissioner shall be a corporation sole and may sue and be sued in the name of the Charity Commissioner, Bombay. The Charity Commissioner shall have a seal which he can affix and the Deputy Charity Commissioner shall also have the power to affix it for the purposes of paragraphs 90 and 92 to 94.

12. The Charity Commissioner shall be a party to all legal proceedings in any court which in any way relate to charity or in which the interests of charity are directly or indirectly affected.

13. The Charity Commissioner, the Deputy Charity Commissioners and Inspectors shall be public servants within the meaning of section 21 of the Indian Penal Code.

14. The Charity Commissioner and a Deputy Charity Commissioner shall hold office until the age of 60 and shall be liable to be removed by the Local Government from office for misconduct only upon a recommendation in that behalf by the High Court after an inquiry.

15. Every Deputy Charity Commissioner shall, in addition to the powers conferred upon him by these provisions, have and exercise, within the regional area for which he is appointed, such powers and functions of the Charity Commissioner as the latter may by an order published in the *Bombay Government Gazette* delegate to such Deputy Charity Commissioner, either generally or specially.

16. The Charity Commissioner shall have power to call for and examine the records of any Deputy Charity Commissioner in order to satisfy himself as to the regularity of any proceedings or the correctness, legality or propriety of any decision or order passed by the Deputy Charity Commissioner; and if it appears to the Charity Commissioner that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly:

Provided that no such order shall be passed prejudicial to any party without giving it a reasonable opportunity of being heard:

Provided further that in cases where an appeal lies against the decision or order no proceedings under this provision shall be entertained, unless no appeal has in fact been filed.

17. The Charity Commissioner may, pending the exercise of his power under paragraph 16, stay execution of any decision or order of a Deputy Charity Commissioner.

18. The Charity Commissioner shall have power to transfer any proceeding pending before any Deputy Charity Commissioner to any other Deputy Charity Commissioner or to himself for disposal.

19. The Charity Commissioner, if satisfied that a Deputy Charity Commissioner has failed to exercise any power or discharge any duty in relation to any trust, may himself exercise such power or discharge such duty.

#### V. *Registration of Charities.*

20. The Charity Commissioner shall maintain a register of all trusts, and a copy thereof shall be kept in the office of each Deputy Charity Commissioner.

21. Separate registers shall be maintained by each Deputy Charity Commissioner for the regional area for which he is appointed.

22. Every Deputy Charity Commissioner shall maintain for the regional area for which he is appointed a classified list of trusts registered in that area arranged according to the objects of the trusts; and the Charity Commissioner shall maintain such a consolidated list for the whole of the Province.

23. The registers and classified lists of trusts as well as all documents required to be filed with the Deputy Charity Commissioners shall be open to public inspection without any charge during office hours.

24. Upon payment of fees to be fixed by the Local Government, any person shall be entitled to obtain certified copies of such documents and of any orders passed by the Charity Commissioner or the Deputy Charity Commissioner.

25. All trusts registered under the Bombay Public Trusts Registration Act, 1935, and falling within the scope of these provisions shall be deemed to be duly registered under these provisions.

26. In the case of any trust not registered under the Bombay Public Trusts Registration Act, 1935, at the date when these provisions take effect, it shall be the duty of the trustee of such trust to get it registered within three months.

27. In the case of any trust created after these provisions come into force, it shall be the duty of every trustee thereof to register it with the Deputy Charity Commissioner in whose regional area the property of the trust is situated within six months of the creation of such trust :

Provided that where such a trust is created by a will, the executors shall cause it to be registered within a month of their obtaining probate of the will or within six months of the death of the testator, whichever date is earlier.

28. Where a trust possesses property partly in one regional area and partly in another or where the objects of the charity are to be carried out in more than one regional area, the Charity Commissioner may, by an order in writing, direct which particular Deputy Charity Commissioner shall have jurisdiction in respect of such charity.

29. For the purpose of registration, the trustees shall submit to the Deputy Charity Commissioner a statement in the prescribed form containing the following particulars :—

- (i) The names and addresses of trustees.
- (ii) Mode of succession to the office of a trustee.
- (iii) A list of moveable and immoveable properties belonging to the trust, with such particulars as would be sufficient for identifying the properties, together with the approximate market value of each one of such properties.
- (iv) The gross average annual income of the trust estimated on the average income of three years preceding the date on which the statement is submitted, or, if the trust has not been in existence for that period, estimated on the basis of the period since the creation of the trust.
- (v) The amount of the annual expenditure in connection with the trust being the average of expenditure incurred during a similar period.
- (vi) An address to which any communications may be addressed or process served on the trustees in respect of the trust.
- (vii) Any other particulars that may be prescribed by the Charity Commissioner.

30. The statement shall be accompanied by a copy of the deed or instrument creating the trust, and if no such deed or instrument has been executed or if a copy thereof cannot be obtained, a full statement of particulars of the origin, nature and objects of the trust in so far as they may be known to the trustees.

31. The statement of particulars and its accompaniments shall be signed by any one or more of the trustees and verified by him or them in the prescribed manner.

32. Any Deputy Charity Commissioner may either on his own motion or upon the request in writing of any person hold an inquiry to determine whether any trust the property or part of the property whereof is situated in the regional area for

which he is appointed is a public trust ; and in the event of his coming to the conclusion that it is a public trust, he shall proceed to determine any or all of the particulars requisite for the purpose of registering such trust, and shall require the trustees of such trust by an order in writing to apply for registration of such trust :

Provided that no Deputy Charity Commissioner shall determine any question of title of persons claiming adversely to the trust.

33. A Deputy Charity Commissioner shall, after an application for registration has been made to him make such inquiry, if any, as he may think necessary, and shall cause the entries to be recorded in a Register of Public Trusts and Endowments to be maintained by him giving a distinctive number to each trust or endowment registered.

34. Where any change takes place in any of the particulars recorded by the Registrar of Public Trusts under the Bombay Public Trusts Registration Act, 1935 or supplied to the Deputy Charity Commissioner along with the application for registration, it shall be the duty of the trustees, within three months of the occurrence of such change, to report the change to the Deputy Charity Commissioner ; and the Deputy Charity Commissioner shall thereupon amend the appropriate entry in the Register after holding such enquiry, if any, as he may deem necessary :

Provided that the Deputy Charity Commissioner may, on his own motion and without any application in that behalf from any of the trustees, amend the particulars in the Register of Public Trusts maintained by him if he is satisfied that any of the particulars recorded therein are incorrect or that a change has occurred in any of them.

35. Any court of competent jurisdiction deciding any question relating to any public religious or charitable trust or endowment shall cause a copy of such decision to be sent to the Charity Commissioner, and the Charity Commissioner shall cause, the entries in the Register of Public Trusts to be amended in accordance with such decision.

36. It shall be the duty of every Deputy Charity Commissioner to forward to the Charity Commissioner a complete copy of the Register and the classified list of charities kept by him at such intervals of time as the Charity Commissioner may require, and the Charity Commissioner shall thereupon complete the Register and the list maintained by him by including therein the copies sent to him.

## VI. ACCOUNTS AND AUDIT.

37. The trustees of every trust shall keep regular accounts of all receipts and disbursements. Such accounts shall be kept in such form and shall contain such particulars as may be prescribed by the Charity Commissioner either generally or specially.

38. The accounts shall be balanced annually on the 31st March or such other date as the Charity Commissioner may, by an order in writing, fix for any particular charity.

39. The accounts shall be audited within three months of their being balanced by a person who is the holder of a certificate granted under section 144 of the Indian Companies Act, 1913, or is a member of any institution or association, the members of which have been declared under that section to be entitled to act as auditors of companies through the Dominion of India :

Provided that the accounts of a trust the gross annual income whereof does not exceed Rs. 1,000 may be audited by some person approved by the Deputy Charity Commissioner :

Provided further that in the case of any trust whose gross annual income exceeds Rs. 15,000, the Deputy Charity Commissioner may direct in writing that the audit shall either be concurrent, that is to say, as and when the expenditure is incurred or that it shall take place at such periods of time shorter than a year as the Deputy Charity Commissioner may direct.

40. It shall be the duty of every auditor auditing the accounts of a trust to prepare a balance sheet and income and expenditure account, and a copy of the same along with a copy of the auditor's report shall be sent to the Deputy Charity Commissioner simultaneously with the said statement and report being sent to the trustees.

41 (1) The auditor shall specify in his report all cases of irregular, illegal or improper expenditure, or of failure to recover moneys or other property due to the trust, or of loss or waste of money or other property thereof, caused by neglect or misconduct.

(2) The report shall also contain such further particulars as the Deputy Charity Commissioner may by general or special order direct.

42. It shall be the duty of the trustees to communicate to the Deputy Charity Commissioner the action taken by them on the report of the auditor within one month of the date of receipt of such report by the trustees.

43. If on a consideration of the report of the auditor and the accounts and the communication, if any, made by the trustees, the Deputy Charity Commissioner is satisfied that the trustees or any one of them was guilty of misappropriation or wilful waste of trust funds or of wilful negligence resulting in a loss to the trust, the Deputy Charity Commissioner may, after giving notice to the trustee or trustees and giving him or them an opportunity of being heard, make an order of surcharge directing the trustee or trustees concerned to pay the amount lost to the trust within a specified time.

## VII. POWERS OF THE CHARITY COMMISSIONERS AND INSPECTORS.

44. The general superintendence of all trusts shall vest in the Charity Commissioner and in the Deputy Charity Commissioners for their respective regional areas.

45. The Charity Commissioner, the Deputy Charity Commissioner and every person duly authorised by either of them in that behalf shall have power to enter the premises of any trust for the purpose of exercising such superintendence or any other power conferred upon him.

46. The Deputy Charity Commissioner shall have the following powers, in addition to the powers conferred upon him by any other provisions herein made :—

(i) To issue licences authorising any person or body of persons to collect subscriptions for any public purpose ;

(ii) To direct any authority, which is entitled to convert securities into stock and *vice versa*, not to transfer any stock owned by a trust and or not to reconvert it into securities without the permission in writing of the Charity Commissioner ;

(iii) To suspend a trustee pending the determination of a charge of breach of trust against him ;

(iv) To appoint a trustee or to provide a mode of appointment in cases where a vacancy occurs in the office of a trustee and no mode is prescribed for filling up the vacancy by the instrument of trust or by any scheme settled by a court, or the mode prescribed has become impracticable ;

(v) To vest any property in a trustee ;

(vi) To authorise the sale, exchange, mortgage or lease for a period exceeding three years of trust property ;

(vii) To determine what proportion of the trust property or income thereof shall be allocated to any particular object of the trust where such allocation is not made by the instrument of trust ;

(viii) To fix the standard scale of expenditure of every religious institution ;

(ix) Upon the application of any person to direct the trustee of any trust to give inspection to such person of all documents and accounts relating to the said trust.

47. In addition to the powers conferred upon by any other provision herein made, the Charity Commissioner shall have the following further powers :—

(i) To decide disputes as to precedence or privilege between purely religious functionaries connected with any religious institution ;

(ii) To determine the rights of religious functionaries and the religious endowment with which they are connected to any offerings at the religious institution ;

(iii) To decide any alleged right of entry into any religious institution or any portion of its premises ;

(iv) To decide any dispute regarding the appointment of a trustee, including a hereditary trustee ;

(v) To remove a trustee, including a hereditary trustee, on any one or more of the following grounds :—

(a) absence from the Dominion of India or non-attendance at meetings of trustees for a continuous period of six months ;

(b) departure from the Dominion of India with the intention of residing abroad for not less than a period of six months ;

(c) adjudication as an insolvent ;

(d) if, in the opinion of the Charity Commissioner, the trustee becomes unfit or personally incapable of acting in the trust ;

(e) if the trustee is guilty of persistent default in complying with the provisions of this Act or with any order lawfully issued by the Charity Commissioner or any Deputy Charity Commissioner ;

(f) if the trustee is sentenced for an offence which, in the opinion of the Charity Commissioner, involves moral turpitude ; and

(g) if the trustee is guilty of any breach of trust ;

(vi) To settle a scheme or amend or modify a scheme already settled by a court ;

(vii) To use his good offices to bring about co-ordination between trusts for the same or similar objects ;

(viii) To pass orders under paragraphs 58 (iii) (a) and (b).

48. Where a trustee is removed for a breach of trust, the Charity Commissioner may cause an inquiry to be held regarding the loss, if any, caused to the trust by reason of such breach and may, by an order in writing, direct the trustee to pay an amount equivalent to such loss.

49. Where the Charity Commissioner is satisfied that the property of a trust is in danger of being lost, misapplied or misappropriated, he may by an order in writing take over the administration of such trust, and thereupon all the property of the trust shall vest in him and the existing trustees, if any, shall cease to be trustees :

Provided that within six months of making such an order, the Charity Commissioner shall appoint new Trustees and vest the properties in them.

50. Where any express or constructive trust for public purposes of a charitable or religious nature is alleged to exist and the alleged trustee or trustees deny the existence of such a trust and/or claim adversely to it, the Charity Commissioner or any two persons, after obtaining in writing the consent of the Charity Commissioner, may file a suit against such trustee or trustees for a declaration that a public religious or charitable trust exists and for accounts of the administration thereof, for removal of the trustees and for appointment of new trustees.

51. Such suit shall be filed in the principal civil court of original jurisdiction within the local limits of whose jurisdiction the whole or any part of the property of the alleged trust is situate.

52. If in any such suit the court makes the declaration prayed for, the court shall direct that a scheme shall be settled for the administration of the trust under paragraph 47 (vi).

53. The Charity Commissioner or the Deputy Charity Commissioner or Inspector, such Inspector acting under the authority of the Charity Commissioner or the Deputy Charity Commissioner, may require written accounts and statements and answers to enquiries relating to any trust or the property or income thereof to be rendered or made to them respectively by all or any of the following persons :—

- (a) Trustees,
- (b) Agents of trustees,
- (c) Depositories of any property or funds of the trust,
- (d) Beneficiaries of any trust, and
- (e) Persons having the possession or control of any documents concerning the trust or any property thereof.

54. The Charity Commissioner or the Deputy Charity Commissioner or Inspector, acting as aforesaid, may require all or any such trustees and persons as aforesaid to attend before them respectively at such times and places as may be reasonably appointed for the purpose of being examined in relation to the trust and to answer such questions as may be put to them and to produce any documents in their custody, power or control relating to the trust or the property thereof and may examine upon oath or otherwise such persons.

55. All requisitions made under the foregoing provisions shall be in writing signed by the appropriate officer.

56. Any person refusing or wilfully neglecting to comply with any such requisition or destroying or withholding any document required to be produced shall be taken to be guilty of a contempt of the High Court of Judicature at Bombay and shall be liable to be punished for such contempt upon a report in that behalf by the Charity Commissioner or the Deputy Charity Commissioner to any Judge of the High Court.

57. All officers having the custody of any documents relating to or concerning any trust or alleged trust shall furnish such copies or extracts as shall be required by the Charity Commissioner or any Deputy Charity Commissioner; and every Inspector shall be at liberty to examine and search the registers and records of every court of law and every public registry and office of records and to take copies of and extracts from any decree or document recorded or registered or deposited therein without fee or any payment in respect thereof.

#### VIII. TRUSTEES, THEIR DUTIES AND POWERS.

58. Notwithstanding anything contained in the instrument of trust or in any scheme settled for the administration and management of the trust,

(i) the number of trustees shall not be less than three ;

(ii) where the objects of a trust have to be carried out, or the properties of a trust are situated, at more than one place and any of such places is separated from the other by a distance of over 100 miles, there shall be at least one local trustee at each such place ;

(iii) no trustee shall utilise any portion of the trust funds or income thereof for any of the following purposes :

(a) any purpose which the Charity Commissioner may, by an order in writing, declare to have ceased to be of public utility or benefit, and

(b) any other purpose which the Charity Commissioner may by a special order served on the trustees of any trust declare to have been otherwise adequately provided for.

59. Notwithstanding any law or any judicial decision to the contrary, it shall be open to the trustees of any trust to agree to a co-ordination with other trusts for same or similar objects on such terms as the Charity Commissioner may approve of.

60. A trustee of every Religious Institution shall, once in every three years, submit to the Deputy Charity Commissioner proposals for fixing the standard scale of expenditure in the institution.

61. Such proposals shall be published at the premises of the institution and in such other manner as the Deputy Charity Commissioner may direct, together with an intimation that within a month from the date of such publication any person might submit objections or suggestions in regard thereto to the Deputy Charity Commissioner.

62. After the expiry of such period, the Deputy Charity Commissioner shall, after considering any objections or suggestions received by him and after applying his own mind to the proposals, irrespective of whether any objections or suggestions have been received, fix the standard scale of expenditure and pass an order in writing to that effect :

Provided that in fixing such expenditure the Deputy Charity Commissioner shall progressively reduce the expenditure on non-essential items.

63. If the expenditure determined in this manner is exceeded the trustees shall be jointly and severally liable to make it good, unless the excess of expenditure is subsequently sanctioned by the Deputy Charity Commissioner; and the Deputy Charity Commissioner may make an order on any trustee or trustees for payment of such amount to the trust.

64. It shall be the duty of trustees to maintain an adequate Depreciation Fund in respect of all buildings and property belonging to the trust and also to maintain a separate fund for Current Repairs.

65. The amounts set apart for the Depreciation Fund and for Repairs shall not be used by the trustees for any other purpose.

66. The Depreciation Fund and the provision for Repairs shall be made notwithstanding any provision in the instrument of trust or a scheme requiring the trustees to utilise the income of trust properties or its funds for any specific purpose.

67. If, as a result of setting aside a Depreciation Fund and a Fund for Repairs out of the annual income, the amount remaining available for other objects of the trust falls short of the allocations made for such objects either by the instrument of trust or by a scheme, the amount to be spent on each object shall be proportionately reduced.

68. In the case of existing trusts, where there are any funds in the hands of the trustees, the income whereof has not been allocated to any specific charitable purpose, the trustees shall cause a survey to be made of the needs of the trust including those with regard to a Depreciation Fund as well as with regard to rebuilding or reconstruction of properties belonging to the trust or providing any amenities in connection therewith and submit proposals to the Deputy Charity Commissioner for utilisation of any part of such funds for such purposes:

Provided that the lay-out and/or maintenance of a garden open to all Hindus around or near a religious institution, and the provision of amenities for pilgrims shall be considered to be a provision of amenities in connection with such religious institution.

69. The Deputy Charity Commissioner, if satisfied that such purposes or any of them are beneficial to the trust, may order that any portion of the accumulated surplus in the hands of the trustees may be set apart for such purpose or purposes.

70. The balance of such amount shall be utilised by the trustees for any public religious or charitable object with the prior approval of the Deputy Charity Commissioner.

71. No trustee shall accumulate out of the income of the trust and keep unused any amount exceeding the gross annual income of the trust for the previous year, except the sums set apart under paragraph 64:

Provided that the Deputy Charity Commissioner may allow accumulations of income if such accumulations are earmarked for any specified religious or charitable purpose to be given effect to not later than seven years from the date of such accumulations.

72. Where the accumulation exceeds the gross annual income of the trust for the previous year, such amount shall be utilised by the trustee for any public

religious or charitable object with the prior approval of the Deputy Charity Commissioner.

73. In the event of the amount mentioned in paragraph 70 remaining unused for one year after it is ascertained, and the amount mentioned in paragraph 72 remaining unused for six months after such accumulation, the Deputy Charity Commissioner shall be entitled to direct that it shall be used on any specified object of charity.

74. A trustee may apply to the Deputy Charity Commissioner to be discharged from office and, if the Deputy Charity Commissioner is satisfied that there is sufficient reason for doing so, he may discharge him accordingly.

75. A trustee may apply to the Deputy Charity Commissioner within the local limits of whose jurisdiction the trust is registered for the opinion, advice or direction of the Deputy Charity Commissioner on any question affecting the management or administration of the trust property.

76. Upon such a petition being presented, the Deputy Charity Commissioner may proceed to pass orders thereon or may fix a date for the hearing of the petition and direct notice to be given to any person interested or to be published in such manner as he thinks fit.

77. On the date so fixed or on any subsequent date to which the hearing may be adjourned, the Deputy Charity Commissioner shall afford reasonable opportunity of being heard to all persons appearing in connection with the petition and then pass orders thereon.

78. A trustee setting out in such petition all material facts correctly and acting upon the opinion, advice or direction of the Deputy Charity Commissioner thereon shall be protected from liability in respect of the matter relating to which the petition was made.

## IX. SAFEGUARDING OF PROPERTY.

### 1. *Immoveable property.*

79. At the time of registering a trust the Deputy Charity Commissioner shall pass an order in writing setting out the immoveable properties which belonging to such a trust.

80. In the case of trusts already registered under the Public Trusts Registration Act, 1935, he shall pass such orders as soon as possible after the coming into effect of these provisions.

81. He shall also pass a similar order when acquisition of further property by the trust is notified to him.

82. Where the Deputy Charity Commissioner sanctions any dealing with an immoveable property belonging to a trust such as the exchange, sale, mortgage or lease for a period exceeding three years, he shall pass an order in writing to that effect.

83. A copy of all such orders passed by the Deputy Charity Commissioner shall be sent to every Registering Officer within the local limits of whose jurisdiction any part of the property to which the order relates is situated and such Registering Officer shall file the copy in Book No. 1.

[This will require a suitable amendment of section 89 of the Registration Act.]

84. Every person dealing with any property be onging to a public, religious or charitable trust or endowment shall be deemed to have notice of all orders filed under the aforesaid provisions.

85. No trustees shall mortgage, exchange, sell or lease for a period exceeding three years any immoveable property belonging to a trust without an order in writing in that behalf from the Deputy Charity Commissioner; and any mortgage, exchange, sale or lease without the requisite order from the Deputy Charity Commissioner shall be void and inoperative.

## 2. *Investment of Trust Funds.*

86. Notwithstanding anything to the contrary contained in any instrument of trust or any scheme settled by a court—

(a) no trustee shall retain with himself at any time a sum representing more than a month's average gross income of the trust calculated on the basis of the last year's income;

(b) all excess amounts shall be deposited in any one or more of the banks approved by the Charity Commissioner by a general or special order;

(c) where the amount in the hands of trustees of any trust together with the amount to the credit of the banking account or accounts taken together exceeds the gross annual income of the previous year, the trustees shall invest the same:

Provided that if the trustees satisfy the Deputy Charity Commissioner that the amount would be necessary for being spent on any legitimate purpose, he may allow them to keep the amount uninvested.

87. Trust funds shall be invested in any of the following securities and in no others:

(a) Promissory notes, debentures, stock or other securities of any Provincial Government or of the Central Government:

Provided that securities the principal and interest whereof has been guaranteed by any such Government shall be deemed to be securities of such Government.

(b) Bonds, debentures and annuities charged on the revenues of the Dominion of India or of any Province.

(c) Stock or debenture of or shares in Railway or other Companies the interest whereon has been guaranteed either by the Secretary of State for India in Council or by the Central or any Provincial Government.

(d) Debentures or other securities for money issued under the authority of any Act of a Legislature in the Dominion of India by or on behalf of any municipal body, Port Trust or City Improvement Trust.

(e) First mortgage of immoveable property situate in the Dominion of India:

Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third or, if consisting of buildings, exceeds by one-half the mortgage money.

(f) National Savings Certificates.

Provided that any direction to invest in any other mode contained in a deed of trust shall be valid during the life-time of the settlor and for five years thereafter and in a will for five years after the death of the testator; but where such period

has come to an end before these provisions take effect the direction shall cease to be operative upon the coming into force of these provisions :

Provided further that any such direction contained in a scheme settled by court shall be valid for one year after the appointment of the Charity Commissioner.

88. No direction contrary to clauses 86 and 87 can be included in any scheme settled by the Charity Commissioner or a Deputy Charity Commissioner.

89. In the case of securities in respect of which a provision for the issue of Stock exists, it shall be the duty of every trustee to apply for conversion of such securities into Stock within 15 days of their purchase and in the case of existing securities within three months of the appointment of the Charity Commissioner.

90. It shall be the duty of every trustee, before submitting an application for conversion of securities into Stock, to submit the same to the Deputy Charity Commissioner for making an endorsement thereon to the following effect under his signature and seal of the Charity Commissioner :—

“ By virtue of section ..... of the ..... Act, I direct that the Stock certificate issued in pursuance of the above request shall not be transferred out of the names of ..... and/or reconverted into securities without permission in writing from the Charity Commissioner, Bombay, or any Deputy Charity Commissioner.

(Signed) .....

Seal of the  
Charity Commissioner.

Deputy Charity Commissioner”.

91. In the case of Stock held by trustees at the date when these provisions come into effect, the trustees shall, within one month of the appointment of the Deputy Charity Commissioner supply particulars to him of such Stock ; and the Deputy Charity Commissioner shall thereupon give an appropriate direction with regard to such Stock under paragraph 46 (ii).

92. Within a fortnight of the acquisition of trust securities which are not convertible into Stock, and in the case of such securities which are already held by a trust within three months of the appointment of the Charity Commissioner, the trustee shall present them to the Deputy Charity Commissioner for being stamped with a stamp “ trust security ” and the seal of the Charity Commissioner.

93. No security which is stamped in this manner shall be negotiable unless accompanied by a certificate issued under the seal of the Charity Commissioner and signature of the Charity Commissioner or any Deputy Charity Commissioner authorising such negotiation.

94. Where a trust security is sold under a certificate from the Charity Commissioner or a Deputy Charity Commissioner, the purchaser, if he does not purchase on behalf of a public trust, shall be entitled to present the security to the Charity Commissioner or the Deputy Charity Commissioner for cancellation of the stamp put thereon, and the Charity Commissioner or the Deputy Charity Commissioner shall thereupon cancel the stamp under his signature and the seal of the Charity Commissioner.

### 3. *Income from property.*

95. It shall be the duty of every trustee to recover the income of the trust property as and when it falls due, and not to allow any such income to remain in arrears in the case of agricultural lands for more than six months and in the case of other immoveable property for more than three months after the date of accrual.

96. In any case in which income remains in arrears for a longer period, the trustees shall report the matter to the Deputy Charity Commissioner and state what action, if any, they have taken or propose to take with regard to the recovery of such income, and if they do not propose to take any action the reason therefor.

97. If, within three months of the submission of such report, the Deputy Charity Commissioner does not otherwise direct and the income continues to remain in arrears, it shall be the duty of the trustees to take legal proceedings for recovery of such income.

98. If the trustees fail to do so and the income is ultimately lost to the trust, they shall be jointly and severally liable to make it good.

99. No trustee shall be entitled to write off any amounts due from any person or to compromise any claim in respect thereof without specific sanction in that behalf from the Deputy Charity Commissioner, and if any amount is written off without such sanction, the trustee or trustees, who are parties to such writing off or have sanctioned it, shall be liable to make good such amount to the trust.

100. In respect of any liability arising under paragraphs 98 and 99, the Deputy Charity Commissioner may pass an order requiring the trustees to pay any amount to the trust.

### X. *CY-PRES.*

101. Where the original object of a trust fails either because it is impossible or impracticable to carry it out or by reason of the provisions contained herein, the trust fund shall be applied to such other charitable objects as the Charity Commissioner may determine.

102. Where the fund set apart for a particular object is so large that it cannot wholly be applied to such purpose or where such purpose has been otherwise adequately provided for, the excess shall be applied to such other charitable objects as the Charity Commissioner may determine.

103. Notwithstanding the doctrine of *cy-pres* and any judicial decisions to the contrary, the Charity Commissioner shall not be bound to direct the application of funds to purposes as nearly as possible to the objects which have wholly or partially failed, but shall be entitled to consider the comparative advantages of various charitable objects and to adopt that which seems to him to be most beneficial to the community at the time of giving such direction :

Provided that where the object which has failed was for the benefit of a section of the community only, the funds so applied shall be applied for the benefit of such section only unless the majority of the trustees agree to their application to a wider section of the community or to the general public.

## XI. LICENCE FOR COLLECTION.

104. No person or body of persons shall collect or take any steps towards inviting or collecting subscriptions from the public for any purpose without obtaining a licence in that behalf from the Charity Commissioner or a Deputy Charity Commissioner :

Provided that no licence will be necessary to enable an individual to collect subscriptions for the relief of himself or his family in case of distress.

105. Such licence shall be granted by the Deputy Charity Commissioner as a matter of course at the request of the trustees of any public trust or the Managing Committee of any society registered under the Societies Registration Act, 1860, to any person or persons named by them to enable collection of funds for any or all of the purposes of such trust or society.

106. Such licence may also be granted by the Charity Commissioner or any Deputy Charity Commissioner to any other person or persons upon his being satisfied that the collection is intended to be made *bona fide* for a public charitable purpose :

Provided that the Charity Commissioner or a Deputy Charity Commissioner may as a term of issuing any such licence require the licensee to satisfy him that the collection shall be used for the purpose for which it is intended :

Provided further that such licensee shall undertake to render to the Charity Commissioner or Deputy Charity Commissioner, at such time or times as may be agreed upon between him and the Charity Commissioner or Deputy Charity Commissioner accounts of all collections and disbursements.

## XII. ENLARGEMENT OF THE CLASS OF BENEFICIARIES.

107. Notwithstanding any provision in the instrument of trust or any scheme settled by a court or in the Memorandum or Articles of Association of any society registered under the Societies Registration Act, 1860, where the object of the trust or the society is to run a hospital, mobile or otherwise, a maternity home or an ambulance unit or to maintain a sanatorium or a dharamshala for the benefit of any section of the Hindu community, the benefit shall be extended and made available to the entire Hindu community :

Provided that the trustees in the case of a trust and the Managing Committee in the case of a registered society may reserve in the case of a hospital which provides beds or of a maternity home any number of beds not exceeding 70 per cent. and in the case of a sanatorium accommodation not exceeding 70 per cent. for the benefit of that section of the community for which the hospital or maternity home or sanatorium was originally intended :

Provided further that in the case of a sanatorium or dharamshala originally intended for vegetarian Hindus no person shall bring in, cook or consume non-vegetarian food.

108. Notwithstanding any provision of law or any judicial decision to the contrary, it shall be open to the trustees of any trust for the benefit of any section of the Hindu community to extend the benefits of such trust to a wider section of the community or to the whole of the Hindu community with the consent previously obtained of the Charity Commissioner.

## XIII "DHARMADA".

109. Where in any transaction of sale or purchase any amount is charged to any party to the said transaction as "Dharmada", i.e. as being intended for charity in whichever name it is in fact collected, the amount so collected shall be used for charitable purposes only.

110. It shall be the duty of every person collecting such an amount to report to the Deputy Charity Commissioner within three months of the coming into effect of these provisions or within three months of his commencing to make any such collection that he makes such a collection stating the basis on which such collection is made and to make a return to the Deputy Charity Commissioner every year of the receipts and disbursements of such an amount.

111. The Deputy Charity Commissioner shall have power to have such account audited by any person whom he may appoint in that behalf and to direct that the expenses of such audit may be paid out of such account.

112. If as a result of such audit the Deputy Charity Commissioner is satisfied that any portion of such collection has been spent on objects which are not charitable, the Deputy Charity Commissioner may by order in writing require the person responsible for such spending to make good the amount so spent :

Provided that before making such an order the Deputy Charity Commissioner shall give a reasonable opportunity to such person of being heard.

## XIV APPEALS AND BAR OF LEGAL PROCEEDINGS.

113. Against an order passed by a Deputy Charity Commissioner under paragraph 46 (viii) there shall be an appeal to the Charity Commissioner.

114. Against any order passed by the Charity Commissioner or a Deputy Charity Commissioner, in exercise of powers under paragraphs 43, 47 (i) to (vi) and (viii), 48, 58 (iii) (a), 69, 70, 100 and 112 there shall be an appeal by a trustee in all cases in which the trust to which the order relates has a gross annual income of Rs. 1,000 or more in the preceding year.

115. Such appeal shall lie in Greater Bombay to a Judge of the High Court exercising original jurisdiction in Chambers, and elsewhere to the principal court of original civil jurisdiction within whose territorial limits the trust is registered :

Provided that an appeal against an order under paragraph 58 (iii) (a) shall always lie to a Judge of the High Court exercising original jurisdiction in Chambers.

116. Before hearing such appeal, the court shall require from the appellant proper security for such costs as may be eventually payable by him.

117. The court may, upon the hearing of an appeal, remit the order to the Charity Commissioner for reconsideration with or without any declaration in relation thereto or may alter or modify the order or make such order in substitution thereof as it shall think just.

118. Against an order passed by a court under this provision, there shall be an appeal by leave of such court, if any question of law arises for determination, to a Division Bench of the High Court.

119. No suit or other legal proceedings in respect of the administration or management of a registered trust or in respect of any other matter or dispute for determining or deciding which provision is herein made shall be instituted in any court of law except under and in conformity with these provisions.

Nothing contained in this clause shall affect the right of the trustees to institute a suit to enforce the rights of the trust as against outsiders.

120. Save as otherwise expressly provided herein, no order passed, decision made, proceedings or action taken, scheme settled or other thing done under these provisions by the Charity Commissioner or Deputy Charity Commissioner shall be liable to be questioned in any court of law.

#### XV LIMITATION.

121. Section 10 of the Limitation Act should be amended so as to provide for its application to constructive trusts of a public religious or charitable nature.

122. It should be provided that no period of limitation shall apply for a suit to set aside an alienation of immoveable property and/or for possession thereof where the alienation is void under these provisions and takes place after these provisions come into effect.

123. An appeal under clause 113 shall be filed within 15 days of the passing of the order and under clauses 114 and 118 within 30 days of the passing of the order.

#### XVI MISCELLANEOUS.

124. The Religious Endowments Act, 1863, shall be repealed.

125. The following enactments shall cease to apply to trusts to which these provisions apply :—

(i) The Charitable Endowments Act, 1890.

(ii) Sections 92 and 93 of the Code of Civil Procedure, 1908.

(iii) The Charitable and Religious Trusts Act, 1920.

(iv) The Bombay Public Trusts Registration Act, 1935.

126. Where a scheme has been settled for the administration and management of a trust prior to the coming into operation of these provisions :—

(a) these provisions shall prevail over any provisions contained in the scheme ;

(b) all powers exercisable by a court or by the Advocate General or by the Collector of a District shall be exercised by the Charity Commissioner ;

(c) notice to the Advocate General or to the Collector of a District shall be notice to the Charity Commissioner ;

(d) consent of the Advocate General or of the Collector of a District shall be the consent of the Charity Commissioner ;

(e) liberty to apply shall mean liberty to apply to the Charity Commissioner ;

(f) where notice to or consent of the Advocate General or of the Collector of a District is required prior to an application to a court, such notice or consent shall be dispensed with.

127. Where under any will a bequest is made to charity, it shall be the duty of the executor of such will, within one month of his accepting executorship to forward a copy of the will to the Charity Commissioner or to the Deputy Charity Commissioner and also to report to him thereafter within such time as he may allow what action, if any, the executor has taken with regard to such bequest.

128. No court shall issue probate of a will or letters of administration with the will annexed without being satisfied that a copy of the will has been supplied to the Charity Commissioner or the Deputy Charity Commissioner if there is any bequest to charity under the will.

129. Where the Charity Commissioner or a trustee is resisted in, or prevented from, obtaining possession of the trust property, including its records, accounts, books, vouchers and papers by a co-trustee, or by a former trustee or by any existing or dismissed servant of the trust, or by any person claiming to be a trustee the

Charity Commissioner may by order direct delivery of such property to himself or the trustee, and such order can be executed as if it were an order of a civil court of competent jurisdiction for possession of property :

Provided that the passing of such an order shall not bar the institution of a suit by any person aggrieved to establish his title to such property.

130. If any person fails to comply with these provisions or with any order lawfully issued by the Charity Commissioner, or a Deputy Charity Commissioner, he shall, on conviction, be punishable with a fine not exceeding Rs. 200, and if he is a trustee he shall be deemed to be guilty of a breach of trust.

131. The Provincial Government may, in consultation with the Charity Commissioner, make rules for the purpose of carrying into effect these provisions.

132. For the purpose of discharging any of his functions, the Charity Commissioner and the Deputy Charity Commissioners shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters :—

- (a) Enforcing the attendance of any person and examining him on oath ;
- (b) Compelling the production of documents and any other moveable property ;
- (c) Issuing commissions for the examination of witnesses ;
- (d) Proof of facts by affidavits .

133. Where the Charity Commissioner or a Deputy Charity Commissioner passes an order directing a trustee to pay any amount, the sum specified in the order shall be recoverable as arrears of land revenue and, for that purpose, the Charity Commissioner or the Deputy Charity Commissioner may remit the order to the Collector of the District within which the trustee against whom the order is made resides.

#### XVII THE PUBLIC TRUSTS ADMINISTRATION FUND.

134. Upon the coming into force of these provisions, the balance standing to the credit of the Public Trusts Administration Fund created under the Bombay Public Trusts Registration Act, 1935, in all the districts and areas of the Province of Bombay shall be amalgamated into a single fund to be known as the Public Trusts Administration Fund, Bombay, and shall be kept as a reserve at the disposal of the Charity Commissioner to enable him to defray the expenses of litigation to which he is a party in cases in which he is liable to pay either his own costs or the costs of any other party to the litigation. The Charity Commissioner shall credit to this account any amounts received by him to wards his legal expenses from any party to any litigation.

26th June 1948.

S. R. TENDOLKAR.

C. K. DAPHTARY.

SHANTILAL H. SHAH.

J. R. GHARPURE.

BHOGILAL LALA (subject to note of dissent).

B. N. DATAR (subject to note).

NAYAN H. PANDIA.

C. C. SHAH (subject to note of dissent).

Mr. C. C. HULKOTI did not take part in the proceedings of the Committee.

## Note 1.

## DISSENTING NOTE BY MR. BHOGILAL D. LALA.

*Paragraph 9.*—The recommendation contained in this paragraph is that Charity Commissioner shall be a person qualified to be appointed as a District Judge. When the question was discussed in the Committee I was informed that according to the law as it stands now, an advocate of five years' standing is qualified to be appointed as a District Judge. Looking to the powers which will be conferred on a Charity Commissioner and considering the duties both Judicial and Administrative which he shall have to perform, I am of opinion that Charity Commissioner shall be a person holding a judicial post qualifying him to be appointed a District Judge or an advocate or a Solicitor having at least ten years' *active practice*.

As for the qualifications of Deputy Charity Commissioner I agree with the recommendation contained in the paragraph with a proviso that an advocate or a Solicitor of at least ten years' *active practice* shall be eligible for the post.

*Paragraph 107.*—This paragraph suggests enlargement of the class of beneficiaries. It contains a recommendation to the effect that where the object of the trust or a society is to run a Hospital, mobile or otherwise, a Maternity home or an ambulance unit or to maintain a Sanatorium or a Dharmashala for the benefit of any section of the Hindu Community, the benefit shall be extended and made available to entire Hindu Community. In my opinion this is going too far. We should proceed cautiously. Many well-organised and well-managed charitable hospitals for particular communities exist in the Province and they have so far lessened the burden on Government. People are generally inclined to give to charity if it is for their own community. I admit that it is necessary to change this mentality. But this cannot be done all at once. It is first necessary to cultivate public opinion in this direction. I think this can be done by the recommendation contained in paragraph 108. Under that recommendation it is open to the trustees of any trust created for the benefit of any section of Hindu Community to extend the benefits of such trust to a wider section of the community or to the whole of the Hindu Community. I think this recommendation is sufficient at present to pave the way for enlarging the class of beneficiaries.

Moreover if we adopt the recommendation contained in paragraph 107 the result will be that the sources of such charities, which charities are generally of very large amounts, will be dried up and Government will have to take of that work. I think, looking to the financial liabilities involved, Government will not be able to undertake that work, to the extent to which public charities do.

This recommendation should therefore be dropped.

Ahmedabad, dated 19th June 1948.

B. D. LALA.

---

 Note 2.

## DISSENTING AND SUPPLEMENTARY NOTES BY MR. B. N. DATAR.

I fully subscribe to the report of the Committee subject to a dissenting as also a supplementary note as below. I may add that they do not involve any difference on a question of principle or a point of substance.

1. *Necessity of full inquiry about Maths.*—The Committee have by a large majority left the question of Maths unconsidered and have made no recommendations in that behalf. They have left it open to Government to extend the provisions of the proposed legislation to a Math or Maths after collecting sufficient materials thereabout. It is true that in the short time at their disposal, the Committee could not gather full material about Maths. All the same, a full and proper investigation into the questions bearing on the administration of Maths, was in my opinion absolutely essential even though it required an extension of time for the submission of our report.

The Maths amongst Hindus form an important and distinct class of religious institutions. There are Maths spread over the whole province. In Karnataka in general, and amongst Lingayats in particular there are Maths of various types, almost in every town and village. The administration of such Maths is far from satisfactory. Once upon a time they served a very useful purpose and may continue to serve the society well even in the present conditions if their administration is properly carried on under the supervision and control of a Central Agency created by Government.

ca

The special characteristics of these Maths and their special problems call for a separate inquiry and recommendations suitable to their conditions. Any inquiry with regard to Hindu religious trusts would be incomplete if these Maths are left out of account. Secondly it would be wrong to leave it to Government, to extend to Maths the provisions recommended for the management and administration of temples. They may not fit in with the conditions prevailing in Maths.

The terms of reference are wide enough to comprise Maths. I am therefore of the opinion that the Government of Bombay should either call upon this very Committee to consider and report upon Maths now or to appoint another Committee and obtain their views before extending the provisions of the proposed Trusts legislation to Maths by an executive order.

2. *Separate Charity Commissioner for Hindu and Jain religious trusts.*—The report of our Committee recommends the appointment of a Charity Commissioner and Deputy Charity Commissioners under him, to superintend and deal with all trusts, religious and charitable. I desire that a separate Commissioner be appointed for Hindu religious endowments and trusts. The Provincial Governments of Madras and Bihar have prepared Bills for such a separate arrangement. I may further suggest to the Government of Bombay that they bring all charitable trusts amongst all Communities under the common control of a charitable Commissioner, and provide for a separate Hindu religious endowments Commissioner to look after all public religious institutions amongst Hindus and Jains. The Charity Commissioners under the proposed legislation will be invested with wide powers, judicial, administrative and inquisitional. They naturally involve considerable interference even with the internal administration and usages of such institutions, and may have to deal even with involving purely religious questions. The Madras Bill insists upon the recommendation of Hindus only to the posts of Commissioners, Deputy Commissioners and other officers and the staff connected with the Department that is to be called upon to deal with such institutions. This is a salutary provision. Though a large measure of Governmental supervision over such institutions is advisable, it should be carried out in a manner least objectionable to Hindu religious sentiment and by persons who profess Hindu religion. I am therefore anxious that religious institutions are provided for separately from  
no r-religious and secular trusts.

I may add that this proposal, conceived of by me at a late stage, may be considered on its own merits and should not be allowed to hold up the preparation or introduction of the proposed legislation. This measure may be brought into force after the Government machinery to deal with all public trusts has begun to function.

B. N. DATAR.

### NOTE 3.

#### DISSENTING NOTE BY MR. C. C. SHAH.

It is not without hesitation and regret that I put in this minute of dissent, but, as some of the recommendations of the Committee from which I differ, are of a fundamental character, I consider it my duty to record my views briefly. In doing so, I am voicing the opinion of several important witnesses who gave evidence before the Committee.

The Committee was appointed to investigate the whole question of the due and proper administration and management of Trusts and Endowments with special reference to the prevailing abuses in such administration and to suggest measures necessary for removing such abuses and securing effective supervision, regulation and control. The present machinery for such purpose is undoubtedly very defective as pointed out in the main body of the report. The main defect is that there is no one to supervise the administration of trusts. The Committee has, therefore, recommended appointment of Charity Commissioner and Deputies and compulsory registration of all Trusts, testamentary as well as non-testamentary, compulsory audit by Certified auditors and filing of accounts, with powers to the Charity Commissioner to call for further information and to investigate into the administration of the Trusts and several other provisions for safeguarding the properties of the Trusts, moveable as well as immovable. Large inquisitorial and administrative powers are conferred on the Charity Commissioner and his Deputies and all these provisions will considerably diminish, if not entirely remove, the present abuses in the administration of the Trusts and will create effective supervision and control by a special Department. The Committee has also considerably enlarged the definition of charity. With all these recommendations I am in complete agreement. These recommendations, if properly given effect to, will go a very long way in improving the administration of the Trusts. The Committee has made certain further recommendations hereinafter mentioned with which I am unable to agree.

It should be noticed that the recommendations of the Committee concern not only religious endowments and institutions but also all secular charities. The Bihar Bill which was before the Committee deals only with religious endowments and institutions. The existing legislation in Madras also deals only with religious endowments and institutions, but in the new Bill which has not still become an Act and which was before the Committee, power has been taken by Government to apply the provisions to other secular charities. The President of the Board of Religious Endowments in Madras who gave evidence before us stated that the provisions of the Act were not applied to other secular charities, because Government feared greater opposition and resentment from the public. The reason is that while the administration of religious institutions and endowments are in the hands of persons like hereditary pujaris or Sevakas or Mahants who have been guilty of malpractices and misappropriation and the public resentment against them is much greater and the need for control also is much greater, in the case of

secular charities, their management is generally in the hands of persons who are more or less disinterested and have accepted office of Trustee out of a sense of duty or service. Madras and Bihar have to deal with mostly religious endowments and institutions whereas the Bombay Presidency has large secular charities. Religious institutions and endowments, for the reasons abovementioned, need greater supervision and control than secular charities. Some of the recommendations with which I am unable to agree have been adopted from the Madras and Bihar Bills which apply only to Religious Endowments and Institutions.

#### *Cypres Doctrine.*

Paragraph 58 (iii) (a) provides that no trustee shall utilise any portion of trust funds or the income thereof for any purpose which the Charity Commissioner may by an order in writing declare to have ceased to be of public utility or benefit. Paragraphs 101, 102 and 103 provide that notwithstanding the doctrine of *Cypres* the Charity Commissioner shall not be bound to direct application of funds to purposes as nearly as possible to the objects which have wholly or partially failed, but shall be entitled to consider the comparative advantages of various charitable objects and to adopt that which seems to him to be the most beneficial to the community at the time of giving such direction. The Charity Commissioner is thus given a blank cheque to disregard the wishes of the settlor or the testator. Several witnesses like Dr. M. R. Jayakar, the Hon'ble Mr. K. S. Firodia and Mr. K. M. Munshi have strongly opposed this view. This is the surest way of discouraging persons from making charities if they know that, after they have made the charities, some Charity Commissioner may consider the objects for which they have donated to have ceased to be of public utility or benefit and he may direct them to be applied to any other object which he considers to be beneficial to the community at the time of giving his directions. It would be doing violence to the wishes of the people which should not be done unless it becomes absolutely necessary. In applying the *Cypres* Doctrine to objects as nearly as possible, the Courts have at times gone as far as possible with the consent of the Trustees or the beneficiaries, but an attempt has always been made to respect the wishes of the donors so far as possible. But to provide by legislation that the wishes of the donors need not be respected at all is something which is going too much beyond the requirements of the situation. This is not an enlargement of the Doctrine of *Cypres* but doing away with it.

#### *Enlargement of the Class of Beneficiaries.*

The proviso to paragraph 103 provides that the majority of the Trustees may agree to the application of Trust funds to a wider section of the community or to the general public than the section of the community for which it is intended. Paragraphs 107 and 108 provide that notwithstanding any provision in the instrument of trust or any scheme settled by a Court or in the Memorandum or Articles of Association of any Society, where the object of the Trust is to run a Hospital, Maternity Home or an Ambulance Unit or to maintain a Sanatorium or Dharamshala for the benefit of a section of the Hindu community, the benefit shall be extended and made available to the entire Hindu Community subject to a reservation of not exceeding 70 per cent. for the benefit of that section of the Community for which the Trust is intended.

Paragraph 108 empowers the trustees (which would mean by majority) of any trust for the benefit of any section of the Hindu Community to extend the benefits of the Trust to a wider section of the community or to the whole Hindu community with the consent of the Charity Commissioner. This is a laudable object as an ideal

but to compel communal charities by legislation to become non-communal is not the way of achieving this object. There was also a sharp difference of opinion on this question amongst the witnesses who appeared before the Committee. This question in fact was not before the Committee in its terms of reference nor was any question put on this subject in the questionnaire issued by the Committee. It came up before the Committee incidentally when one of the witnesses suggested that all communal charities should be thrown open to the entire Hindu community and the question was subsequently put to several witnesses appearing thereafter who sharply differed. It would not be correct to say that public opinion has been properly ascertained on this very important question. It is one thing to discourage communal charities and another to make them non-communal by legislation. The Hon'ble Mr. Justice M. V. Desai strongly opposed this kind of legislation and Mr. P. M. Laud, I.C.S., stated that in the circumstances in which we exist today, if the particular charity for a particular community is unable to meet even the needs of that community, there is no purpose in compulsorily throwing it open to the entire Hindu community. Charities of this nature, viz., a Hospital or a Sanatorium, do not foster such kind of communal spirit as is destructive of national solidarity and if a particular community looks after its own needs without any disadvantage to any other community, it would be unwise at this stage to discourage such charities which takes off a burden of the State. It is well-known that communal hospitals and sanatoriums are unable to meet even the needs of the particular community for which they exist. People do like to serve their community as they serve their family. The very persons who donate for communal charities also donate for general charities. It will dry up the sources of charities if legislation compels communal charities to throw open their door to the entire Hindu community. Nobody will defend communal charities, but we have to face realities.

Similarly, to give power only to the trustees to enlarge the class of beneficiaries without in any manner consulting the beneficiaries will be hazardous; if there are 5 trustees, 3 of them by majority can decide to throw open the charity to the entire Hindu community which means one man will decide. It should be provided that the trustees shall ascertain the wishes of the beneficiaries before taking any such step and it should not be difficult to do so.

#### LICENCE FOR COLLECTION.

Paragraphs 104 to 106 provide that no person or body of persons shall collect or take any steps towards inviting or collecting subscriptions from the public for any purpose without obtaining a licence in that behalf from the Charity Commissioner or Deputy Charity Commissioner.

Paragraph 105 provides that such licence will be granted as a matter of course at the request of the trustees of any public trust or the Managing Committee of Societies, and paragraph 106 makes the licensee liable to render accounts to the Charity Commissioner of all collections.

This question also was not before the Committee nor was any question put about it in the questionnaire issued by the Committee, but it incidentally came up before the Committee on a suggestion from one of the witnesses. It is rather too much to expect persons making collections for charities to apply for a licence from the Charity Commissioner. The public generally does not pay those whom it does not know or trust and if there is abuse, it is comparatively small and not such as to call for such a provision for all charities. It is particularly unnecessary in case of trusts which will be registered under the Act because in that case it is known who are

the trustees and they are bound to render accounts for the collections that have been made by him and under the Act every Trust is made compulsorily registrable.

#### JUDICIAL POWERS OF THE CHARITY COMMISSIONER.

Under the recommendations, large judicial powers are conferred on the Charity Commissioner. In fact all the powers now exercised by the Court over charities and trustees are proposed to be transferred to the Charity Commissioner subject to a right of appeal in specified cases. I think it is premature to confer such wide judicial powers on the Charity Commissioner. Removal of trustees or any order upon the trustees to make good any loss occasioned to the Trust by reason of their alleged negligence are matters which must be dealt with by a proper court. The Charity Commissioner is bound to deal with these matters summarily. Until the office of the Charity Commissioner acquires that reputation so as to inspire confidence in the public, it will be premature to take away all the powers from the Court. It is well known that it is very difficult to go in appeal and particularly when it is a discretionary matter. In all these cases, the Charity Commissioner himself will be in the position of the plaintiff because he will have investigated the matter and come to his own conclusion and he is also to become the judge. This combination of executive and judicial functions has led to abuse and at least in the beginning it is advisable to reserve the judicial powers in the Court as at present, particularly when it is proposed that the Charity Commissioner may delegate all or any of his powers to his Deputy and as the report expressly states that it is intended that all powers of the Charity Commissioner should be exercised by his deputy. It will be open to the Charity Commissioner to file a suit against the trustee who has been found guilty for his removal or making good the loss to the Trust by reason of his negligence or misappropriation.

Paragraph 43 provides that if on consideration of the report of the auditor, the Deputy Charity Commissioner is satisfied that the trustees or any of them was guilty of misappropriation or wilful waste of trust funds or of wilful negligence resulting in a loss to the Trust, he may after giving notice to the Trustee and giving him an opportunity of being heard, make an order of surcharge directing the trustee or trustees concerned, to pay the amount lost to the trust within a specified time.

Paragraph 48 provides that where a trustee is removed for breach of trust (under the recommendations, by the Charity Commissioner or his Deputy), the Charity Commissioner (or his Deputy) may cause an enquiry to be held regarding the loss, if any, caused to the Trust by reason of such breach and may by an order in writing direct the trustee to pay an amount equivalent to such loss.

Paragraph 100 provides that if the trustee fails to take certain legal proceedings to recover the income of the Trust and the income is ultimately lost to the Trust or writes off any amount or compromises any claim without specific sanction in that behalf from the Deputy Charity Commissioner, the Deputy Charity Commissioner may pass an order requiring the trustee to pay such amount to the Trust. These are wide powers conferred on the Charity Commissioner and his deputies who can summarily order the trustee to pay the amount alleged to have been lost by reason of the alleged negligence of the trustee. I think the proper course would be to leave the Charity Commissioner or to his Deputy to adopt proceedings in a court of law to recover such loss instead of himself being the plaintiff and the judge.

Paragraphs 95 to 98 require the trustees to recover the income of the trust property within three months from the date of accrual and in case of arrears, to report to the Deputy Charity Commissioner and if the Deputy Charity Commissioner does

not otherwise direct, to take legal proceedings for recovery of such income, and if the trustee fails to do so and such income is ultimately lost, he is made personally liable and may be ordered to pay the same.

Similarly, paragraph 86 provides that no trustee shall retain with himself at any time a sum representing more than a month's average gross income of the Trust and not more than a year's average annual income in the bank and he must invest the surplus.

Paragraph 99 provides that a trustee shall not write off any amount however small it may be or compromise any claim without the specific sanction in that behalf from the Deputy Charity Commissioner.

Paragraph 49 empowers the Charity Commissioner to take over the administration of a Trust when he is satisfied that the property of the Trust is in danger of being lost, misapplied or misappropriated. This is too wide a power to vest in the Charity Commissioner. He should apply to the Court where the Trustees may have an opportunity of being heard before being deprived of the management.

All these provisions introduce in the administration of the Trust a degree of rigidity which is sure to discourage honest persons from undertaking the onerous duties of trustees. Under the law, a trustee is bound to invest trust funds and to recover the income thereof and if by reason of his negligence any interest or income is lost to the Trust, he is liable. This is a broad rule of law which is well recognised. To make specific detailed rules that a trustee shall recover the income within three months or shall not keep more than a month's income in hand or a year's income in bank or shall not write off any amount however small is imposing upon the trustees liabilities which are excessive and which may expose them to the charge of breach of trust and liability for the loss. It is difficult to get honest persons to assume responsibilities of a trustee and it is not wise to make their task more onerous. Those connected with the administration of trust, know how it is difficult to get honest and competent men as servants and in spite of best vigilance by the trustees, irregularities do occur.

#### SURPLUS FUNDS.

Paragraphs 68 to 73 deal with the utilisation of surplus funds of trust, meaning accumulations of unspent income. This presumes that there is always observed a clear distinction between capital and income which is not the case with many trusts. Paragraphs 68 to 70 deal with existing surpluses and paragraphs 72 and 73 with future surpluses. Several witnesses have strongly urged upon the Committee that in utilising surplus funds of Religious Endowments, they should be applied only for objects which are broadly speaking religious and not for secular charitable objects. There again the question is of respecting the feelings of those who have made donations for religious purposes. No doubt, under the recommendations, the discretion is left to the Trustees to make a scheme for utilisation of surpluses subject to the approval of the Charity Commissioner but the Charity Commissioner is left free to direct the surpluses to be utilised for any public religious or charitable object.

It was suggested that surplus funds of religious endowments can be used, for example, for educating the priests or Sadhus, for advancement of Oriental languages, particularly Sanskrit, for research into and spread of Hindu culture, for providing amenities to the pilgrims and such other objects as are broadly recognised as religious. The same question arises with regard to the Dev Dravya of Jains who have strongly urged that Dev Dravya cannot be utilised for any purpose except

that of temples or deity. I do not agree with that theory but at the same time I feel that it will allay public fears and opposition if it is expressly provided that surplus funds of religious endowments should be utilised for objects which are broadly religious as mentioned above. These objects are also beneficial to the community and probably all the surplus funds available at present or in future can be well utilised for such objects and there is no reason why it cannot be provided that the Charity Commissioner in giving any directions shall apply such funds to such objects only and not to secular objects. The very persons who make donations for religious purposes also give for secular charities but they attach certain sanctity to donations made for religious purposes and it is well to respect their wishes particularly when it is possible to do so without any disadvantage to the community. In the case of Dev Dravya of Jains, for example, it will mean that apart from providing for the needs of the institutions and amenities to pilgrims, the surplus can be applied for educating the Sadhus or Sadhis and Shravakas or Shravikas in Jain religion and philosophy, for establishing research institutions on modern lines for research into Jain philosophy, history and literature, for establishing Chairs at Universities and making endowments for extension lectures on Jain religion and culture and for comparative study of all religions, etc. The same thing can be done in the case of Hindu philosophy and culture.

#### (GENERAL.

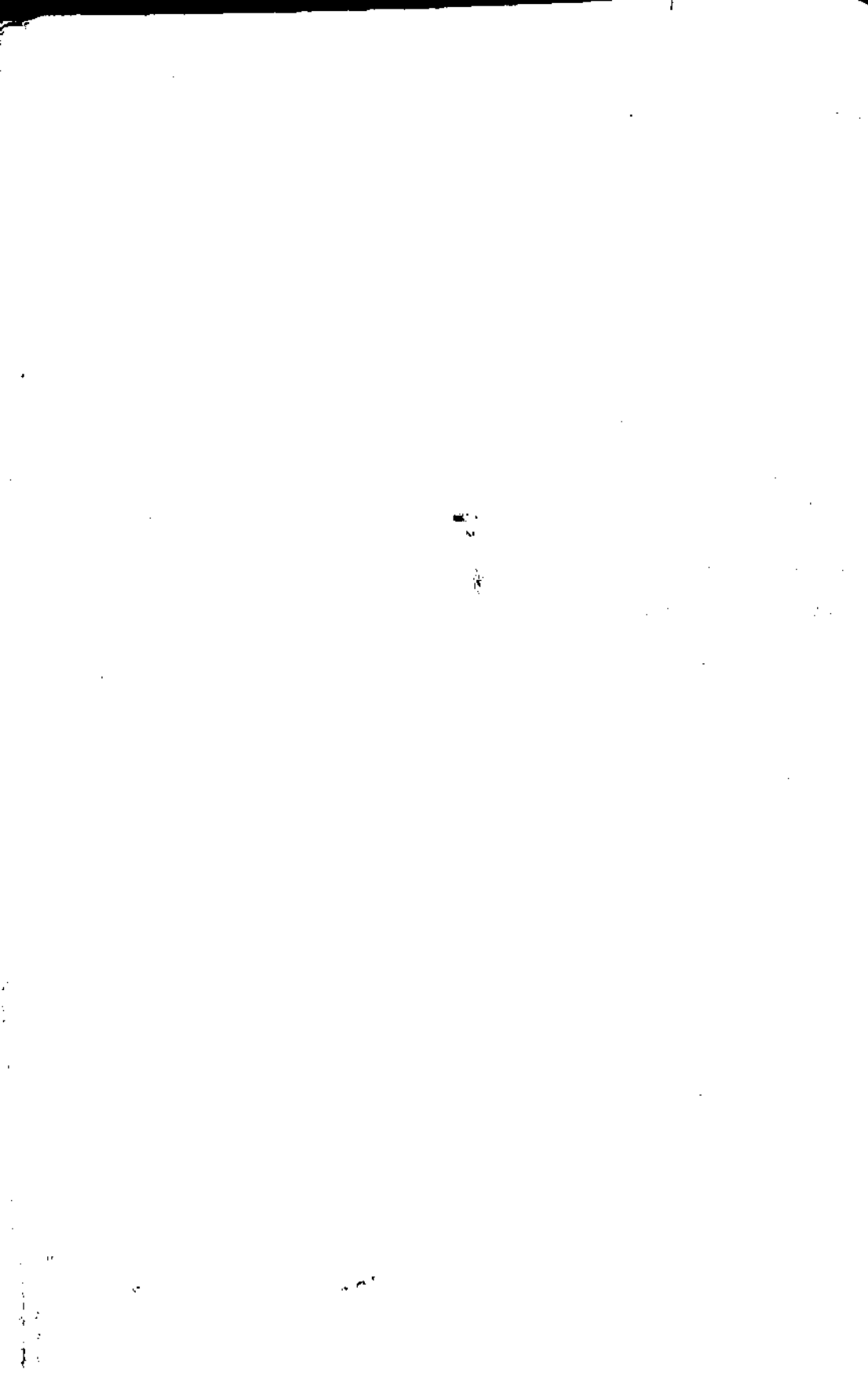
There are a number of Trusts in which the trustees are mere custodian trustees and the entire management is in the hands of a Managing Committee which is periodically elected by a General Body of beneficiaries. The Trustees are responsible to the Managing Committee and the General Body to whom they periodically render accounts and by whom they are periodically appointed. In all such cases, the administration and management is generally well looked after. It will be desirable to provide that in the case of such trusts where the body of the beneficiaries is organised and where it is not difficult to ascertain their wishes, the Charity Commissioner shall, before passing any orders or giving any directions in the case of such trusts, ascertain the wishes of the beneficiaries and shall respect them so far as possible. It is the beneficiaries who know best what is in their interest. I am asking this to be specially provided for because it will allay public opposition and will inspire confidence that the Charity Commissioner is not going to act without consulting the beneficiaries wherever it is possible to do so.

In England, Charity Commissioners have been appointed under the Charity Trusts Acts. The object of these Acts is, shortly, to protect property belonging to Charities against loss and to provide a simple and economical way of carrying out the charitable intentions of the founders where such intentions are inadequately expressed in the instruments of foundation. The Commissioners are concerned with all dealings with capital of charities as well as variations of the prescribed mode of giving effect to the objects of a charity. They are in no sense administrators of the income which must be dealt with by the trustees within the limits prescribed by the founders or according to duly authorised variations. Their jurisdiction does not extend to any institution, establishment or Society for religious or other charitable purposes wholly maintained by voluntary contributions, that is to say, such as have no invested endowment yielding an income for its support but is dependent upon gifts of the benevolent whether recurring or occasional and whether *inter vivos* or by will. In case of "mixed" charities, that is a charity partly maintained by voluntary subscriptions and partly by an endowment, if the capital of this endowment is applicable as income for the maintenance of the charity, as it would *prima facie* be in such cases, it seems that the endowment as well as the

voluntary subscriptions is exempt from the jurisdiction of the Commissioners; but this is not so if trusts are declared of the capital which prevent its application as income. This excludes a large class of charities from the jurisdiction of the Charity Commissioners and as above stated, they do not interfere with the administration.

The recommendations made by the Committee, concern all kinds of charities and its capital as well as income. In conferring powers upon the Charity Commissioner for supervision and control, they should not be so wide and numerous as to compel the trustees to approach the Charity Commissioner for directions or orders frequently nor should the trustees be reduced to the position of being agents of the Charity Commissioner for the administration of the Trust. They are the persons chosen to administer the Trust. The supervision and control by the Charity Commissioner should be only to a degree which is necessary for the purpose of preventing abuses in the administration of the Trust or any misappropriation or waste of the Trust funds and for the purposes of properly protecting the Trust property. The inquisitorial and administrative powers proposed to be conferred upon the Charity Commissioner and his Deputies by the recommendations of the Committee are sufficient to achieve these objects which should be the principal purpose of any legislation to secure proper administration of Trust. I am entirely in agreement with such recommendations, but respectfully differ from others mentioned above which are likely to discourage persons from making charities or responsible and honest persons from undertaking the duties of a trustee.

C. C. SHAH.



## APPENDIX A.

Questionnaire issued by the Committee appointed by the Government of Bombay to investigate into the question of administration and management of trusts and endowments in the Province of Bombay for public purposes:—

(i) of a religious nature intended solely for the benefit of the Hindu community (including Jains), and

(ii) of a charitable nature excluding those intended solely for the benefit of communities other than Hindus and Jains.

*Note.*—In answering the questionnaire you are requested to give your name, designation and address and to state whether you would be so good as to attend and give evidence before the Committee if called upon to do so.

1. What are the abuses, malpractices and difficulties in the administration and management of trusts and endowments which you have come across?
2. What remedies do you suggest for their removal?
- \*3. Are you in favour of the creation of charity Commissioners as in England with powers of supervision and control over charities?
- \*4. Are you in favour of creating a non-official body of visitors with powers to visit and inspect the working of trusts and endowments?
- \*5. What in your opinion should be the powers and functions of the charity commissioners and the visitors?
- \*6. Are you in favour of providing by legislation that any funds set apart for objects which according to the progress of times have ceased to be considered as objects of public utility or benefit should be diverted to other charitable purposes? If so, what in your opinion are objects which have ceased to be considered as of public utility and benefit?
7. Are you in favour of providing that surplus funds of religious endowments may be used for other charitable objects, e.g., education, medical relief, relief of poverty, etc.?
8. Do you think that the legally accepted definition of "Charity" should be widened? If so, to what extent? †
9. Are you in favour of providing machinery to take over the administration of trusts which are either mismanaged or inefficiently managed?
10. Are you in favour of compulsory amalgamation of charitable trusts which have the same or similar objects?
11. Any other matter which you would like to place before the Committee for their consideration.

---

\*In answering the questions if you make any distinction between trusts for religious and for other objects please answer the questions separately for the two classes of trust.

†The generally accepted definition is that given by Lord Macnaghten, viz.,

" 'Charity' in its legal sense comprises four principal divisions; trusts for the relief of poverty, trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads."

To this definition two other requirements have been added by subsequent decisions viz., that only those purposes are charitable which are of a public nature and capable of administration by the Court.

N. B.—Answers to the Questionnaire may be sent on a separate sheet of paper by reference to the serial numbers of the questions.

## APPENDIX "B".

*List of Witnesses.*

1. Prof. T. A. Kulkarni, Hon. Secretary, Social Service League, Bombay.
2. Raoji Nemchand Shah, President, Jain Sahitya Seva Mandal, Sholapur.
3. Dr. K. S. Mhaskar, Managing Trustee, Mahalaxmi Temple Charities, Bombay.
4. Mr. B. B. Chaudhary, General Secretary, Dakshin Maharashtra Jain Sabha, Sangli.
5. Mr. P. R. Kamat, Bombay.
6. Rao Bahadur S. G. Achrekar.
7. Mr. A. S. Padukone, President, and  
Mr. Shankar Rau Ex-President of the Standing Committee of the Mahasabha of Chitrapur  
Saraswats.
8. Mr. T. M. Chinnaiya Pillai, President, Hindu Religious Endowments Board, Madras.
9. Mr. P. C. Kapadia, Vice-President, Jain Yuvak Sangh, Bombay.
10. Mr. D. D. Shah, Member, Jain Yuvak Sangh, Ahmedabad.
11. Mr. Jayantilal Parikh.
12. Rao Saheb Raoji Sojpal.
13. Sir Purshotamdas Thakurdas.
14. Dewan Bahadur K. M. Khavéri.
15. Mr. Motilal H. Vin, Broach.
16. Miss Indumati Chimanolal, Parliamentary Secretary to the Honourable the Prime Minister,  
Bombay.
17. Seth Kasturbhai Lalbhai.
18. Mr. Chhotalal T. Parikh, Ahmedabad.
19. Mr. Motichand Kapadia,  
Mr. M. B. Jhaveri,  
Seth Damjibhai Jethabhai, and  
Mr. Mohanlal Dipchand Choksi,  
Representatives of the Shri Jain Svetambar Conference.
20. Muni Jivvijayji, Director, Bhuratiya Vidya-bhawan, Bombay.
21. Mr. Kakasahab Kalelkar.
22. Pandit Becharadas.
23. Mr. B. V. Potlur.
24. Mr. V. V. Albal, Pleader, Bijapur.
25. Mr. R. R. Mohare, Editor, "Samyukta Karnataka."
26. Mr. R. R. Diwakar, Member, Constituent Assembly.
27. The Hon'ble Mr. Justice M. V. Desai.
28. Mr. K. M. Munshi.
29. Mr. P. M. Ladd, I.C.S., Remembrancer of Legal Affairs and Secretary to the Government  
of Bombay, Legal Department.
30. The Hon'ble Mr. K. S. Firodea, Speaker, Bombay Legislative Assembly.
31. The Right Hon'ble Dr. M. R. Jayskar, P. C.
32. Sir Manilal B. Nanavati.

## APPENDIX C.

Statement showing gross annual incomes of public trusts registered in the various districts in the Province of Bombay under the Bombay Public Trusts Registration Act, 1935, as of the year ending on 31st March 1947.

District.					Total number of registered trusts.	Gross annual incomes.
						Rs.
1. Bombay City	...	...	...	...	612	91,37,558
2. Ahmedabad	...	...	...	...	135	12,06,262
3. Ahmednagar	...	...	...	...	2	2,894
4. Belgaum	...	...	...	...	6	38,432
5. Bijapur	...	...	...	...	Nil.	Nil.
6. Broach and	...	...	...	...	13	30,875
6a. Panch Mahals	...	...	...	...	3	7,466
7. Dharwar	...	...	...	...	1	13,348
8. East Khandesh	...	...	...	...	1	4,348
9. Kaira	...	...	...	...	43	16,92,012
10. Kanara	...	...	...	...	27	59,919
11. Nasik	...	...	...	...	11	68,511
12. Poona	...	...	...	...	7	71,566
13. Ratnagiri	...	...	...	...	8	59,367
14. Satara	...	...	...	...	2	5,734
15. Sholapur	...	...	...	...	2	33,686
16. Surat	...	...	...	...	50	2,95,439
17. Thana and	...	...	...	...	3	79,097
17a. Kolaba	...	...	...	...	1	2,352
18. West Khandesh	...	...	...	...	5	21,452
Total					932	1,28,30,248

APPENDIX "D".

Statement showing classification of objects of trusts registered under the Bombay Public Trusts Registration Act, 1935—*as on 31st March 1947.*

Districts.	Total registered trusts.	Sudavara-rats and Anna-chhatras.	Caste dinners, etc.	Charitable trusts, hostels, etc.	Advance-ment of education.	Library, reading room.	Medical relief.	Orphanages, etc.	Sana-torium.	Religious endowments, (temples), etc.	Feeding brahmins, sadhus, mendicants.	Animals or birds, etc.	Relief of poverty, General.
1. Bombay City	612	94	84	115	258	21	76	30	49	159	38	58	31
2. Ahmedabad	135	12	1	13	30	1	11	..	2	76	2	4	14
3. Ahmednagar	..	1	..	..	1	..	..	..	..	1	1	..	1
4. Belgaum	..	6	..	..	..	..	..	..	..	6	..	..	..
5. Bijapur	..	..	..	..	..	..	..	..	..	..	..	..	..
6. Breach and Panch Mahals	13	..	..	1	..	..	..	1	..	10	..	..	1
7. Dharwar	..	1	..	..	1	..	1	..	..	..	..	..	..
8. East Khandesh	1	..	..	..	..	..	1	..	..	..	..	..	..
9. Kaira	43	10	3	..	6	..	2	1	..	28	3	2	..
10. Kanara	27	..	2	..	..	..	..	..	..	26	..	..	..
11. Nasik	11	..	..	2	..	..	..	..	..	9	..	..	..
12. Poona	7	2	..	..	1	..	..	..	..	13	..	..	1
13. Ratnagiri	8	..	..	..	2	..	..	..	..	6	..	..	..
14. Satara	2	..	..	..	..	..	..	..	..	2	..	..	..
15. Sholapur	2	..	..	..	..	..	..	..	..	2	..	..	..
16. Surat	50	..	3	..	15	1	1	1	1	34	2	..	3
17. Thana and Kolaba	3	..	..	..	2	..	..	..	..	1	..	..	..
17a. West Khandesh	1	..	..	..	..	..	1	..	..	..	..	..	..
18. West Khandesh	6	..	..	..	..	..	1	..	..	4	..	1	..

Total .. 982 127 93 163 317 23 94 33 52 367 48 65 118 34

Statement showing moveable assets of trusts registered in various districts in the Province of Bombay under the Bombay Public Trusts Registration Act, 1935—as on 31st March 1947.

District.	No. of registered trusts.	Authorised securities.	Ornaments.	Bullion.	Shares.	Loans, deposits, dues, etc.	Mortgages.	Furniture, pots, pans, books, etc.	Cash in hand or in banks.
1. Bombay City	612	4,70,79,378	18,02,317	4,09,155	33,01,807	53,67,337	33,11,471	6,46,018	11,96,764
2. Ahmedabad	135	32,77,031	14,99,505	13,549	8,64,197	33,86,998	.....	2,02,367	4,83,721
3. Ahmednagar	2	.....	.....	.....	.....	2,700	.....	500	26,742
4. Bolgaum	6	1,05,700	56,030	.....	.....	.....	.....	3,762	4,955
5. Bijapur	.....	.....	.....	.....	.....	.....	.....	.....	.....
6. } Broach and	13	92,420	2,51,574	.....	19,442	7,563	.....	1,965	.....
6a. } Panch Mahals	2	20,000	.....	.....	.....	30,000	.....	450	.....
7. Dharwar	1	1,80,000	.....	.....	1,003	19,062	.....	154	10,986
8. East Khandesh	1	.....	.....	.....	.....	.....	.....	3,000	.....
9. Kaira	43	43,49,019	6,76,604	18,524	28,879	28,53,580	.....	33,788	11,560
10. Kanara	27	18,923	1,98,804	.....	1,550	1,85,096	4,070	44,627	85,749
11. Nasik	11	.....	69,898	10,615	.....	1,480	15,100	16,922	.....
12. Poona	7	17,500	65,066	.....	13,600	40,000	.....	2,53,927	10,246
13. Ratnagiri	8	72,179	49,084	.....	.....	66,120	.....	1,563	.....
14. Satara	2	52,000	1,943	.....	.....	42,000	.....	2,270	714
15. Sholapur	2	.....	7,213	.....	200	.....	.....	7,533	.....
16. Surat	50	12,52,175	2,33,861	.....	2,06,223	55,087	27,074	71,794	1,56,817
17. } Thana and	3	69,950	.....	.....	.....	29,307	.....	1,030	9,785
17a. } Kolaba	1	.....	.....	.....	.....	46,431	.....	1,464	4,802
18. West Khandesh	5	.....	.....	.....	.....	.....	.....	.....	.....
Total	932	5,65,86,375	49,11,699	4,51,843	44,36,892	1,21,32,761	33,57,721	12,93,134	19,52,841