



STANDING COMMITTEE ON FINANCE

(2009-10)

FIFTEENTH LOK SABHA

Ministry of Finance (Department of Economic Affairs)

The Indian Trusts (Amendment) Bill, 2009

EIGHTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 2010/Phalguna, 1931 (Saka)

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*Presented to Lok Sabha on 12 March, 2010
Laid in Rajya Sabha on 12 March, 2010*



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COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2009-2010

Dr. Murli Manohar Joshi - Chairman

MEMBERS

LOK SABHA

2. Dr. Baliram (Lalganj)
3. Shri Sudip Bandyopadhyay
4. Shri C.M. Chang
5. Shri Harishchandra Chavan
6. Shri Bhakta Charan Das
7. Shri Gurudas Dasgupta
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11. Shri Bhartruhari Mahtab
12. Shri Mangani Lal Mandal
13. Shri Rayapati Sambasiva Rao
14. Shri M. Sreenivasulu Reddy
15. Shri Y.S. Jagan Mohan Reddy
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19. Dr. M. Thambidurai
20. Shri Anjankumar M. Yadav
21. Shri G.M. Siddeshwara*

RAJYA SABHA

22. Shri Raashid Alvi
23. Dr. K.V.P. Ramachandra Rao
24. Shri Vijay Jawaharlal Darda
25. Shri S.S. Ahluwalia
26. Shri Moinul Hassan
27. Shri Mahendra Mohan
28. Shri S. Anbalagan
29. Dr. Mahendra Prasad
30. Shri Y.P. Trivedi
31. Shri Rajeev Chandrasekhar

SECRETARIAT

- | | | | |
|----|-------------------------|---|---------------------|
| 1. | Shri A.K. Singh | - | Joint Secretary |
| 2. | Shri T.G. Chandrasekhar | - | Additional Director |

* Nominated to this Committee w.e.f. 09.03.2010 vice Shri Gopinath Munde, MP

INTRODUCTION

1, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Eighth Report on the Indian Trusts (Amendment) Bill, 2009.

2. The Indian Trusts (Amendment) Bill, 2009 introduced in Lok Sabha on 3 August, 2009, was referred to the Committee on 9 September, 2009 for examination and report thereon, by the Speaker, Lok Sabha under rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3 The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Economic Affairs).

4. The Committee received written views/memoranda from the Institute of Chartered Accountants of India (ICAI) and the Institute of Company Secretaries of India (ICSI).

5. The Committee took evidence of the representatives of the Ministry of Finance (Department of Economic Affairs), Ministry of Finance (Department of Revenue), Ministry of Law and Justice and the Central Board of Direct Taxes (CBDT) on 11 January, 2010. The Committee also heard the views of the representatives of the Institute of Chartered Accountants of India (ICAI) and the Institute of Company Secretaries of India (ICSI) on 11 January, 2010.

6. The Committee considered and adopted this report at their sitting held on 10 March, 2010.

7. The Committee wish to express their thanks to the representatives of the Ministry of Finance (Department of Economic Affairs) Ministry of Finance (Department of Revenue), Ministry of Law and Justice and the Central Board of Direct Taxes (CBDT) for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the Institute of Chartered Accountants of India (ICAI) and Institute of Company Secretaries of India (ICSI) for furnishing written views/memoranda and appearing before the Committee for placing their views.

9. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi;
10 March, 2010
19 Phalguna, 1931(Saka)

DR. MURLI MANOHAR JOSHI,
Chairman,
Standing Committee on Finance.

REPORT

A. Background

The Indian Trusts Act, 1882 which provides the law relating to Private Trusts and Trustees is administered by the Legislative Department, Ministry of Law and Justice. Trusts in the wider sense of the word, that is to say, obligations annexed to the ownership of property which arise out of a confidence reposed in and accepted by the owner for the benefit of another, are constantly created in India. The Indian Trusts Act, 1882 codifies the law relating to private trusts and private trustees under different subject heads which include (i) Creation of trusts; (ii) Duties and liabilities of trustees; (iii) Their rights and powers; (iv) Their disabilities; (v) The rights and liabilities of the beneficiary; (vi) Vacating the office of trustee; (vii) The extinction of trusts and; (viii) Certain obligations in the nature of trusts. Section 20 of the Act relating to investment of trust funds is administered by the Department of Economic Affairs, Ministry of Finance.

2. Section 20 of the Indian Trust Act, 1882 relating to investment of trust funds provides as under :

“Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

(a) in promissory notes, debentures, stock or other securities of any State Government or of the Central Government, or of the United Kingdom of Great Britain and Ireland:

Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government;

(b) in bonds, debentures and annuities charged or secured by the Parliament of the United Kingdom before the fifteenth day of August, 1947 on the revenues of India or of the Governor-General in Council or of any Province:

Provided that, after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid;

(bb) in India three and a half per cent., stock, India three per cent., stock, India two and a half per cent. stock or any other capital stock which before the 15th day of August, 1947, was issued by the Secretary of State for India in Council under the authority of an Act of Parliament of the United Kingdom and charged on the revenues of India or which was issued by the Secretary of State on behalf of the Governor-General in Council under the provisions of Part XIII of the Government of India Act, 1935;

(c) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council or by the Central

Government or in debentures of the Bombay Provincial Co-operative Bank, Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council or the State Government of Bombay;

(d) in debentures or other securities for money issued, under the authority of any Central Act or Provincial Act or State Act, by or on behalf of any municipal body, port trust or city improvement trust in any presidency-town or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi:

Provided that after the 31st day of March, 1948, no money shall be invested in any securities issued by or on behalf of a municipal body, port trust or city improvement trust in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;

(e) on a first mortgage of immovable property situate in any part of the territories to which this Act extends: 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;

(ee) in units issued by the Unit Trust of India under any unit scheme made under section 21 of the Unit Trust of India Act, 1963; or

(f) on any other security expressly authorised by the instrument of trust, or by the Central Government by notification in the Official Gazette, or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e) and (f) shall be made without his consent in writing.”

3. The Law Commission of India had, in their 17th Report submitted in 1961, *inter alia*, recommended amending Section 20 of the Indian Trusts Act, 1882 and deleting the provisions pertaining to securities in the Act which have become obsolete.

4. The Indian Trusts (Amendment) Bill, 2009 seeking to amend section 20 and empowering the Government to notify a class of securities for the purposes of investing trust money and doing away with the requirement of case to case approval by the Government of “any security” was introduced in the Lok Sabha on 3 August, 2009 and referred to the Standing Committee on Finance by the Speaker, Lok Sabha on 9 September, 2009 for examination and report thereon.

5. As per the statement of Object and Reasons appended to the Bill, the amendment proposals would provide the trustees greater autonomy and flexibility to take decisions on investment of trust money based on their assessment of the risk return tradeoff and the relevant provisions of the trust deed. This is also said to be consistent with the current economic environment and the present shift from a merit based regulatory regime to a disclosure based regulatory regime.

6. As per the information furnished by the Ministry of Finance (Department of Economic Affairs) the application of the proposed Indian Trusts (Amendment) Bill, 2009 would be restricted to private trusts registered under the Act for any lawful purpose and shall not cover public trusts, public or private religious or charitable endowments, waqfs, etc.

Public and Private Trusts

7. The Committee, in the course of taking evidence of the representatives of the Ministry of Finance (Department of Economic Affairs) inter-alia questioned on the legal framework governing various types of trusts. i.e. private and public religious and charitable trusts etc. In response thereto, the Finance Secretary, stated as follows:

“Firstly, the Act as it stands today does not really say what is private, what is non-private or public-trust. The legal framework itself is in the domain of the Law Ministry. We are not very clear as to what is private trust or what is non-private trust.”

8. In this regard, a representative of the Ministry of Law and Justice added as under:

“... there are two categories of trusts - private and public. If a person is specified and determined, then that is known as a private trust. If a person is not determined and the trust is meant for general public, then it is known as a public trust. That is the simple distinction between a private and a public trust. These charitable and religious trusts also, if they are private in nature this Trust Act will be applicable to them.”

9. The subject matter, ‘Trusts and Trustees’ falls under entry 10 of the Concurrent list in the Seventh Schedule to the Constitution and has been allotted to the Legislative Department under the Government of India (Allocation of Business) Rules, 1961.

10. The existing Central and State laws relating to Charitable and Religious Trusts, societies etc., as furnished by the Ministry of Law and Justice are delineated in brief as under:

The Charitable and Religious Trusts Act, 1920 [14 Of 1920] : The Charitable and Religious Trusts Act, 1920 is enacted to provide more effectual control over the administration of Charitable and Religious Trusts

and to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a Court on certain matters, and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts.

The Religious Endowments Act, 1863 (Act XX of 1863) : The Religious Endowments Act, 1863 is enacted to enable the Government to divest itself of the management of Religious Endowments and to relieve the Boards of Revenue and the local Agents, in the presidency of Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX, 1810, of the Bengal Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu temples, Colleges and other purposes; for the maintenance and repair of Bridges, Salaries, Kattras and other public buildings; and for the custody and disposal of Nazul Property of Escheats) and Regulation VII, 1817, of the Madras Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings, and for the custody and disposal of Escheats), so far as those duties embrace the superintendence of lands granted for the support for mosque or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and prevention of endowments made for the maintenance of such religious establishment; the repair and preservation of buildings connected therewith and the appointment of trustees of managers thereof; or involve any connection with the management of such religious establishment.

State Laws : The State Governments of Maharashtra, Madhya Pradesh and Rajasthan have enacted state laws relating to public trusts. **The Bombay Public Trust Act, 1950** is applicable only in the States of Maharashtra and Gujarat and all organizations that are registered as 'Society' thereunder are by default also registered as Public Trust.

Section 25 of the Companies Act, 1956: A public charitable or religious institution can be formed either as a Trust or as a Society or as a non-profit company and registered under section 25 of the Companies Act, 1956 (without addition of the word “Limited” or “Private Limited” to their name).”

11. Responding to a query posed on the tax exemptions available to different types of trusts, the Finance Secretary while deposing before the Committee inter-alia cited the submission made to the Committee by the Department of Revenue, which reads as under:

“Under the Indian Income Tax Act, the taxation of private trust is different from that of public, religious and charitable endowments. In the case of public, religious or charitable endowments the taxation has a linkage with the mode of investments of the trust property. The manner of investment being specified in sub-section 5 of section 11 of the Indian Income Tax Act. Whereas, in the case of private trust there is no restriction as to how the property of a private trust is invested. The taxation of private trust is not linked to manner/mode of investment of trust property. The Indian Trust Act applies to private trusts only and has no application to public, religious and charitable endowments. The proposed amendment to the Indian Trust Act would, therefore, have no impact on the taxability of such trusts under the Income Tax Act 1961.”

12. The Committee, inter-alia sought to know from the representatives of the Ministry of Finance, whether the recommendations of the 17th Law Commission report were confined to Section 20 of the Indian Trusts Act, 1882 relating to investment of trust money, or extended to the provisions of the Act in its entirety. The Committee also expressed the desirability of formulating a model legislation covering trusts and societies in lieu of the existing laws on societies, trusts, endowments, charitable institutions etc.

13. In this regard, the Ministry of Law and Justice in their reply, as furnished by the Ministry of Finance informed the Committee as under:

” The Law Commission of India, in its Seventeenth Report, had recommended amendment of the Indian Trusts Act, 1882 in its entirety. However, while the State Governments were being consulted in this regard, the Second Administrative Reforms Commission, in its ninth report on ‘**Social Capital- A Shared Destiny**’, has made certain recommendations in respect of laws relating to Societies, Trusts, Waqfs, Religious and Charitable Endowments in India and suggested a comprehensive model legislation covering both Trusts and Societies in lieu of existing laws on Societies, Trusts, Endowments, Charitable Institutions, etc. In view of this, it had become necessary to look into the recommendations of the Law

Commission of India afresh. But, since existing Acts namely, the Societies Registration Act, 1860, the Religious Endowments Act, 1863, The Indian Trusts Act, 1882, the Charitable and Religious Trusts Act, 1920, the Waqfs Act, 1995, etc. on the above said subjects are being administered by different Ministries and Departments such as Ministry of Corporate Affairs, Ministry of Minority Affairs, Ministry of Finance (Department of Economic Affairs) and Ministry of Law and Justice (Legislative Department), a reference was made by the Hon'ble Law Minister vide D.O.No.15(3)/2009-Leg-III, dated the 20th January, 2009 to the Law Commission of India to look into the matter afresh after taking into consideration the recommendations made by the Second Administrative Reforms Commission and to give its considered report on the feasibility of making a model legislation covering both Trusts and Societies in lieu of existing laws on Societies, Trusts, Endowments, Charitable Institutions, etc. The Report of the Law Commission in this regard is still awaited.”

14. On a specific issue raised by the Committee on whether it would not be appropriate to bring in comprehensive amendments in the Indian Trusts Act, 1882 as recommended by the Law Commission instead of confining the amendment proposals to Section 20 as proposed in the Indian Trusts (Amendment) Bill, 2009, the Ministry of Finance (Department of Economic Affairs) in a written reply proposed as under:

“As regards Section 20, the proposed amendments will be finalized on the basis of the recommendations of the Standing Committee and can be sent to Ministry of Law for incorporating in the comprehensive amendments to the Act as and when prepared and finalized by Ministry of Law.”

15. Apart from taking evidence of the representatives of the Ministry of Finance (Department of Economic Affairs) and Ministry of Law and Justice in connection with the examination of the Bill, the Committee also heard the views of the representatives of the Institute of Chartered Accountants of India (ICAI) and the Institute of Company Secretary of India (ICSI) on the provisions of the Indian Trusts (Amendment) Bill, 2009. The institutes also furnished written views/suggestions on the provisions of the Bill for the consideration of the Committee.

16. The intended purpose of the amendment proposals of the Indian Trusts (Amendment) Bill, 2009 is to do away with the obsolete provisions relating to investment of funds of private trusts which are a relic of colonial rule and provide greater flexibility to the trusts in deciding their investment pattern by enabling investments in 'any security or class of securities expressly authorised by the instrument of trust or by the Central Government by a notification'. While the amendment proposals are based on the recommendations made in the 17th Report of the Law Commission presented way back in 1961, the thrust of the recommendations of the Law Commission has been on revising the Indian Trusts Act, 1882 in its entirety and are not merely confined to section 20 of the Act as covered in the Bill. Section 20 relating to the manner of investment of funds of trusts is administered by the Ministry of Finance (Department of Economic Affairs) while the Indian Trusts Act, 1882 as a whole is in the administrative domain of the Ministry of Law.

17. As recommended by the Law Commission, bringing the Principal Act regulating the functioning of private trusts and trustees in its entirety in conformity with the requirements of the current times inter-alia by doing away with obsolete and redundant provisions would, in the opinion of the Committee be more beneficial and appropriate. The Committee expect the Ministry of Law to expeditiously complete the exercise of comprehensively revising the laws regulating the functioning of trusts as recommended by the Law Commission. As proposed by the Ministry of Finance (Department of Economic Affairs) following the deliberations on the Bill, the Committee desire that the proposals of the Indian Trusts (Amendment) Bill, 2009 are finalised on the basis of the

recommendations made in this Report and incorporated in the comprehensive amendments to the laws relating to the functioning of trusts to be prepared by the Ministry of Law.

18. The Committee's examination of the amendment proposals of the Bill also brought to the fore a volley of issues relating to the laws relating to various types of trusts including public, religious and charitable trusts. These include, the necessity of doing away with the provisions in the laws that may have become obsolete and redundant, tax exemptions currently available to the trusts which are believed to be weighed in favour of charitable trusts vis-a-vis religious trusts, flow of tainted money into public trusts etc. Though these issues which were deliberated upon have not been delved into detail in this report, the Committee, however, feel the need to express the necessity for having a relook at the tax exemptions available to various types of trusts and the regulatory mechanism in place with a view to streamlining the exemptions available with objectivity and strengthening the regulatory framework.

19. The Committee also note in this regard that following the presentation of the 17th report of Law Commission in 1961, the Second Administrative Reforms Commission had, in their Ninth Report on 'Social Capital – A Shared Destiny' inter-alia recommended formulating a model legislation covering both trusts and societies in lieu of the existing myriad central and state laws on Societies, Trusts, Endowments, Charitable Institutions etc. i.e. the Charitable and Religious Trusts Act, 1920, the Religious Endowments Act, 1863, the Bombay Public Trusts Act, 1950, Section 25 of the Companies Act, 1956 etc. The Committee expect the Government to ensure that the process of formulating the

model legislation regulating the functioning of various types of trusts which is presently under consideration by the Law Commission is expedited.

20. Specific issues that emerged in the course of the Committee's examination of the amendments proposed to section 20 in the Indian Trusts (Amendment) Bill, 2009, include inter-alia, the necessity of defining the term, 'securities' in the section, risk mitigation mechanisms required for protecting the interest of the beneficiaries of Trusts following the proposal to ease the investment norms etc. These issues are dealt with in the subsequent sections of this report.

Clause 2 : Investment of trust money

(Substitution of new Section for Section 20)

21. Clause 2 of the Bill which seeks to substitute a new section for the existing section 20 of the Indian Trusts Act, 1882 relating to investment of trust money reads as under :

“20 Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on any security or class of securities expressly authorised by the instrument of trust, or by the Central Government, by notification in the Official Gazette:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security or class of securities mentioned above shall be made without his consent in writing:

Provided further that no such consent shall be required where such investment is made in the securities of the Government.

Explanation.—For the purposes of this section, the securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by the Central Government or the State Government, shall be deemed to be securities of such Government.”

22. By way of explaining the rationale behind the proposed substitution of the existing section 20 with the new Section, the Ministry of Finance (Deptt. of Economic Affairs) in a written reply, stated as follows:

“The basic idea behind the move is that Government should not be taking the Advisory role of risk analysis for investment by Trusts or of certifying any instruments as safe for investment by Trusts. Besides, with the enactment of SEBI Act, the Regulation of Exchanges, Rating Agencies and issuance and trading of securities is regulated by SEBI at present and not directly by the Government. After due examination and consultation, a considered view was taken to move an amendment which will enable trusts to make their own investment decisions without any explicit or implicit Government guarantee regarding the credit worthiness of the securities/debt instruments. The rationale for the proposed amendment is to obtain the following advantages.

- (i) Removal of obsolete clauses.
- (ii) Doing away with case to case approval
- (iii) Afford greater flexibility and autonomy to trustees in making their investment decisions.
- (iv) Shift from a merit based to a criteria based investment regime.”

The amendment will enable the Government to prescribe a class of securities rather than individual securities.”

23. Elaborating on the rationale and necessity of the amendment proposals of the Bill, the Finance Secretary, while deposing before the Committee inter-alia stated:

“.....we had earlier in December, 2007 approached the Union Cabinet with a proposal to amend Section 20 (f) of the Act at that stage, which was basically the Act. Section 20(f) concerned notifying a class of securities as eligible for investment by Trusts and the philosophy behind that proposed amendment at that stage was that the Central Government need not get into this administrative procedure of defining or identifying the class of securities. So, we can delete that and that amendment was finalized in consultation with the Ministry of Law.

When it went to the Cabinet in October, 2008, the hon. Members of the Union Cabinet looked at that and suggested that we should look at the other provisions also of Section 20 and therefore move a more comprehensive amendment, and that is the proposal which is currently before you for your consideration. The basic philosophy in this amendment I have mentioned is that the idea is to delete the obsolete clauses, to do away with the case by case approval in relation to securities and in the process, it gives the Trustees somewhat greater autonomy and flexibility in making their investment decisions. That is the framework with which the amendment has been proposed.”

24. In terms of Section 20 (f) cited by the Finance Secretary in his deposition, apart from the securities mentioned in Clauses (a) to (e) of the section, if the trust property consists of money that cannot be applied immediately or at an early date to the purposes of the trust, the trustee may (subject to any direction contained in the instrument of trust) invest the money:

“On any other security expressly authorized by the instrument of trust, [or by the Central Government by the notification in the Official Gazette] or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e) and (f) shall be made without his consent in writing.”

a) Definition of the term 'Securities'

25. The Institute of Company Secretaries of India (ICSI), in their written memorandum and in the course of personal hearing on the provisions of the Bill expressed the need for defining the term 'securities' as occurring in the proposed Section 20 in line with the definition of the term under the securities laws. The suggestion made to the Committee by the institute reads as under:

"The term 'Securities' as mentioned in the proposed Section 20 may be defined. Securities (Contracts) Regulation Act, 1956 being the principal legislation dealing with securities defines the term 'securities'. The usage of the term securities under Indian Trust Act, 1882, in line with Securities (Contracts) Regulation Act, 1956 would bring uniformity."

26. Section 2(h) of Securities (Contracts) Regulation Act, 1956, defines the term 'securities' as under: -

"securities" include—

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- (ia) derivative;
- (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (id) units or any other such instrument issued to the investors under any mutual fund scheme;
- (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case maybe;"
- (ii) Government securities;
- (iia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) rights or interest in securities;

27. Questioned whether it would not be appropriate to define the term 'securities', as suggested by the ICSI, the Ministry of Finance (Department of Economic Affairs) in a written reply furnished at first, stated inter-alia:

"The act as it stands does not define securities, because specific securities are listed in the present Act. As the proposed amendment also aims to specify a class of securities by notification, there may not be a need to define securities."

28. The Ministry, however, in a subsequent reply furnished to the Committee informed as under in this regard:

"The term 'securities' is defined in Section 2(h) of the Securities Contract (Regulation) Act, 1956. The Department of Economic Affairs has no objection to adopt the said definition in the Indian Trusts Act also. The exact mode of carrying this out will be done on the advice of the Ministry of Law and the recommendations of the Standing Committee on Finance."

29. In regard to the term 'securities' as occurring in Section 20 of the Act, the 17th Law Commission had recommended giving a general definition of all categories of securities, which are in vogue in the market. The relevant extract from the report of the Law Commission reads as follows :

"The securities mentioned in the existing section have become outmoded. We, therefore, suggest that the existing Government securities and public securities may be included in the section. In this connection section 35 of the Bombay Public Trust Act, 1950 may be generally kept in view. It is better not to enumerate particular securities but to give a general definition of all categories of securities which are in vogue in the market. The securities, which have become obsolete may be omitted."

b) Norms of investment

30. The newly proposed Section 20 seeks to enable the Government to prescribe a 'class of securities' rather than 'individual securities where the trust property which consists of money that 'cannot be applied immediately or at an early date' can be invested. Questioned inter-alia on how prescribing a 'class of securities' would be different from 'individual securities' presently prescribed by the Government for investing trust money, the Finance Secretary, while tendering evidence before the Committee stated:

“.....The intention is, it will not be individual security, it will be class of securities. For instance, one is already specified in the Act itself like the securities which are guaranteed by the State or Central Governments. So, that will automatically come into the notification which will be issued presuming that it will be a law. The other is the mutual funds, let us say, or this kind of securities. It will not specify ‘X’ mutual fund or ‘X’ company or something like that. But it will be a class of securities as has been done in the case of investments by non-Government provident fund and superannuation funds.”

31. On the parameters for prescribing a ‘class of securities’ where trust money could be invested, the Finance Secretary stated:

“The general parameter which is followed is to balance the need for safety and adequate return. That is the broad criteria.”

32. In reply to a question on what would constitute the ‘class of securities’ to be prescribed for investment of trust money, the Ministry of Finance (Department of Economic Affairs) inter-alia stated:

‘Class of Securities’ would signify a sub-set of ‘securities’. Though, so far, no firm view has been taken on what ‘class of securities’ can be authorized by the Central Government for investment by trusts, it may be similar to/in line with those specified under the investment guidelines applicable for non-governmental superannuation funds which provides a range of instruments in which investment can be made.

33. The Institute of Company Secretaries of India (ICSI), in their Memorandum furnished to the Committee and in the course of personal hearing before the Committee, also emphasized on building adequate risk management measures in regard to investment of trust money. By citing the capping on investment by mutual funds in different classes of securities prescribed by the Securities and Exchange Board of India (SEBI) and the Investment pattern to be followed by Non government provident funds as notified by the Ministry of Finance, the ICSI suggested that a cap on investment of trust money in different classes of securities or a single security/scheme may be specified for better risk management/risk mitigation in the following pattern:

Debt Instruments by a single issuer	- Up to 20%
Companies under the same group	- Up to 15%
Money market instruments	- Up to 25%
Companies forming part of BSE sensx, NSE Nifty	- Up to 40%

34. As per the ICSI, the capping on investment by trusts could be prescribed either by inclusion in the instrument of trust/trust deed; or Rules; or Notification by the Central Government.

35. Questioned on the risk mitigation measures that may be required to be put in place for protecting the interest of the beneficiaries inter-alia by prescribing a capping on various kinds of Securities where trust money could be invested, the Finance Secretary, while tendering evidence stated:

“ That is not envisaged in the provision as it is proposed to be amended. It did not form part of the original Act also.
.....it may be useful and a valuable idea to bring it if not in the Act may be in the guidelines or the rules there under. It has some merit and I acknowledge that.”

36. In this regard, the Ministry of Finance (Department of Economic Affairs) in their post evidence reply informed the Committee that the ‘Class of Securities’ that can be authorized by the Government for investment by trusts may be similar to/in line with those specified under the investment guidelines applicable to non-governmental superannuation funds. As per the notification, the capping on the pattern of investment to be followed by non-governmental superannuation funds in different types of Securities is as under:

- Government Securities – upto 55%
- Debt Securities – upto 40%
- Money market instruments – upto 5%
- Shares of companies on which derivatives are available – 15%

c) Other issues

37. The Institute of Chartered Accounts of India (ICAI) in their memorandum submitted to the Committee, and in the course of personal hearing, inter-alia, made the following points in regard to the new Section 20 as proposed:

- i) stipulating a timeframe of about 90 days in the proposed Section 20 for obtaining the consent of the beneficiary for investing trust money;
- ii) necessity of obtaining the permission of beneficiaries for investments made in securities of the Government.

38. On the issue of stipulating a timeframe for obtaining the consent of the beneficiary for investment of Trust money, as suggested by the ICSI, the Finance Secretary, while deposing before the Committee stated:

“We have no objection to this very pertinent suggestion and contribution. May I, nevertheless, mention that this is in relation to the private trust and where it is presumed that the trustees would act in the best interest. The Act does not apply, as you yourself have in the beginning mentioned, to public trust. These are private trusts where one can presume that the trustees would act in the best interests of the trust or the beneficiaries but a time limit can be prescribed. We have no contrary views on that.”

39. In this regard, the Ministry of Finance (Department of Economic Affairs) in a subsequent reply informed as under:

“The Department of Economic Affairs, in principle, have no objection to specifying ‘a period’ for obtaining the written consent of the trustee for investment of trust money.”

40. On the issue raised on the inappropriateness of providing blanket exemption from obtaining the consent of the beneficiary for investment in Government securities, the Ministry of Finance (Deptt. of Economic Affairs) in reply, stated:

“The proviso as it exists, does not apply to investment in Government Securities. The same status has been retained and is being proposed to continue.”

41. The ICSI also suggested certain changes in the text of the proposed section 20 so as to bring out the intent more clearly in a manner consistent with present-day drafting. The text as proposed with the substitution of words suggested by ICSI reads as follows:

“Where the trust-property consists of money and **the same** cannot be applied

“..... the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money **on** any security or class of securities

42. Asked to give their opinion on the modification in the proposed section as suggested by ICSI, the Ministry of Finance (Department of Economic Affairs) in a written reply informed:

“The Department of Economic Affairs also has no objection to effecting the changes that have been suggested in the text of the proposed section 20 (clause 2). However, the final language of the proposed changes in the Law will be carried out on the advice of the Legislative Department.”

43. Enabling the Government to notify a class of securities for investment of trust money in lieu of existing system of notifying specific securities where trust money could be invested on case-by-case basis is intended to provide the trusts a greater flexibility in deciding their investment pattern. The Committee are, however, constrained to note the lack of clarity and ambiguity on the part of the Government on various aspects of the proposal seeking to incorporate the new section 20 in lieu of the existing section. For instance, the Government has been unclear on the necessity of defining the term 'Securities' in the proposed section in line with the provisions of the securities laws; and a firm view remains to be taken on what would constitute the 'class of securities' where the funds of trusts could be invested. On an even more serious note, the risk mitigation measures required to be put in place for protecting the interests of the beneficiaries under the trusts remain to be worked out.

44. Though the Government had, at first, informed that it may not be necessary to define the term 'securities' in the proposed section 20 as also suggested by the ICSI and ICAI, this has been expressed to be appropriate at a later stage. The Committee note in this regard that the Law Commission too had, way back in 1961, recommended that it would be better to give a general definition of all categories of securities which are in vogue in the market in section 20 of the Act. As agreed to by the Government, the Committee expect that the term 'securities' is defined in the proposed section 20 so as to be in alignment with the definition of the term under the securities laws, i.e. the Securities Contracts (Regulation) Act, 1956.

45. Protecting the interests of the beneficiaries under the trust, particularly the minors, the old and the destitute acquires added importance

with the amendment proposal seeking to incorporate the new section 20. This is mainly so because by proposing to do away with the existing system of notifying specific securities as an investment option by trusts, the explicit or implicit government guarantee on the credit worthiness of the investible securities is also being done away with. While a proposal has been made for fixing a cap on investment of the trust funds in different classes of securities as a risk mitigation measure in the interest of the beneficiaries, as per the submission of the Government, the guidelines for investment of trust funds are likely to be modeled on the pattern of the investment guidelines applicable to non-governmental superannuation funds which inter-alia prescribe a cap on the investment pattern to be followed in different securities. As agreed to by the Finance Secretary in his deposition, the Committee emphasise on ensuring that simultaneous with the bringing in to effect of the amendment proposals of the Bill, the guidelines for investment of the funds of trusts, the disclosure norms relating thereto etc. which are essential for protecting the interests of the beneficiaries are also formulated and notified.

46. The new section 20 proposed replicates the stipulation or wording of the existing section whereby Trust property that consists of money that cannot be applied 'immediately or at an early date' is to be invested by the trustee. This, as also pointed out in the submissions made to the Committee can be ambiguous and potentially litigious. Stipulating a time frame for investment of trust money in lieu of the words 'immediately or at an early date' has been felt to be more appropriate. As agreed to by the Government, the Committee expect that the newly proposed section 20 is suitably modified to specify a time

frame for obtaining the consent of the beneficiary of the trust and investing the funds.

47. The new section 20 proposed also retains the existing proviso to the section whereby the written consent of the beneficiaries would not be required when investments are made in Government securities. While investments in Government securities may be risk free, the returns thereon may not be advantageous to the beneficiaries. The Committee, therefore, recommend that the provision be suitably amended so as to provide for obtaining the consent of the beneficiary for investment in Government securities also.

48. The Committee also expect that as agreed to by the Government, the text of the proposed Section 20 is attuned to present day legal drafting in consultation with the Ministry of Law so as to bring out the intent in clearer terms.

C. Clause 3 : Section 20 A : Power to purchase redeemable Stock at premium
(Amendment of Section 20 A)

49. Section 20 (A) of the Act as it stands now enables the trustee to invest in securities mentioned in Section 20 notwithstanding the fact that the security may be redeemable and that the price of the security exceeds its redemption value. However, the existing proviso to Section 20 A places some restrictions on the power of the trustees, which are applicable only to the instruments referred to in clause (c) and (d) of Section 20. The proviso to Section 20(A) requires that a premium (price above par or face value) cannot exceed 15% of par or face value in respect of instruments referred to in Section 20 (c) {stock or debentures of, or shares in companies wherein the interest is guaranteed by government} or Section 20(d) {debentures or other securities for money issued under the authority of an Act or by municipal body, port trust or city improvement trust etc.,}. The intent behind the restrictions placed under the proviso, as informed by the Ministry of Finance (Department of Economic Affairs) is to ‘avoid the possibility of mispricing in the purchase of certain securities issued by bodies corporate (other than the government per-se).’

50. Clause 3 of the Bill which seeks to amend the existing proviso to Section 20 which enables purchase of redeemable stock at premium reads as under :

- “(i) the words, bracket and letters “clauses (c) and (d) of” shall be omitted;
- (ii) for the words “said clauses,” the words ‘said section” shall be substituted.

51. In regard to the proposed amendments under Clause 3, the Ministry of Finance (Deptt. of Economic Affairs), however, submitted to the Committee as follows:

“While examining the Amendment Bill in detail for preparation of Lok Sabha discussion, it has been noticed that Ministry of Law & Justice have, while revising the draft Bill dropped the words “clause (c) and (d) of” in the proviso of Section 20(A).

As a consequence, the proviso to section 20(A) now applies to the entire Section 20 instead of only to sub clauses (c) and (d), as originally provided. On a detailed examination it is found that this will have serious implications for sale and purchase of government securities by trusts. The specific implication is that trusts cannot purchase Government Securities of upto 15 years maturity with any premium. It will also prohibit them from paying beyond 15% premium for Government Securities of more than 15 years

maturity. Since the prices of these securities and the premium, if any, are decided in the Government Securities market, this stipulation will be very difficult to implement as well as have a negative consequence for the Government Securities market. This consequence was not intended. Hence, it has been decided to insert an appropriate correction to the amendment bill to undo this.”

52. The Ministry of Finance (Deptt. of Economic Affairs) accordingly inter-alia proposed to omit section 20(A)(1) as its relevance has gone by moving an official amendment to the Indian Trusts (Amendment) Bill, 2009 on the following lines:

Page 2, for line 7 to 9, substitute

“3. In Section 20(A) of the Principal Act, in sub-section (1), the proviso shall be omitted.”

53. Asked as to why the implications of the amendment proposals of the Bill on the Government securities market was not taken note of at the stage of drafting the Bill and before its introduction in Parliament, the Ministry of Finance, Department of Economic Affairs, in a written reply inter alia submitted as follows :

“Only subsequent to the drafting of the amendment was it realized that since the prices of these securities & the premium, if any, are determined in the Government Securities market, this stipulation will restrict the availability of securities for investment by trusts, which, in turn, will have a negative consequence for the Government Securities market. This consequence was not intended and a result of the proposed amendment to Section 20 (A). Hence, it is proposed, with the approval of the SCOF, to insert an appropriate correction to the amendment bill to undo this. Hon’ble Finance Minister has approved this proposal.”

54. In this regard, the Finance Secretary while tendering evidence before the Committee stated :

“..... Section 20 (A) enables a Trustee to invest in securities mentioned in Section 20 notwithstanding the fact that the security may be redeemable and that the price of the security exceeds the redemption value. However, the proviso to Section 20 (A) as it stands now places restriction on this power of the Trustees but is applicable only to the instruments referred to in Clause (c) and (d) of Section 20.

Now, since Section 20 itself is proposed to be amended, we were facing a difficulty which we have mentioned in the replies to the Standing Committee.”

55. When pointed out whether this did not amount to carelessness in formulating the proposals of the Indian Trusts (Amendment) Bill, 2009. the Finance Secretary stated:

“I would accept that. So, that is the basic amendment which is proposed in the Bill, which is for your consideration.”

56. In this regard, the Ministry of Finance (Deptt. of Economic Affairs) also informed the Committee as under :

“The official amendment has been proposed in the form of a draft cabinet note which Ministry of Law has seen and vetted. Department of Economic Affairs are yet to send the revised cabinet note for final clearance from Hon’ble Minister of Law and Justice to the amendment Bill. Subsequent to information that the matter stands referred to the Standing Committee, it has been decided that once the Standing Committee considers the proposal including the official amendment, a fresh cabinet note will be prepared and will be referred to Ministry of Law after which Cabinet approval will be obtained.”

57. The fact that the proposal to omit the words, 'clauses (c) and (d) of' of the proviso to section 20A with the amendments envisaged under the clause 3 of the Bill would have serious negative implications on the Government securities market came to the know of the Government only following the detailed examination of the Bill when it became slated for discussion in Parliament. It is a matter of surprise and serious concern to the Committee that the amendment proposals of the Bill were examined in detail only after its introduction in Parliament. The proviso to section 20 A of the Principal Act as it presently stands prohibits investments in certain securities referred to in Section 20C and 20D (issued by railways or companies in which interest is guaranteed by Central Government, or by municipalities under the authority of any Act) if the purchase price is higher than the redemption value. With the amendments proposed under Clause 3, this prohibition would be extended to all securities including those issued by the Government whose market price could be well above the redemption value. The negative implications that the amendment proposal would have on the Government securities market by prohibiting the purchase of the securities at a premium having come to light, the Government have now proposed moving an official amendment for omitting the proviso to section 20A. The lapse, as admitted by the Finance Secretary has been owing to carelessness, which could have been avoided by exercising adequate care and caution at the time of formulating the amendment proposals of the Bill

for introduction in Parliament. The Committee expect that, as proposed an official amendment is moved for omitting the proviso when the Bill is taken up for consideration and passing in the Parliament.

New Delhi:
10 March, 2010
19 Phalguna, 1931 (Saka)

Dr. MURLI MANOHAR JOSHI
Chairman
Standing Committee on Finance

Minutes of the Tenth sitting of the Standing Committee on Finance
The Committee sat on Monday, the 11th January, 2010 from 1100 hrs. to 1430 hrs.

PRESENT

Dr. Murli Manohar Joshi - Chairman

MEMBERS

LOK SABHA

2. Dr. Baliram
3. Shri Sudip Bandyopadhyay
4. Shri Bhakta Charan Das
5. Shri Gurudas Dasgupta
6. Shri Nishikant Dubey
7. Shri Bhartruhari Mahtab
8. Shri Rayapati Sambasiva Rao
9. Shri M. Sreenivasulu Reddy
10. Shri Sarvey Sathyanarayana
11. Shri Manicka Tagore
12. Shri Anjankumar M. Yadav

RAJYA SABHA

13. Shri Raashid Alvi
14. Shri Vijay Jawaharlal Darda
15. Shri S.S. Ahluwalia
16. Shri Moinul Hassan
17. Shri Mahendra Mohan
18. Shri S. Anbalagan
19. Shri Y.P. Trivedi

SECRETARIAT

- | | | | |
|----|--------------------------|---|---------------------|
| 1. | Shri A.K. Singh | - | Joint Secretary |
| 2. | Shri T.G. Chandrasekhar | - | Additional Director |
| 4. | Shri R.K. Suryanarayanan | - | Deputy Secretary |
| 5. | Smt. B. Visala | - | Deputy Secretary |

Part I
(1100 to 1300 hours)

WITNESSES

Ministry of Finance (Department of Economic Affairs)

1. Shri Ashok Chawla, Finance Secretary
2. Shri Shaktikanta Das, Joint Secretary (Budget)

3. Dr. K.P. Krishnan, Joint Secretary (Capital Market)

Ministry of Law & Justice

Dr. G.N. Raju, Joint Secretary

2. The Committee heard the representatives of the Ministry of Finance, (Department of Economic Affairs) and Ministry of Law and Justice (Legislative Department) on the provisions of the Indian Trusts (Amendment) Bill, 2009. The major points discussed with the representatives of the Ministries include, the laws governing the functioning of private and public trusts including religious and charitable trusts, tax exemptions available to different types of trusts, necessity of defining the term 'securities' in generic terms or in consonance with the definition of the term under the Securities laws, safeguard mechanisms for protecting the interest of the beneficiaries, necessity of evolving a model legislation governing the functioning of religious and charitable trusts etc. The Chairman directed the representatives to furnish written replies to the points raised by Members at an early date.

The witnesses then withdrew.

Part II
(1300 to 1400 hours)

WITNESSES

The Institute of Chartered Accountants of India

1. Shri Uttam Prakash Aggarwal, President
2. Shri J. Venkateswarlu, Central Council Member
3. Shri G. Ramaswamy, Central Council Member

The Institute of Company Secretaries of India

1. Shri Vinayak S. Khanvalkar, Vice President
2. Shri N.K. Jain, Secretary & CEO
3. Shri Sutanu Sinha, Director (Academics)
4. Dr. S.K. Dixit, Joint Director (Academics)

3. The Committee heard the views of the representatives of the Institute of Chartered Accountants of India and the Institute of Company Secretaries of India. The major issues discussed with the representatives include, necessity of defining the term 'securities', safeguard mechanism for protecting the interest of the beneficiaries, stipulating a time frame for obtaining the consent of the beneficiaries for investment of trust money, necessity of obtaining the prior permission of the beneficiaries for investment of trust money in

Government securities etc. The Chairman asked the representatives to furnish written replies to the points raised by Members at an early date.

The witnesses then withdrew.

Part III
(1400 to 1430 hours)

WITNESSES

Ministry of Finance, Department of Revenue

Shri P.V. Bhide, Secretary

Central Board of Direct Taxes

1. Shri S.S.N. Moorthy, Chairman
2. Shri Dinesh Verma, Commissioner

4. The Committee heard the views of the representatives of Ministry of Finance (Department of Revenue) and Central Board of Direct Taxes (CBDT). The major issues discussed with the representatives related to tax exemptions available to public and private trusts, definition of the term 'securities' under the Income Tax Act and the Securities laws, necessity of having a re-look at the tax exemption provisions for different types of trusts, necessity of formulating a model legislation governing the functioning of public trusts etc. The Chairman directed the representatives to furnish written replies to the points raised by Members at an early date.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

Minutes of the Fourteenth sitting of the Standing Committee on Finance
The Committee sat on Wednesday, the 10th March, 2010 from 1530 hrs. to 1600 hrs.

PRESENT

Dr. Murli Manohar Joshi - Chairman

MEMBERS

LOK SABHA

2. Shri C.M. Chang
3. Shri Harischandra Chavan
4. Shri Bhakta Charan Das
5. Shri Khagen Das
6. Shri Bhartruhari Mahtab
7. Shri G.M. Siddeshwara
8. Shri M. Sreenivasulu Reddy
9. Shri Y.S. Jagan Mohan Reddy
10. Shri N. Dharam Singh

RAJYA SABHA

10. Shri Vijay Jawaharlal Darda
11. Shri S.S. Ahluwalia
12. Shri Moinul Hassan
13. Dr. Mahendra Prasad
1. Shri Y.P. Trivedi
2. Shri Rajeev Chandrasekhar

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri T.G. Chandrasekhar - Additional Director
3. Shri R.K. Suryanarayanan - Deputy Secretary
4. Smt. B. Visala - Deputy Secretary

2. The Committee took up the following draft Reports for consideration:-

- (i) Draft Report on the Life Insurance Corporation (Amendment) Bill, 2009;
- (ii) Draft Report on the Indian Trusts (Amendment) Bill, 2009;
- (iii) Draft Report on the Securities and Exchange Board of India (Amendment) Bill, 2009;
- (iv) Draft Report on action taken by the Government on the recommendations contained in 78th Report (14th Lok Sabha) on "Flow of Credit to Agriculture Sector"; and

- (v) Draft Report on action taken by the Government on the recommendations contained in 79th Report (14th Lok Sabha) on “Counterfeit Currency Notes in Circulation”

3. The Committee adopted the draft reports at (i), (ii) and (iv) above without any amendment and authorized the Chairman to present the reports to Parliament.

4.	XX	XX	XX	XX
	XX	XX	XX	XX

The Committee adjourned at 1600 hours.