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PART - V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT PUBLIC TRUSTS BILL, 2011.

GUJARAT BILL NO. 25 OF 2011.

A BILL

to provide for regulating and for making more effective provisions for the administration of public, religious and charitable trusts in the State of Gujarat and for the matters connected therewith and incidental thereto.

It is hereby enacted in the Sixty-second Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

1. (1) This Act may be called the Gujarat Public Trusts Act, 2011.
- (2) It shall extend to the whole of the State of Gujarat.
- (3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Short title,
extent and
commencement.

Definitions. 2. In this Act, unless the context otherwise requires, -

- (1) "Assistant Charity Commissioner" means the Assistant Charity Commissioner appointed under section 6;
- (2) "Charity Commissioner" means the Charity Commissioner appointed under section 3;
- (3) "Court" means in the City of Ahmedabad, the City Civil Court and elsewhere the District Court;
- (4) "Deputy Charity Commissioner" means the Deputy Charity Commissioner appointed under section 6;
- (5) "Director of Accounts" and "Assistant Director of Accounts" mean respectively the Director of Accounts and Assistant Director of Accounts appointed under section 7;
- (6) "Hindu" includes Jain, Buddhist and Sikh;
- (7) "Inspector" means an Inspector appointed under section 7;
- (8) "instrument of trust" means the instrument by which the trust is created by the author of the trust and includes any scheme framed by a competent authority or any Memorandum of Association and rules and regulations of a society registered under the Societies Registration Act, 1860, in its application to the State of Gujarat; XXI of 1860.
- (9) "Joint Charity Commissioner" means the Joint Charity Commissioner appointed under section 4;
- (10) "manager" means any person (other than a trustee) who, for the time being, either alone or in association with some other person or persons administers the trust property of any public trust and includes -
 - (a) in the case of a math, the head of such math,
 - (b) in the case of a society registered under the Societies Registration Act, 1860, its governing body, whether or not the property of the society is vested in trustees; XXI of 1860.
- (11) "math" means an institution for the promotion of the Hindu religion presided over by a person whose duty is to engage himself in imparting religious instructions or rendering spiritual service to a body of disciples or who exercises or claims to exercise headship over such a body and includes places of religious worship or instruction which are appurtenant to the institution;
- (12) "person having interest" includes-
 - (a) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple or who is entitled to partake or is in the habit of partaking in the distribution of gifts thereof,
 - (b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,
 - (c) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, XXI of 1860.

- (d) in the case of a trust or a society established for educational or medical purposes or both, any resident of the area where such trust is registered or where such trust or society carries on its activities,
- (e) in the case of any other public trust, any trustee or beneficiary;
- (13) "prescribed" means prescribed by rules;
- (14) "public securities" means -
- (a) securities of the Central Government or any State Government,
- (b) stocks, debentures or shares in Railway or other companies, the interest or dividend on which has been guaranteed by the Central Government or any State Government,
- (c) debentures or other securities for money issued by or on behalf of any local authority in exercise of the powers conferred by an Act of the Central or the State Legislature;
- (15) "public trust" means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a church, synagogue, *agiar*y or other place of public religious worship, a *dharmada* or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860.
- XXI of 1860.
- Explanation.* - A public trust established by a person professing Islam, which does not fall within the definition of "wakf" under the Wakf Act, 1995 shall be considered as such for the purpose of this Act;
- 43 of 1995.
- (16) "region" or "sub-region" means the areas designated as such and for which a Public Trusts Registration Office has been established under this Act;
- (17) "rules" means rules made under this Act;
- (18) "temple" means a place by whatever designation known and used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu Community or any section thereof as a place of public religious worship;
- (19) "tribunal" means the Gujarat Public Trusts Tribunal constituted under section 96;
- (20) "trustee" means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager;
- (21) words and expressions used but not defined in this Act and defined in the Indian Trusts Act, 1882, shall have the meaning assigned to them in that Act. II of 1882.

CHAPTER II

ESTABLISHMENT

Charity Commissioner. 3. (1) For carrying out the purposes of this Act, the State Government shall, by notification in the *Official Gazette*, appoint a person to be the Charity Commissioner for the State.

(2) The Charity Commissioner, shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special order as the State Government may pass, superintend the administration and carry out the provisions of this Act throughout the State.

Joint Charity Commissioner. 4. (1) The State Government may, by notification in the *Official Gazette*, appoint one or more persons to be called Joint Charity Commissioners who shall, subject to the control of the Charity Commissioner and to such general or special order as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions of the Charity Commissioner.

(2) The State Government may, by general or special order, declare a Joint Charity Commissioner to be the regional head to superintend, subject to the control of the Charity Commissioner, the administration in one or more regions or sub-regions, as may be specified in such order.

Qualifications for appointment of Charity Commissioner and Joint Charity Commissioner. 5. (1) A person to be appointed as the Charity Commissioner shall be one –

- (i) who is holding or has held a judicial office not lower in rank than that of a District Judge (Selection Grade), or
- (ii) who has been for not less than ten years an advocate enrolled under the Advocates Act, 1961, or
- (iii) who is a member of All India Service and is qualified to be appointed as the Secretary to Government, or
- (iv) who has worked on the post of Joint Charity Commissioner continuously for a period of five years.

(2) A person to be appointed as the Joint Charity Commissioner shall be one-

- (i) who is holding or has held a judicial office not lower in rank than that of a District Judge (Entry Level) for not less than five years, or
- (ii) who has been for not less than ten years an advocate enrolled under the Advocates Act, 1961, or
- (iii) who has worked on the post of Deputy Charity Commissioner continuously for a period of five years.

XXV of 1961.

XXV of 1961.

6. (1) The State Government may also appoint such number of Deputy and Assistant Charity Commissioners in the office of the Charity Commissioner or for such regions or sub-regions or for such public trusts or such class of public trusts as may be deemed necessary.

Deputy and
Assistant
Charity
Commissioners.

(2) A person to be appointed as a Deputy Charity Commissioner shall be one-

(i) who is holding or has held a judicial office not lower in rank than that of a Senior Civil Judge or a Judge of the Court of Small Causes or any office which in the opinion of the State Government is an equivalent office for not less than three years, or

XXV of 1961.

(ii) who has been for not less than seven years an advocate enrolled under the Advocates Act, 1961, or

(iii) who has worked on the post of Assistant Charity Commissioner continuously for a period of five years.

(3) A person to be appointed as an Assistant Charity Commissioner shall be a person -

(a) who is holding or has held a judicial office not lower in rank than that of a Civil Judge for not less than three years, or

XXV of 1961.

(b) who has been for not less than five years an advocate enrolled under the Advocates Act, 1961.

(4) The Deputy and Assistant Charity Commissioner shall exercise such powers and perform such duties and functions as may be provided by or under the provisions of this Act.

7. For the purposes of carrying out the provisions of this Act, the State Government may appoint, the Director of Accounts and Assistant Directors of Accounts possessing the prescribed qualifications, Inspectors and other subordinate officers and employees possessing such qualifications as may be prescribed and assign to them such powers, duties and functions under this Act, as may be deemed necessary :

Subordinate
Officers.

Provided that the State Government may, by general or special order and subject to such conditions as it deems fit to impose, delegate to the Charity Commissioner powers to appoint subordinate officers and employees as may be specified in the order.

8. The Charity Commissioner, the Joint Charity Commissioner, Deputy and Assistant Charity Commissioner, the Director of Accounts, the Assistant Directors of Accounts, the Inspectors and other subordinate officers and employees appointed under this Act shall be the employees of the State Government and they shall draw their pay and allowances from the Consolidated Fund of the State. The conditions of service of such officers shall be such as may be determined by the State Government.

Charity
Commissioner
and other
officers to be
the employees
of State
Government.

9. There shall be paid every year out of the Public Trusts Administration Fund to the State Government such cost as the State Government may determine on account of the pay, pension, leave and other allowances of the Charity Commissioner, the Joint Charity Commissioner, the Deputy and Assistant Charity Commissioners, the Director of Accounts, the Assistant Directors of Accounts, the Inspectors and other subordinate officers and employees appointed under this Act.

Cost of pay, pension, etc. of Charity Commissioner etc., to be paid to Government out of the Public Trusts Administration Fund.

10. (1) The State Government may delegate any of its powers or functions under this Act to the Charity Commissioner or any other officer subject to such conditions as it thinks fit.

(2) The State Government may also direct that any power exercisable and duties or functions to be performed by any particular officer appointed under this Act may be performed by any other officer subject to such conditions as it thinks fit.

(3) Subject to the direction and control of the State Government, every person appointed under the provisions of this Act shall work under the general guidance, and the superintendence and control of the Charity Commissioner.

CHAPTER III

CHARITABLE PURPOSES AND VALIDITY OF CERTAIN PUBLIC TRUSTS

Charitable purposes.

11. For the purposes of this Act, a charitable purpose includes, -

- (1) relief of poverty or distress,
- (2) education,
- (3) medical relief,
- (4) rehabilitation of persons affected due to earthquake, flood, scarcity or any other natural calamities, and
- (5) the advancement of any other object of general public utility, but does not include a purpose which relates -

- (a) exclusively to sports, or
- (b) exclusively to religious teaching or worship.

Public trust not to be void on ground of uncertainty.

12. Notwithstanding any law, custom or usage, a public trust shall not be void, only on the ground that the persons or objects for the benefit of whom or which it is created are unascertained or unascertainable.

Explanation. - A public trust created for such objects as *dharma*, *dharmada* or *punya-karya*, *punya-dan* shall not be deemed to be void, only on the ground that the objects for which it is created are unascertained or unascertainable.

13. A public trust created for purposes, some of which are charitable or religious and some are not, shall not be deemed to be void in respect to the charitable or religious purpose only on the ground that it is void with respect to the non-charitable or non-religious purpose. **Public trust not void on ground that it is void for non-charitable or non-religious purpose.**
14. Any disposition of property for a religious or charitable purpose shall not be deemed to be void as a public trust, only on the ground that no obligation is annexed with such disposition requiring the person in whose favour it is made to hold it for the benefit of a religious or charitable object. **Public trust not void on ground of absence of obligation.**
15. If any public trust is created for specific object of a charitable or religious nature or for the benefit of a society or institution constituted for a charitable or religious purpose, such trust shall not be deemed to be void only on the ground - **Public trust not void on failure of specific object or society, etc., ceasing to exist.**
- (a) that the performance of the specific object for which the trust was created has become impossible or impracticable, or
 - (b) that the society or institution does not exist or has ceased to exist, notwithstanding the fact that there was no intent for the appropriation of the trust property for a general charitable or religious purpose.

CHAPTER IV

REGISTRATION OF PUBLIC TRUSTS

16. For the purposes of this Act, the State Government may, by notification in the *Official Gazette*, form regions and sub-regions and prescribe or alter limits of such regions and sub-regions. **Regions and sub-regions.**
17. (1) In every region or sub-region there shall be a Public Trusts Registration Office: **Public Trust Registration Offices.**
- Provided that for two or more regions or sub-regions, there may be one Public Trusts Registration Office:
- Provided further that for one region or sub-region there may be one or more Joint Public Trusts Registration Offices.
- (2) To facilitate the administrative work of the regions or sub-regions, the State Government may, having regard to the quantum of work and the number of trusts, set up offices in all the districts under any region or sub-region.
18. The State Government may appoint a Deputy Charity Commissioner or Assistant Charity Commissioner to be in-charge of one or more Public Trusts Registration Offices or Joint Public Trusts Registration Offices. **Deputy or Assistant Charity Commissioner to be in charge of Public Trusts Registration Office.**

Books,
indices and
registers.

19. It shall be the duty of the Deputy or Assistant Charity Commissioner in-charge of every Public Trusts Registration Office or, as the case may be, the Joint Public Trusts Registration Office to keep and maintain such books, indices and other registers containing such particulars as may be prescribed.

Registration
of public
trusts.

20. (1) No institution being an institution covered under clause (15) of section 2 shall function as a public trust or derive any benefit as such under this Act or under any other law for the time being in force unless it is registered with the Charity Commissioner under the provisions of this Act.

(2) It shall be the duty of the trustees of a public trust to make an application for the registration of the public trust.

(3) Such application shall be made to the Deputy or Assistant Charity Commissioner of the region or sub-region within the jurisdiction of which the trustee has an office for the administration of the trust or, as the case may be, the trust property, or substantial portion of the trust property is situated.

(4) Such application shall be in writing and shall be in such form and accompanied by such fees as may be prescribed.

(5) Such application shall be made within three months of its creation.

(6) Such application shall *inter alia* contain the following particulars:

- (i) the designation by which the public trust is or shall be known (hereinafter referred to as "the name of the public trust"),
- (ii) the names and addresses of the trustees and the managers,
- (iii) the mode of succession to the office of the trustees,
- (iv) the list of the movable and immovable trust property and such descriptions and particulars as may be sufficient for the identification thereof,
- (v) the approximate value of the movable property,
- (vi) the approximate value of the immovable property determined on the basis of the certificate of the approved valuer and the value shown in the jantri issued by the revenue authorities alongwith a declaration concerning the mode of acquisition of and the burden over such property,
- (vii) the estimated gross annual income of the public trust,
- (viii) the estimated gross annual expenditure of the public trust,
- (ix) the address to which any communication to trustee or manager in connection with the public trust may be sent,
- (x) the declaration whether any amount by way of contribution, donation or the like is expected by the trust from any place outside the State of Gujarat or India;
- (xi) such other particulars as may be prescribed:

Provided that the rules may provide that in the case of all or any of the public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein.

(7) Every application made under sub-section (1) shall be signed and verified in the prescribed manner by the trustee specially authorized in this behalf by the trust. It shall be accompanied by a copy of an instrument of trust.

(8) Where on receipt of such application, it is noticed that the application is incomplete in any particulars, or does not disclose full particulars of the public trust, the Deputy or Assistant Charity Commissioner may return the application to the trustee, and direct the trustee to complete the application in all particulars or disclose therein the full particulars of the trust, and resubmit it within the period specified in such direction; and it shall be the duty of the trustees to comply with the direction.

(9) (i) It shall also be the duty of the trustee of the public trust to send a Memorandum in the prescribed form containing the particulars, including the name and description of the public trust, relating to the immovable property of such public trust, to the Sub-Registrar of the sub-district appointed under the Registration Act, 1908, in which such immovable property is situate.

XVI of
1908.

(ii) Such Memorandum shall be sent within three months from the date of creation of the public trust and shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf.

21. On the receipt of an application under section 20, or, upon an application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining - Inquiry for registration.

- (i) whether a trust exists and whether such trust is a public trust,
- (ii) whether any property is the property of such trust,
- (iii) whether such property is subject to any conditions or restrictions laid down or imposed by authority competent under any law for the time being in force or is freehold and unencumbered having clear marketable title as to ownership and possession,
- (iv) whether the whole or any substantial portion of the subject matter of the trust is situate within his jurisdiction,
- (v) the names and addresses of the trustees and manager of such trust,
- (vi) the mode of succession to the office of the trustees of such trust,
- (vii) the origin, nature and object of such trust,
- (viii) the amount of gross annual income and expenditure of such trust, and
- (ix) any other particulars as may be prescribed under sub-section (6) of section 20.

22. On completion of the inquiry provided for under section 21, the Deputy or Assistant Charity Commissioner shall record his findings alongwith the reasons therefor as to each of the matters mentioned in the said section, and may make an order for the payment of the registration fee. Findings of Deputy or Assistant Charity Commissioner.

Entries in
Register.

23. (1) The Deputy or Assistant Charity Commissioner shall make entries in the register kept under section 19 in accordance with the findings recorded by him under section 22 or if appeals or applications are made as provided by this Act, in accordance with the final decision of the Competent Authority provided by this Act.

(2) The entries so made shall, subject to the provisions of this Act and subject to any change recorded under the following provisions, be final and conclusive.

Change.

24. (1) Where any change occurs in any of the entries recorded in the register kept under section 19, the trustee shall, within ninety days from the date of the occurrence of such change, or where any change is desired in such entries or in any of the entries recorded in the register kept under section 19 in the interest of the administration of such public trust, the trustee authorised by the trust shall report such change or proposed change along with the reasons therefor to the Deputy or Assistant Charity Commissioner in-charge of the Public Trusts Registration Office where the register is kept in such form as may be prescribed.

(2) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall, along with the report, furnish a Memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the Sub-Registrar referred to in sub-section (9) of section 20. Such Memorandum shall be signed and verified in the prescribed manner by the trustee specially authorised by the trust in this behalf.

(3) For the purpose of verifying the correctness of the entries in the register kept under section 19 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner.

(4) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under sub-section (1) and holding an inquiry, if necessary, under sub-section (3) or merely after holding an inquiry under the said sub-section (3), is satisfied that a change has occurred in any of the entries recorded in the register kept under section 19 in regard to a particular public trust, or that the trust should be removed from the register by reason of the change, he shall, preferably within sixty days of the date of making an application under sub-section (1), record the findings with the reasons therefor to that effect; and if he is not so satisfied, he shall record findings with reasons therefor accordingly.

(5) Any person interested in the trust, may file an appeal before the tribunal against any findings made under sub-section (4). The Deputy or Assistant Charity Commissioner shall amend or delete the entries in the said register in accordance with the findings which requires an amendment or deletion of entries.

(6) Whenever an entry is amended or the trust is removed from the register under sub-section (5), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the Memorandum furnished to him under sub-section (2), after certifying the amended entry, to the Sub-Registrar referred to in sub-section (9) of section 20 for the purpose of filing in Book No.1 under section 89 of the Registration Act, 1908, in its application to the State of Gujarat.

(7) In the event of failure of the trustees to report any change that has taken place within ninety days of its occurrence under sub-section (1), such unreported change shall cease to have effect on expiration of ninety days from the date of its occurrence.

25. (1) If any part of the property of any public trust is situated within the limits of more than one region or sub-region, the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the public trust is registered, shall forward a copy of the entries to the Deputy or Assistant Charity Commissioner in-charge of the region or sub-region within the limits of which such part of the trust property is situated.

Procedure where trust property is situate in several regions or sub-regions.

(2) The Deputy or Assistant Charity Commissioner in-charge of such region or sub-region shall make an entry in such book as may be prescribed for the purpose.

(3) A copy of such entry shall also be sent by the Deputy or Assistant Charity Commissioner, as the case may be, to the Sub-Registrar appointed under the Registration Act, 1908 of the sub-district within the limits of which such property or part thereof is situated.

XVI of 1908.

26. No Deputy or Assistant Charity Commissioner shall proceed with an inquiry under section 21 or 24 in regard to any public trust which has been already registered in any other region or sub-region.

Stay of inquiry.

27. (1) If an inquiry under section 21 or 24 in regard to any public trust is pending before more than one Deputy or Assistant Charity Commissioners, the Charity Commissioner shall, on the application of any of the persons having interest in such public trust or on report of any Deputy or Assistant Charity Commissioner before whom such inquiry is pending or on his own motion, determine which of such Deputy or Assistant Charity Commissioner shall proceed with the inquiry in regard to such trust.

Inquiry regarding public trust not to be held by more than one Deputy or Assistant Charity Commissioner.

(2) Upon such determination, no Deputy or Assistant Charity Commissioner, other than the Deputy or Assistant Charity Commissioner specified by the Charity Commissioner, shall proceed with the inquiry in regard to the public trust under section 21 or 24, as the case may be.

28. (1) Any Court of competent jurisdiction deciding any question relating to any public trust which by or under the provisions of this Act is not expressly or impliedly barred from deciding shall cause copy of such decision to be sent to the Charity Commissioner and the Charity Commissioner shall cause the entries in the register kept under section 19 to be made or amended in regard to such public trust in accordance with such decision. The entries so made or amended shall not be altered except in cases where such decision has been varied in appeal or revision by a court of competent jurisdiction. Subject to such alterations, the entries made or amended shall be final and conclusive.

Entries in register to be made or amended in certain cases.

(2) Where the tribunal decides any question in relation to any public trust or passes any order in relation thereto, the Charity Commissioner shall also cause the entries to be made or amended in such register in regard to such public trust in accordance with such decision or order passed by it; and thereupon, the provisions of sub-section (1) shall apply in relation to entries so made or amended as they apply in relation to entries made or amended according to the decision or order of a court.

Copy of entries relating to immovable property to be sent to sub-registrar, revenue and local authorities.

29. The Deputy or Assistant Charity Commissioner shall send a Memorandum in the prescribed form containing entries including the entry of the name and description of the public trust, relating to immovable property of such public trust made by him in the register kept under section 19, to the Sub-Registrar of the sub-district appointed under the Registration Act, 1908 or the revenue or local authority in which such immovable property is situate.

XVI of 1908.

Public Trust created by will.

30. In the case of the public trust which is created by a will, the executor of such will shall within one month from the date on which the probate of the will is granted or within six months from the date of the testator's death which ever is earlier, make an application for the registration in the manner provided in section 20 and the provisions of this Chapter shall *mutatis mutandis* apply to the registration of such trust :

Provided that the period prescribed herein for making an application for registration may, for sufficient cause, be extended by the Deputy or Assistant Charity Commissioner.

Notice of particulars of immovable property entered in register.

31. Any person acquiring any immovable property belonging to a public trust which has been registered under this Chapter or any part of or any share or interest in such property of such trust shall be deemed to have notice of the relevant particulars relating to such trust entered in the register kept under section 19 or filed in Book No.1 under section 89 of the Registration Act, 1908 in its application to the State of Gujarat.

XVI of 1908.

Explanation.- For the purposes of this section, a person shall be deemed to have notice of any particulars in the registers, -

- (i) when he actually knows the said particulars or when, but for willful abstention from any inquiry or search which he ought to have made, or gross negligence, he would have known them;
- (ii) if his agent acquires notice thereof whilst acting on his behalf in the course of business to which the fact of such particulars is material.

Bar to file suits.

32. (1) No public trust shall file a suit or other proceeding to enforce a right on behalf of the public trust unless it is registered under this Act.

(2) The Charity Commissioner shall be the necessary party in any suit or proceeding touching or relating to the public trust before any court, tribunal or other authority and no court, tribunal or authority shall take cognizance of such suit or proceeding unless the Charity Commissioner is a party to such suit or proceeding. Any suit or proceeding decided without joining the Charity Commissioner as party shall be null and void.

(3) The provisions of sub-section (1) shall apply to a claim of set-off or other proceedings to enforce a right on behalf of such public trust.

CHAPTER V

BUDGET, ACCOUNTS AND AUDIT

33. (1) A trustee of a public trust which has an annual income exceeding the prescribed amount shall, at least one month before the commencement of each accounting year, prepare in such form as may be prescribed, a budget showing the probable receipts and disbursement of the trust during the following year.

Trustees of certain trusts to prepare budget.

(2) Every such budget shall make adequate provision for carrying out the objects of the trust, and for the maintenance and preservation of the trust property.

34. Every trustee of a public trust shall keep and maintain accounts in such form and shall contain such particulars as may be prescribed.

Maintenance of accounts.

35. (1) The accounts kept under section 34 shall be balanced each year on the thirty-first day of March or such other day, as may be fixed by the Charity Commissioner.

Balancing and auditing of accounts.

XXXVIII of
1949.

(2) The accounts shall be audited annually by a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949:

Provided that no such person in any way interested in, or connected with the affairs of the public trust shall audit the accounts of such public trust.

(3) Every Auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers, other documents and records in the possession of or under the control of the trustee; and it shall be the duty of the trustee to make them available for the use of the Auditor.

(4) Notwithstanding anything contained in the preceding sub-sections -

(a) the Charity Commissioner may direct a special audit of the accounts of any public trust to be undertaken by the *Examiner, Local Fund Audit* under the Gujarat Local Fund Audit Act, 1963, whenever in his opinion such special audit is necessary. The Charity Commissioner may direct the payment of such fees as may be prescribed for such special audit; and

XLIX of
1963.

(b) the State Government may, by general or special order, exempt any public trust or class of trusts from the provisions of sub-section (2), subject to such conditions as may be specified in the order.

36. (1) It shall be the duty of every Auditor auditing the accounts of a public trust under section 35 to prepare a balance sheet and income and expenditure account and to forward a copy of the same along with a copy of his report to the trustee, and to the Deputy or Assistant Charity Commissioner of the region or sub-region who shall forward the same to the Charity Commissioner with his remarks.

Auditor's duty to prepare balance sheet and to report irregularities.

(2) It shall be the duty of the trustee of a public trust to file a copy of the balance sheet and income and expenditure account forwarded by the Auditor before the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.

(3) The Auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover moneys or other property belonging to the public trust or of loss or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of a breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person.

CHAPTER VI

POWERS AND DUTIES OF AND RESTRICTION ON TRUSTEES

Investment of public trust money. 37. Where the trust property consists of money and cannot be applied immediately or at any early date to the purposes of the public trust, the trustees shall be bound (notwithstanding any direction contained in the instrument of the trust) to deposit the money in any Scheduled Bank as defined in the Reserve Bank of India Act, 1934, in the Postal Savings Bank or in a Co-operative Bank approved by the State Government for the purpose or to invest it in public securities:

II of 1934.

Provided that such money may be invested in the first mortgage of immovable property situate in any part of India if the property is not leasehold for a term of years and the value of the property exceeds by one-half the mortgage money:

Alienation of immovable property of public trust. 38. (1) Notwithstanding anything contained in the instrument of trust -

- (a) any sale, mortgage, exchange, or gift or alienation in any manner of immovable property; or
- (b) any lease of immovable property for a period exceeding three years;

belonging to a public trust, shall be void unless the prior permission is obtained in this regard by making an application to the Charity Commissioner.

(2) The Charity Commissioner may, after affording an opportunity of hearing to the interested parties and the concerned Government authorities if the immovable property sought to be alienated with the prior permission of the Charity Commissioner was acquired by the public trust subject to conditions imposed by such authorities and having regard to the interest, benefit or protection of the trust, grant the permission subject to such conditions as it may think fit to impose. The decision of the Charity Commissioner shall be communicated to the trustees and shall be published in such manner as may be prescribed.

(3) Any person aggrieved by such decision may appeal to the tribunal within thirty days from the date of its publication.

(4) Such decision shall, subject to the provisions of sub-section (3), be final.

39. (1) A trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purposes and objects of the trust in accordance with the terms of the trust, usage of the institution and lawful directions which the Charity Commissioner or tribunal may issue in respect thereof, and exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property, as if they were his own.

Powers and duties of and restrictions on trustees.

(2) The trustee shall, subject to the provisions of this Act and the instrument of trust, be entitled to exercise all powers incidental to the prudent and beneficial management of the trust, and to do all things necessary for the due performance of the duties imposed on him.

(3) No trustee shall borrow moneys for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust.

(4) No trustee shall borrow money for his own use from any property of the public trust of which he is a trustee.

40. (1) A public trust shall prepare and maintain a register of all movable and immovable properties (not being property of trifling value) of such trust in such form or forms giving all such information, as may be prescribed.

Register of movable and immovable properties.

(2) Such register shall show the jewels, gold, silver, precious stones, vessels and utensils and all other movable property belonging to the trust with their description, weight and estimated value.

(3) Such register shall be signed by all the trustees after verifying its correctness, and shall be made available to the Auditor for the purpose of auditing if the accounts are required to be audited under the provisions of this Act. Where the accounts are not required to be audited, the trustees shall file a copy of such register duly signed and verified, with the Deputy or Assistant Charity Commissioner of the region.

(4) The Auditor shall mention in the audit report whether such register is properly maintained or not, and the defects or inaccuracies, if any, in the said register and trustees shall comply with the suggestions made by the auditor and rectify the defects or inaccuracies mentioned in the audit report within a period of three months from the date on which the report is sent to the trustees.

(5) Every year within three months from the date of balancing the accounts, the trustees shall scrutinize such register, and shall bring it up-to-date by showing alterations, omissions or additions to the same and such changes shall be reported to the Deputy or Assistant Charity Commissioner in the manner provided in section 24.

CHAPTER VII

CONTROL

Power of inspection and supervision. 41. (1) The Charity Commissioner, the Deputy or Assistant Charity Commissioner or any Gazetted Officer authorised by the State Government by a general or special order shall have power -

- (a) to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust at reasonable hours of the day;
- (b) to call for or inspect proceedings of the trustees of any public trust, and any books of account or document in the possession or under the control of the trustees or any person connected with the trust;
- (c) to call for any return, statement, account or report which he may think fit from the trustees or any person connected with a public trust;
- (d) to get the explanation of the trustee or any person connected with the public trust and reduce or cause to be reduced to writing any statement made by him :

Provided that in entering upon any property belonging to the public trust, the officers making the entry shall give notice to the trustees and shall have due regard to the religious practices or usages of the trust.

(2) It shall be the duty of every trustee to afford all reasonable facilities to any officer exercising any of the powers under sub-section (1) and the trustees or any person connected with the public trust shall comply with any order made or direction issued by such officer in exercise of the power conferred upon him by or under sub-section (1).

(3) If on inspection of the affairs of a public trust under this section, it is noticed by the Deputy or Assistant Charity Commissioner or the officer authorised under sub-section (1) that there is a loss caused to the public trust on account of gross negligence, a breach of trust, misapplication or misconduct on the part of a trustee or any person connected with the trust, the Deputy or Assistant Charity Commissioner or the officer authorized under sub-section (1) shall submit report thereof to the Charity Commissioner who shall act in accordance with section 44.

Explanation on report of Auditor. 42. On receipt of a report of the Auditor under section 36 or on receipt of a complaint in respect of any public trust, the Deputy or Assistant Charity Commissioner to whom the report is submitted or complaint is made shall require the trustee or any other person concerned to submit an explanation thereon within such period as he thinks fit.

Report to Charity Commissioner. 43. On considering the report referred to in section 41, and the accounts and explanation, if any, furnished by the trustees connected with the public trust, the Deputy or Assistant Charity Commissioner shall record his findings on the question whether or not a trustee or the person connected with the trust has been guilty of gross negligence, breach of trust, misappropriation or misconduct which has resulted in loss to the trust, and make a report thereof to the Charity Commissioner.

44. The Charity Commissioner shall, after considering the report of the Deputy or Assistant Charity Commissioner, and after giving an opportunity to the person concerned and holding such inquiry as he thinks fit, –

Power of
Charity
Commissioner
on report
under section
43.

(1) determine --

- (a) the amount of loss caused to public trust ;
- (b) whether such loss was due to any gross negligence, breach of trust, mis-application or misconduct on the part of any person;
- (c) whether any of the trustees, or any person connected with the public trust was responsible for such loss;
- (d) the amount which any of the trustees or any person connected with the public trust is liable to pay to the public trust for such loss, or

(2) remand the matter for further inquiry to the officer who made the report or to any other officer as he thinks fit or for reasons to be recorded in writing, compromise or may drop the matter if a suit is instituted for obtaining a decree for a direction for taking accounts under section 52.

45. (1) If the Charity Commissioner decides that any person connected with the trust is liable to pay to the public trust any amount for the loss caused to the trust, the Charity Commissioner may direct that the amount shall be surcharged on such person.

Order of
surcharge.

(2) Subject to the provisions of section 97, the order of the Charity Commissioner under sub-section (1) shall be final and conclusive.

(3) The decision of the Charity Commissioner under sub-section (1) shall be deemed to be a decree of the court.

46. (1) Subject to the provisions of this Act and on direction of the State Government, the Charity Commissioner may, from time to time, issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust and also where he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

Power of
Charity
Commissioner
to issue
directions to
trustees and
other persons.

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).

47. (1) Notwithstanding anything contained in any instrument of trust or in any contract, with a view to making essential medical facilities available to the poorer classes of the people, either free of charge or at concessional rates, it shall be lawful for the Charity Commissioner, subject to such general or special orders as the State Government may, from time to time, issue in this behalf, to issue all or any of the following directions to the trustees of, or persons connected with, any such public trust, which maintains a hospital (including any nursing home or maternity home), dispensary or any other centre for medical relief (hereinafter in this section referred to as "the medical centre") as follows, namely : -

Power of
Charity
Commissioner
and State
Government to
issue directions
in respect of
medical
facilities to
poorer
patients.

- (a) to reserve and earmark ten per cent. of the total number of operational beds and ten per cent. of the total capacity of patients treated at such medical centre, for medical examination and treatment in each department of the medical centre, in such manner as may be specified in the directions, for the indigent patients seeking admission or treatment, who shall be medically examined and treated and admitted, as the case may be free of charge;
- (b) to reserve and earmark ten per cent. of the total number of operational beds and ten per cent. of the total capacity of patients treated at such medical centre, for medical examination and treatment in each department of the medical centre, in such manner as may be specified in the directions, for the weaker sections of the people seeking admission for medical examination and treatment, who shall be charged according to such rates as the State Government may, by general or special order, determine from time to time, having regard to the rates charged by the State Government in the corresponding; medical centers maintained by it;
- (c) to comply with such other incidental or supplemental requirements as may be specified in the directions or in any general or special orders issued thereunder:

Provided that while issuing any directions as aforesaid, the Charity Commissioner shall take into consideration such facilities as are already made available by any such medical centre and having regard to the availability of such facilities may give appropriate directions if any, consistent with and subject to the percentage specified in clauses (a) and (b).

Explanation. - For the purposes of this sub-section, -

- (a) "indigent person" means a person whose total annual income does not exceed six thousand rupees or such other limit as the State Government may, from time to time, by notification in the *Official Gazette*, specify;
 - (b) "person belonging to the weaker sections of the people" means a person who is not an indigent person, but whose income does not exceed one lakh rupees per annum or such other limit as the State Government may from time to time, by notification in the *Official Gazette*, specify.
- (2) (a) It shall be lawful for the officer duly authorised by the State Government in this behalf, or for the Charity Commissioner by himself or through his representative duly authorised by him in this behalf, to verify the implementation of the directions given under sub-section (1) to any medical centre, and, for that purpose, visit, inspect and call for information and returns periodically or otherwise.
- (b) It shall be the duty of every trustee of, or person connected with, such medical centre to comply with the direction issued under sub-section (1) and to afford all reasonable facilities and assistance required by the said officer or the Charity Commissioner or his representative for verification of the

implementation of such directions under clause (a) and to comply with the requirements thereunder.

- (c) In case there arises any dispute relating to the interpretation, implementation or any matter whatsoever in respect of any direction issued under sub-section (1), it shall be referred to the State Government, through the Charity Commissioner, for appropriate directions.

(3) It shall be the duty of the governing body (by whatsoever name called) of every medical centre to get the category of a patient duly verified and recorded in a register kept for the purpose in the prescribed form before he is admitted or treated as a patient within the reserved and earmarked percentage under sub-section (1). If there is any dispute as to the category of a patient, it shall be referred to the Charity Commissioner, for appropriate direction.

48. (1) On receipt of a complaint in writing from any person having interest in respect of any public trust or on the receipt of any direction of from the State Government, the Charity Commissioner or Deputy or Assistant Charity Commissioner specially authorized by the Charity Commissioner may institute an inquiry with regard to charities or a particular charity or class of charities either generally, or for particular purposes.

Power to
institute
inquiries.

(2) The officers aforesaid may either hold inquiry themselves or entrust such inquiry to the officer authorised under sub-section (1) of section 41.

(3) For the purpose of any such inquiry, the officer holding the inquiry may by notice, require any person to attend at a specified time and place and give evidence or produce documents in his custody or control which relate to any matter in question at the inquiry.

(4) For the purpose of any such inquiry, evidence may be taken on oath and the person holding the inquiry may for that purpose administer an oath under the Oaths Act, 1969, or may instead of administering an oath on solemn affirmation require the person to make and subscribe a declaration of the truth of the matters about which he is examined.

44 of 1969.

(5) The necessary expenses of any person of his attendance to give evidence or produce documents for the purpose of the inquiry shall be paid as may be directed by the Charity Commissioner.

(6) After the completion of the inquiry, the person holding the inquiry (not being the Charity Commissioner) shall submit his report to the officer who entrusted such inquiry to him.

(7) The Deputy or Assistant Charity Commissioner of the region concerned shall submit his own report or report received by him under this section to the Charity Commissioner with his remarks thereon. The Charity Commissioner may, if he is satisfied that there is a *prima facie* case against the trustees, take such steps as are necessary under the provisions of this Act.

(8) The Charity Commissioner may himself also call for the proceedings of any inquiry made under this section for such action as he may think fit.

CHAPTER VIII

OTHER FUNCTIONS AND POWERS OF CHARITY COMMISSIONER

Power of Charity Commissioner to sue, etc. 49. The Charity Commissioner may sue or be sued in his name and shall, subject to the provisions of this Act, be competent to acquire, hold or dispose of property, both movable and immovable, and to contract and do all things necessary for the purposes of this Act.

Charity Commissioner to be Treasurer of Charitable Endowments under Act VI of 1890. 50. The Charity Commissioner shall be deemed to be and to have always been the Treasurer of Charitable Endowments appointed under the provisions of the Charitable Endowments Act, 1890 and the property so vested in the said Treasurer before the date on which this Act comes into force shall be deemed to vest in the Charity Commissioner as the Treasurer of Charitable Endowments and the provisions of the said Act shall apply to the Charity Commissioner as the Treasurer of Charitable Endowments appointed under the said Act. VI of 1890.

Power of tribunal to appoint new trustee or trustees. 51. (1) Any person interested in a public trust or the Charity Commissioner, may apply to the tribunal for the appointment of a new trustee, where there is no trustee for such trust or the trust cannot be administered until the vacancy is filled or for the suspension, removal or discharge of a trustee, when a trustee of such trust -

- (a) disclaims or dies;
- (b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or the Deputy or Assistant Charity Commissioner in this behalf;
- (c) leaves India for the purpose of residing abroad;
- (d) is declared an insolvent;
- (e) desires to be discharged from the trust;
- (f) refuses to act as a trustee;
- (g) becomes, in the opinion of the tribunal, unfit or physically incapable to act in the trust or accepts a position which is inconsistent with his position as trustee;
- (h) in any of the cases mentioned in Chapter III, is not available to administer the trust; or
- (i) is convicted of an offence punishable under this Act or an offence involving moral turpitude.

(2) The tribunal may, after hearing the parties and making such enquiry as it may deem fit, by order appoint any person as a trustee or may also remove or discharge any trustee for any of the reasons specified in sub-section (1).

(3) In appointing a trustee under sub-section (2), the tribunal shall have regard -

- (a) to the wishes of the author of that trust;
- (b) to the wishes of the person, if any, empowered to appoint a new trustee;

- (c) to the question whether appointment will promote or impede the execution of the trust;
 - (d) to the interest of the public or the section of the public who have interest in the trust; and
 - (e) to the custom and usage of the trust.
- (4) It shall be lawful for the tribunal upon making any order appointing a new trustee under sub-section (2) either by the same or by any subsequent order to direct that any trust property shall vest in the person so appointed and thereupon it shall so vest.
- (5) The order of the tribunal under sub-section (2) shall be deemed to be the decree of the Court and an appeal shall lie there from to the High Court.

52. In any case, -

- (i) where it is alleged that there is a breach of public trust, negligence, misapplication or misconduct on the part of a trustee or trustees;
- (ii) where a direction or decree is required to recover the possession of, or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee;
- (iii) where the direction of the tribunal is deemed necessary for the administration of any public trust; or
- (iv) for any declaration or injunction in favour of or against a public trust or trustee or beneficiary thereof,

Suits relating to public trusts.

the Charity Commissioner after making such inquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner or with the permission of the tribunal as provided in section 53 may institute a suit whether contentious or not in the tribunal within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs :

- (a) an order for the recovery of the possession of such property or proceeds thereof;
- (b) the removal of any trustee or manager;
- (c) the appointment of a new trustee or manager;
- (d) vesting any property in a trustee;
- (e) a direction for taking accounts and making certain inquiries;
- (f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;

- (g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (h) a direction to apply the trust property or its income cypres on the line of section 57 if this relief is claimed alongwith any other relief mentioned in this section;
- (i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the Court may deem necessary;
- (j) an order for winding-up of any trust and applying the funds for other charitable purposes;
- (k) an order exonerating the trustees from technical breaches, etc;
- (l) an order varying, altering, amending or superseding any instrument of trust :
- (m) declaring or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or
- (n) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid reliefs or is necessary in the interest of the trust:

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof.

Consent of
Charity
Commissioner
for institution
of suit.

53. (1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 52, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner, after hearing the parties and making such enquiries as he thinks fit is satisfied that there is a *prima facie* case, may, within a period of three months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal. In case the Charity Commissioner fails to grant or refuse his consent to the institution of suit within such period, the consent shall be deemed to have been granted.

(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1), the person aggrieved may institute the suit with the permission of the tribunal.

Power of
Charity
Commissioner
to frame,
amalgamate or
modify
schemes.

54. (1) Notwithstanding anything contained in section 53, where the two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it or where the State Government so directs, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such trust.

(2) Where the Charity Commissioner is of the opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after -

- (a) publishing a notice in the *Official Gazette*, and also if necessary in any newspaper which, in the opinion of the Charity Commissioner, is best circulated to bring to the notice of persons likely to be interested in the trust with a wide circulation in the region in which the trust is registered, and
- (b) giving the trustees of such trusts and all other interested persons due opportunity to be heard,

frame a common scheme for the same.

(3) The Charity Commissioner may, at any time, after hearing the trustees, modify the schemes framed by him under sub-section (1) or sub-section (2).

(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the tribunal under section 97, have the effect as a decree of a court.

55. No suit against an assignee of any immovable property of the public trust for the purpose of following in his hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Suit against assignee not barred by time.

56. (1) Where according to the custom or usage of any business or trade or the agreement between the parties relating to any transaction, any amount is charged to any party to the said transaction or collected under whatever name, as being intended to be used for a charitable or religious purpose, the amount so charged or collected (in this Act called '*dharmada*') shall vest in the person charging or collecting the same as a trustee. *Dharmada.*

(2) Any person charging or collecting such sums shall within three months from the expiration of the year for which his accounts are ordinarily kept, submit the account in such form as may be prescribed, to the Deputy or Assistant Charity Commissioner.

(3) The Deputy or Assistant Charity Commissioner shall have power to make such inquiry as he thinks fit to verify the correctness of the account submitted and may pass order for the disposal of the amount in the manner prescribed.

(4) The provisions of Chapter IV shall not apply to *dharmada*.

57. (1) If upon an application made to him or otherwise, the Charity Commissioner is of the opinion that - Cypres.

- (a) the original object for which the public trust was created has failed,
- (b) the income or any surplus balance of any public trust has not been utilized or is not likely to be utilized,
- (c) in the case of a public trust other than a trust for a religious purpose, it is not in public interest expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the public trust or the object for

which the public trust was created and that the property or the income of the public trust or any portion thereof should be applied to any other charitable or religious object,

- (d) in any of the cases mentioned in sections 11 to 14 or in regard to the appropriation of the *Dharmada* sums held in trust under section 56, the directions of the tribunal are necessary,

the Charity Commissioner shall require the trustees to apply within the prescribed time for directions to the tribunal and the trustees shall comply with such requisition.

- (2) If the trustees fail to make the application as required under sub-section (1) or if there is no trustee of the public trust, the Charity Commissioner shall make an application to the tribunal.

Power of the
tribunal to
hear
application.

58. (1) On the application being made under section 57, the tribunal after hearing the parties and the Charity Commissioner and making an inquiry shall decide the matter and shall give directions. In giving the directions, the tribunal shall, so far as may be expedient, practicable, desirable, necessary or proper in public interest, give effect to the original intention of the author of the public trust or the object for which the public trust was created. If the tribunal is of the opinion that the carrying out of such intention or object is not wholly or partially expedient, practicable, desirable, necessary or proper in public interest, the tribunal may direct the property or income of the public trust or any portion to be applied cypres to any other charitable or religious object. In doing so, it shall be lawful for the tribunal to alter any scheme already settled or to vary the terms of any decree or order already passed in respect to the public trust or the conditions contained in the instrument of the public trust.

- (2) Any decision or order passed by the tribunal under sub-section (1) shall be deemed to be a decree of such court and an appeal shall lie therefrom to the High Court.

Power of
trustee to
apply for
directions.

59. (1) Save as hereinbefore provided in this Act, any trustee of a public trust may apply to the tribunal, within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, for the opinion, advice or direction of the tribunal on any question affecting the management or, administration of the trust property or income thereof, and the tribunal shall give its opinion, advice, or direction, as the case may be, thereon:

Provided that the tribunal shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

- (2) The tribunal, on an application under sub-section (1), may give its opinion, advice or direction thereon after giving notice to the Charity Commissioner. The tribunal, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the application.

- (3) A trustee stating in good faith the facts of any matter relating to the trust in application under sub-section (1) and acting upon the opinion advice or direction of the tribunal given thereon, shall be deemed, as far as his

responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the application was made.

(4) No appeal shall lie against any opinion, advice or direction given by the tribunal under this section.

60. (1) In any suit or legal proceedings in which it appears to the Court that any question affecting a public religious or charitable purpose is involved, the Court shall not proceed to determine such question until after notice has been given to the Charity Commissioner.

Proceedings involving question affecting public charitable or religious purpose.

(2) If upon the receipt of such notice or otherwise the Charity Commissioner makes any application in that behalf, he shall be added as a party of such suit or proceedings.

Explanation.- For the purpose of this section 'Court' means any Civil Court of competent jurisdiction in the State of Gujarat.

CHAPTER IX

SPECIAL PROVISIONS AS RESPECTS RELIGIOUS AND CHARITABLE INSTITUTIONS AND ENDOWMENTS WHICH VEST IN, OR THE MANAGEMENT OF WHICH VEST IN THE STATE GOVERNMENT

61. (1) The provisions of this chapter shall apply to every temple, mosque or endowment created for a public religious or charitable purpose (hereinafter in this chapter referred to as 'the endowment') which vests in, or the management of which vests in, the State Government and which -

Provisions of Chapter IX to apply to certain endowments.

(i) has been registered under the provisions of this Act as, or

(ii) is declared by the State Government by notification in the *Official Gazette*, after such inquiry as it thinks fit, and after previous publication, to be a public trust.

On such declaration such endowment shall be deemed to be a registered public trust for the purposes of this Act and the provisions of Chapter IV relating to the registration of public trusts shall as far as may be apply to the making of entries in the register kept under section 19, provided that such entries shall also conform to the provisions of this Chapter. The entries so made shall be final and conclusive.

(2) The State Government shall, as soon as may be, after the commencement of this Act, publish in the *Official Gazette*, a list of such endowments as are registered as, or declared to be, public trusts, and the State Government may, by like notification and in like manner, add to or delete from such list any endowment entered therein.

Vesting or
transfer of
management
of certain
endowments.

62. The State Government shall, from such date as it determines, and in the manner hereinafter provided, transfer the endowment, or the management thereof to a committee (hereinafter referred to as 'committee') and thereupon such endowment together with all the immovable or moveable property appertaining thereto, or as the case may be, management thereof, shall vest in the members of such committee; and the members of the committee shall be the trustees of such endowment within the meaning and for the purposes of this Act.

Committee of
management.

63. (1) Notwithstanding anything contained in sections 51 and 52 for the purpose of vesting or transferring the management of the endowment under the provisions of this Chapter, to a committee, the State Government shall, by notification in the *Official Gazette*, appoint (under such name as may be specified in the notification) one or more committees, for one or more districts as the State Government may think fit.

(2) The committee shall have power to acquire, hold and dispose of property, subject to such conditions and restrictions as may be prescribed and may sue and be sued in the names of all the members of the committee.

(3) A committee shall consist of not less than five and not more than seven members, and the members in the case of a religious endowment shall, and in any other case may, be appointed from amongst persons professing the religion or belonging to the religious denomination (or any section thereof), for the purposes of which or for the benefit of whom the endowment was founded or is being administered. The members shall be appointed, as far as possible, and in accordance so far as can be ascertained with the general wishes of those who are interested in the administration of such endowment.

Term of
office of
members of
committee.

64. (1) A member shall be appointed to a committee for a period of five years, and shall be eligible for re-appointment.

(2) A member may, by writing under his hand addressed to the State Government, resign his membership of a committee:

Provided that such resignation shall not take effect until the resignation has been accepted by the State Government.

Disqualification
of membership.

65. (1) A person shall be disqualified for appointment, as or for being a member of a committee, if he –

- (i) is a minor;
- (ii) has been convicted by a criminal court of any offence involving moral turpitude;
- (iii) is of unsound mind, and is so declared by a competent court;
- (iv) is an undischarged insolvent;
- (v) has directly or indirectly interest in a lease or any other transaction relating to the property vesting in the committee;
- (vi) is a paid servant of the committee or has any share or interest in a contract for the supply of goods to, or for the execution of any works, or the performance of any service, undertaken by the committee in respect of the endowment;

- (vii) is found to be guilty of misconduct by the State Government; or
- (viii) in the case of a religious endowment ceases to profess the religion or to belong to the religious denomination for which the committee is appointed.

(2) If it appears to the State Government that a member has incurred any of the disqualifications aforesaid, the State Government may, after giving such member an opportunity of showing cause, and after considering any such cause shown, remove such person from membership and the decision of the State Government shall be final.

(3) Notwithstanding anything contained in any other law for the time being in force, a member of the committee shall not be disqualified from being chosen as, and for being a member of, the Gujarat Legislative Assembly or any local authority by reason only of the fact that he is a member of such committee.

66. The State Government may appoint a new member, when a member of a committee --

Power of State Government to appoint new member.

- (a) resigns or dies;
- (b) is for a continuous period of six months absent from India without leave of the Charity Commissioner;
- (c) leaves India for the purpose of residing abroad;
- (d) desires to be discharged;
- (e) refuses to act; or
- (f) is removed by the State Government.

67. (1) The State Government shall, from amongst the members of a committee, appoint a Chairman and shall also appoint a Treasurer.

Chairman and treasurer of committee.

(2) The State Government may direct that the Chairman, Treasurer and other members of the committee may be paid such honorarium or fees and allowances from the Management Fund constituted under section 76 and in such manner as may be prescribed.

68. The committee shall meet at such intervals and follow such procedure in exercising its powers and discharging its duties and functions as may be prescribed; but the day-to-day proceedings and routine business shall be dispatched in accordance with regulations made by it, and approved by the State Government.

Meeting of and procedure for committee.

69. The committee may, by resolution, appoint such sub-committees as it may think fit, and may delegate to them such powers and duties as it specifies in the resolution, and a committee or sub-committee may associate with itself, generally or for any particular purpose, in such manner as may be determined by regulations, any person who is not a member, but whose assistance or advice it may desire, and the person associated as aforesaid shall have the right to take part in the discussions of the committee or sub-committee, relevant to that purpose, but shall not have the right to vote at any meeting thereof.

Power of Committee to appoint sub-committees.

Secretary and
other officers
of committee.

70. (1) The State Government may appoint a Secretary to the Committee.
- (2) The committee may appoint such officers (other than the Secretary) and employees as it may think necessary for the efficient performance of the duties and functions of the committee under this Act:

Provided that no officer or employee, who is paid or is to be paid a salary of over two thousand rupees per men sum shall be appointed by a committee without the previous approval of the State Government.

Terms and
conditions of
service of
Secretary and
other employees.

71. (1) The Secretary, officers and employees shall be appointed on such terms and conditions as may be prescribed by rules, or as the case may be, by regulations made by the committee.

- (2) The salary and allowances of the secretary, officers and employees of a committee shall be paid out of the Management Fund.

General
duties of
committee.

72. (1) Subject to the general and a special orders of the State Government, it shall be the general duty of a committee to manage and administer the affairs of the endowment which vests in, or the management of which vests in it. It shall be the duty of a committee to so exercise the powers conferred and discharge the duties and functions imposed upon it, by or under this Act or under any instrument of trust, or a scheme, for the time being in force relating to such endowment as to ensure that such endowment is properly maintained, controlled and administered and the income thereof is duly applied to the objects and purposes for which it was created, intended or to be administered.

- (2) In particular, but without prejudice to the generality of the foregoing provisions, a committee shall -

- (a) maintain the record containing information relating to the origin income, object and the beneficiaries of every such endowment;
- (b) prepare a budget estimating its income and expenditure;
- (c) make regular payment of salaries and allowances and other sums payable to the Secretary, officers and employees of a committee from such fund as may be prescribed;
- (d) keep separate accounts for each such endowment;
- (e) ensure that the income and property of the endowment are applied to the objects and for the purposes for which such endowment was created intended or is to be administered;
- (f) take measures for the recovery of lost properties of any such endowment;
- (g) institute and defend any suits and proceedings in a court of law relating to such endowment;
- (h) supply such returns, statistics, accounts and other information with respect to such endowment as the State Government may from time to time require;
- (i) inspect, or cause the inspection of the properties of such endowment; and
- (j) generally do all such acts as may be necessary for the proper control, maintenance and administration of such endowment.

73. No act or proceedings of a committee shall be invalid by reason only of the existence of any vacancy amongst its members, or any defect in the constitution thereof. **Act and proceedings not invalidated by reason of vacancy or defect.**
74. The State Government may, from time to time, for the better management or administration of any endowment issue directions to a committee. **Power of State Government to issue directions.**
75. The Charity Commissioner may, with the previous sanction of the State Government, provide for the performance of any duty which a committee is bound to perform under the provisions of this Act, or the rules or directions made or given thereunder, and may direct that the expenses of the performance of such duty be paid by any person who may have from time to time the custody of any fund belonging to the committee. If such duty is in connection with any endowment, the payment shall be made out of the funds belonging to the said endowment. **Power of Charity Commissioner to require duties of committee to be performed and to direct expenses in respect thereof to be paid from fund of committee, etc.**
76. (1) For each managing committee there shall be constituted a fund to be called the "Management Fund" which shall vest in, and be under the control of, the committee. **Management Fund.**
- (2) There shall be placed to the credit of every Management Fund of every managing committee -
- (a) the total balance (whether in cash, securities or in any other form) standing to the credit of any endowment held by the State Government immediately before such endowment or the management thereof was transferred to, and vested in, the members of the committee under section 62.
 - (b) a sum not exceeding ten per cent. of the gross annual income of each endowment transferred to, or placed under the management of, the members of the committee as the committee may, with approval of the State Government, fix in this behalf. In fixing such sum regard shall be had to the gross annual income of the endowment, the average annual expenditure incurred to give effect to the objects and purposes for which the endowment is founded, created, intended or is being administered, the liability, if any, to which the endowment is subject and any other factors which the State Government may either generally or specially specify in the case of any endowment or class of endowments :
- Provided that the State Government may, by rules, provide for exemption for any endowment or class of endowments from the whole sum or any part of such sum;

- (c) the fees charged for inspection of proceedings of the committee, and for copies of records maintained by the committee;
- (d) any other sum which the State Government may, by order, specify in this behalf.

(3) The Management Fund of a managing committee shall, subject to the provisions of this Act and subject to any general or special order of the State Government, be applied to -

- (i) the payment of honorarium, fees and allowances of the Chairman, Treasurer and other members of the committee;
- (ii) the payments of salaries, allowances and other sums payable to the Secretary and other officers and employees of the committee;
- (iii) the payment of any expenses lawfully incurred by the committee in the exercise of its powers and in the performance of its duties and functions as provided by section 72.

(4) The custody and investment of the moneys credited to the Management Fund and disbursement and payment therefrom and the credit of accounts of the Fund shall be regulated in the prescribed manner.

Power to
supersede
committee.

77. (1) If the State Government is of the opinion that a committee is unable to perform or has persistently made default in the performance of, the duties imposed upon it by or under this Act, or has exceeded or abused its powers, the State Government may, by notification in the *Official Gazette* supersede the committee for such period as may be specified in the notification:

Provided that, before issuing a notification under this sub-section, the State Government shall give a reasonable opportunity to the committee to show cause why it should not be superseded and consider the explanations and objections, if any, of the committee.

(2) Upon the publication of a notification under sub-section (1) superseding a committee --

- (a) all the members of the committee shall, as from the date of supersession, vacate their offices as such members;
- (b) all the powers, duties and functions which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the committee, shall during the period of supersession, be exercised and performed by such person or persons as the State Government having regard to the provisions of sub-section (1) of section 65 may direct; and
- (c) all property vested in, or the management of which is vested in, the committee shall during the period of supersession vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may-

- (a) extend the period of supersession for such further period as it may consider necessary, or
- (b) reconstitute the committee in the manner provided in section 63.

78. (1) Notwithstanding anything contained in this Chapter or any other provisions of this Act, or in any judgment, decree, order or scheme of any court, Charity Commissioner or any other authority, where a committee of management has been appointed by the State Government under section 63 in respect of any endowment or endowments, and the State Government is of the opinion that for better management and administration of the endowments, the management of the said endowments should be taken over temporarily by the State Government and then should be governed by a scheme or schemes framed by the Charity Commissioner or should be handed over again to the committee as reconstituted, the State Government may, by notification in the *Official Gazette* , -

Power of removal of members of committee and appointment of Administrator temporarily.

(a) terminate the appointment of all the existing members of the Committee (including Chairman and treasurer), even before the expiry of their term of office of five years, on and from such date as may be specified in the notification, whereupon they shall be deemed to have vacated their office on that date;

(b) appoint a Government officer from time to time, as the Administrator of the committee, for such period not exceeding three years as may be specified in the notification, which may be extended by like notification, from time to time, so however, that the total period shall not exceed five years:

Provided that, if during the said period the committee is reconstituted, the Administrator shall cease to hold his office from the day the committee is reconstituted or as and when any scheme is framed by the Charity Commissioner in respect of any endowment the Administrator shall cease to function in respect of that endowment from the day the scheme comes in operation.

(2) During the period the Administrator is holding his office, all the powers, duties and functions of the committee and its members and sub-committee, if any, under this Act or any other law for the time being in force, shall be exercised, performed and discharged by the Administrator and he shall be deemed to be the sole trustee in respect of the endowments under his management under section 62.

(3) The Administrator may delegate any of his powers, duties and functions to any officer or employee of the committee or with the previous approval of the State Government, to any other Government officer.

(4) The Administrator and any other Government officer to whom he may have delegated any of his powers, duties and functions shall receive such salary and allowances from the Management Fund and be subject to such other conditions of service as the State Government may, by general or special order, determine.

79. (1) The committee may, with the approval of the State Government make regulations not inconsistent with this Act or the rules made thereunder for carrying out its functions under this Act.

Power to make regulations.

(2) In particular, but without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely :-

- (i) dispatch of day-to-day proceedings and routine business of the committee under section 68,

- (ii) the manner in which any person who is not a member of a committee or sub-committee may be associated with such committee or sub-committee and, as the case may be, under section 69,
- (iii) terms and conditions of service of the employees of a committee under section 70.

Non-application of certain provisions of this Act to endowments.

80. Except so far as is expressly provided in the provisions of this Chapter, nothing in sections 20, 21, 22, 23, 117 and 118 shall apply to the endowment to which this Chapter applies.

CHAPTER X

PUBLIC TRUSTS ADMINISTRATION FUND

Public Trusts Administration Fund.

81. (1) There shall be established a fund to be called the Public Trusts Administration Fund. The Fund shall vest in the Charity Commissioner.

(2) The following sums shall be credited to the said Fund, namely :-

- (a) fees leviable under section 20;
- (b) contributions made under section 82;
- (c) the amount from the funds or the portion thereof credited under section 85;
- (d) any sum received from a private person;
- (e) any sum allotted by the State Government or any local authority; and
- (f) any other sum which may be directed to be credited by or under the provisions of this Act or the Inter-State Corporations Act, 1957.

XXXVIII of 1957.

Contribution by public trusts to Public Trusts Administration Fund.

82. (1) Every public trust shall pay to the Public Trusts Administration Fund annually such contribution on such date and in such manner as may be prescribed:

Provided that the contribution prescribed under this section shall –

- (i) in the case of a *dharmada*, be fixed at rates in proportion to the gross annual collection or receipts of the *dharmada*;
- (ii) in the case of other public trusts, be fixed at rates in proportion to the gross annual income of such public trust.

Explanation.- For the purposes of this section, the gross annual income shall include gross income from all sources in a year excluding donations given or offerings made with a specific direction that they shall form part of the corpus of the public trusts:

Provided that the interest or income accruing from such donations or offerings in the years following that in which they were given or made shall be taken into account in calculating the gross annual income.

(2) Notwithstanding anything contained in sub-section (1), on and after the commencement of this Act, every trustee of a public trust liable to pay contribution, shall, while filing a copy of balance sheet and income and expenditure account under sub-section (2) of section 36, pay in advance the whole amount of the annual contribution of the public trust computed at the prescribed rate according to specified percentage of the gross annual income or of the gross annual collection or receipt, as the case may be, as shown in the balance sheet and income and expenditure account, in such manner, and subject to such adjustments to be made after the contribution payable is assessed as may be prescribed.

(3) Notwithstanding anything in the foregoing provisions, the State Government may exempt any public trust or class of public trusts from the whole or any part of the contribution payable under that sub-section in the manner and subject to such conditions, if any, as may be prescribed.

83. (1) If the trustee of a public trust or the person charging or collecting *dharmada* fails to pay the contribution under section 82, he shall be liable to penalties provided in section 86.

Penalties as
recovery of
contribution.

(2) The Charity Commissioner may also make an order directing the bank in which or any person with whom any moneys belonging to the public trust are deposited to pay the contribution from such moneys as may be standing to the credit of the public trust or may be in the hands of such person or may from time to time be recovered from or on behalf of the public trust by way of deposit by such bank or person and such bank or person shall be bound to obey such order. Every payment made pursuant to such order shall be a sufficient discharge to such bank or person from all liability to the public trust in respect of any sum or sums so paid by it or him out of the moneys belonging to the public trust so deposited with the bank or person.

(3) Any bank or person who has been ordered under sub-section (2) to make the payment may appeal to the State Government and the State Government may, after making such inquiry as it thinks fit, confirm, modify or cancel such order.

84. The Public Trusts Administration Fund shall, subject to the provisions of this Act and subject to the general or special order of the State Government, be applicable to the payment of charges for expenses incidental to the regulation of public trusts and generally for carrying into effect the provisions of this Act.

Application of
Public Trusts
Administration
Fund.

85. The custody and investment of the moneys to be credited to the Public Trusts Administration Fund and the disbursement and payment therefrom shall be regulated and made in the prescribed manner.

Custody and
investment of
money.

CHAPTER XI

OFFENCES AND PENALTIES

Penalty. 86. Whoever contravenes any provision of any of the sections mentioned in the first column of the following Table shall, on conviction, for each such offence be punished with fine as shown in the third column of the said Table.

Explanation.- The entries in the second column of the said Table headed 'Subject' are not intended as the definitions of offences described in the sections mentioned in the first column or even as abstracts of those sections, but are inserted merely as references to the subject of the sections, the numbers of which are given in the first column: -

TABLE

Section	Subject	Fine which may be imposed.
(1)	(2)	(3)
		Rs.
Section 20, sub-sections (2) and (5)	Duty of trustee to make an application to the Deputy or Assistant Charity Commissioner for registration of public trust within time.	10,000
Section 20, sub-section (9)	Duty of trustee to send Memorandum of immovable property to certain officers and authorities within time.	2,000
Section 24	Failure to report a change.	10,000
Section 30	Duty of an executor to apply for the registration of a public trust within the time provided for.	10,000
Section 34	Duty to keep regular accounts.	10,000
Section 37	Failure or omission to invest money in public securities.	10,000
Section 83	Failure to pay contribution by a trustee or by a person charging or collecting <i>dharmada</i> .	10,000

87. Any contravention of any of the provisions of this Act or the rules by a trustee or any other person connected with the affairs of the trust or failure to comply with the directions of the Charity Commissioner shall be a cognizable offence and such person shall, on conviction by the competent court be punished with imprisonment for three years. **Offences.**

CHAPTER XII

AMALGAMATION, TRANSFER OR DIVISION OF TRUSTS

88. (1) Subject to the provisions of the rules and the previous sanction of the Charity Commissioner, a trust may by resolution passed by two-thirds majority of the trustees present and voting at a special meeting of the trust held for the purpose, decide- **Amalgamation, transfer or division of trusts.**

- (a) to amalgamate with another trust;
- (b) to transfer its assets and liabilities, in whole or in part, to any other trust;
- (c) to divide itself into two or more trusts; or
- (d) to change its objects.

(2) Where the amalgamation, transfer or division referred to in sub-section (1) involves a transfer of the liabilities of society to any other trust, the Charity Commissioner shall not sanction the resolution of the trust unless he is satisfied that such amalgamation, transfer or division is in the better interest of such trust.

89. (1) Where the Charity Commissioner is satisfied that it is essential in the public interest or for the purpose of securing proper management of any trust that two or more trusts should be amalgamated or that any trusts should be re-organised, then notwithstanding anything contained in section 88 but subject to the provisions of this section, the Charity Commissioner may, after consulting such trusts, may by order published in the *Official Gazette*, provide for the amalgamation of these trusts into a single trust or, as the case may be, for the re-organisation of that trust, with such constitution, property rights, interests and authorities, and such liabilities, duties and obligations as may be specified in the order. Such order may also provide for the constitution of the Committee of Management or any other committees of such amalgamated, or re-organised trust and the persons who shall be, or continue to be the officers of such trust and the period after which such committee or committees may be re-constituted. **Power to direct amalgamation and re-organisaion of trusts in public interest.**

(2) No order shall be made under this section unless,-

- (a) a copy of the draft of the proposed order has been sent to the trust or each of the trusts concerned;
- (b) the Charity Commissioner has considered suggestions and objections if any received either from the trust or from any member or class of members thereof within such period (not being less than one month from the date on which the copy of the order as aforesaid was received by the trust) as the Charity Commissioner may fix in that behalf,

and has, if necessary, modified the same in the light of such suggestions and objections.

(3) The order referred to in sub-section (1) may contain such incidental, consequential and supplemental provisions as may, in the opinion of the Charity Commissioner, be necessary to give effect to the amalgamation or re-organisation.

90. Where two or more trusts have been amalgamated, or a trust has been divided, the registration of such societies or society, as the case may be, shall be cancelled on the date of registration of the new trust or trusts so formed.

Cancellation of
registration of
amalgamated or
divided trusts.

91. (1) The Charity Commissioner shall, make an order cancelling the registration of a trust if it transfers the whole of its assets and liabilities to another trust or amalgamates with another trust, or divides itself into two or more trusts, or if its affairs are wound up or it has not commenced charitable activities within a reasonable time of its registration or has ceased to function.

(2) An order made under sub-section (1) shall be published in the *Official Gazette*.

(3) The trust shall, from the date of such order of cancellation, be deemed to be dissolved and shall cease to exist as a public trust.

Cancellation of
registration.

92. When a trust-

Direction by
Charity
Commissioner.

- (i) makes persistent default in submitting its accounts continuously for a period of ten years;
- (ii) fails to make contribution to the Public Trust Administration Fund for a period of ten years;
- (iii) persistently fails to comply with the directions of the Charity Commissioner;
- (iv) fails to carry out the purposes for which it was created;
- (v) fails to put the immovable properties to the use of the purposes of the trust for a period of ten years,

the Charity Commissioner may, after affording an opportunity of hearing to the trust, direct that -

- (a) such trust shall be merged with the trust having similar religious or charitable purposes;
- (b) such trust properties shall be forfeited to the State Government and shall, subject to the directions of the State Government, be utilized for the purposes for which such trust was created; or
- (c) such trust shall be de-registered.

93. (1) When the State Government finds on application of any interested party or on recommendation by the Charity Commissioner that a trust -

Direction by
State
Government
in case of
default .

- (a) does not comply with the directions of the Charity Commissioner;
- (b) makes persistent default in observing the provisions of this Act;
- (c) carries on the activities other than the purposes for which it was created; or
- (d) fails to put the immovable properties to the use of the purposes of the trust for a period of ten years,

the State Government may, after affording an opportunity of hearing to the trust, appoint, by notification published in the *Official Gazette*, any Gazetted Officer as the administrator of the said trust for a period of one year by publishing a notification in the *Official Gazette*.

(2) The administrator so appointed shall, subject to the control of the Charity Commissioner and to such instructions as he may from time to time give, have powers to exercise all or any of the functions of the trust, and take all such actions as may be required in the Interest of the trust.

(3) All acts done or purported to be done by the administrator during the period when the affairs of the trust are carried on by such administrator shall be binding on the trust.

CHAPTER XIII

FILING OF RETURNS

94. (1) Every public trust shall file following returns at the end of every quarter commencing from the month of April of the year with the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where such trust is registered, namely:-

Filing of
returns by
public trusts .

- (i) the statement showing gross income in the quarter from all sources and requirement of payment of contribution to the Public Trusts Administration Fund thereon;
- (ii) the statement showing gross income in the quarter from sources outside the State of Gujarat;
- (iii) the statement showing gross income in the quarter from sources outside India;
- (iv) the statement showing particulars of change that occurred during the quarter in any of the entries of such public trust in the register of public trusts maintained under section 23 alongwith the particulars of report made therefor to and decision of the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office on such report;
- (v) the statement showing particulars of any sale, mortgage, exchange, or gift or alienation in any manner of immovable property or any lease of immovable property for a period exceeding three years made by the trust alongwith the particulars of prior permissions for alienation granted by the Charity Commissioner therefor.

(2) The Deputy or Assistant Charity Commissioner shall forward the consolidated statement of the reports made by public trusts registered at the Public Trusts Registration Office under sub-section (1) to the Charity Commissioner alongwith his recommendations.

Furnishing
returns by
Charity
Commissioner.

95. The Charity Commissioner shall furnish the following returns to the State Government every quarter commencing from month of April of the year, namely:-

- (i) the return showing details of contributions receivable by the Public Trusts Registration Offices under its administrative control during the quarter;
- (ii) the return showing details of actual contributions received by such Public Trusts Registration Offices during the quarter;
- (iii) the return showing break up details of change reports decided by the Deputy or Assistant Charity Commissioners during the quarter, the details of change reports pending at the end of the quarter and the reasons for such pendency;
- (iv) the return showing particulars of the prior permissions sought by the public trusts in the quarter for alienation of trust properties and the details of the decisions taken thereon during the quarter along with the details of the cases pending for granting prior permissions for alienation of trust properties and the reasons therefor;
- (v) the return showing the breach of, contravention of or non-observance of the provisions of this Act by the public trusts in the quarter and his recommendations thereon;
- (vi) the return showing the details of the schemes settled for the public trusts;
- (vii) the return showing the number of applications received for seeking permissions to file suits and the number of applications decided during the quarter.

(2) The Charity Commissioner may also furnish all or any of the returns mentioned in sub-section (1) as and when ~~he is of the opinion~~ that circumstances exist for furnishing such return to the State Government.

(3) The State Government shall consider the returns furnished by the Charity Commissioner under sub-section (1) or (2) and may issue necessary directions to the Charity Commissioner or take necessary corrective measures for effective implementation of this Act.

CHAPTER XIV

APPEALS

96. (1) The State Government may, by notification in the *Official Gazette*, constitute one or more Gujarat Public Trusts Tribunal or Tribunals.

Constitution of Gujarat Public Trusts Tribunal and appeals to Gujarat Public Trusts Tribunal.

(2) The State Government shall appoint a person who has been or is qualified to be a District Judge (Super Time Scale) to be the President of the Tribunal and also appoint such other persons who had been or who are qualified to be appointed as Senior Civil Judges as Members of the Tribunal.

(3) The tribunal shall follow such procedure as may be prescribed.

V of 1908.

(4) The tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely:-

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses ;
- (d) such other matters as may be prescribed.

XLV of 1860.

(5) Every inquiry or investigation by the tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

XXXVI of 1963.

(6) The tribunal shall be deemed to be a court for the purpose of section 5 of the Limitation Act, 1963.

(7) The decision of the tribunal shall be final, and no suit shall lie in any civil court in respect of the matters decided by it.

97. (1) An appeal against the findings or order of the Charity Commissioner, Joint Charity Commissioner, Deputy or, as the case may be, the Assistant Charity Commissioner may be filed to the tribunal in the following cases, namely:-

Appeal against findings of Charity Commissioner, and other officers.

- (a) the findings and order, if any, under section 22;
- (b) the findings under section 24;
- (c) the determination under section 27;
- (d) the decision of the Charity Commissioner under section 38;
- (e) the order framing scheme under section 54;
- (f) an order confirming or amending the record under section 108.

(2) No appeal shall be maintainable after the expiration of thirty days from the recording of the findings, or, as the case may be, the passing of the order.

(3) The tribunal shall also discharge the following functions, namely:-

- (a) deciding question in relation to trust under sub-section (2) of section 27;

- (b) appointment of new trustee under section 51;
- (c) giving direction under clause (iii) of section 52;
- (d) giving consent under section 53;
- (e) deciding application of trustee under section 57;
- (f) deciding application of trustee under section 59.

(4) No party to such appeal shall be entitled to produce additional evidence, whether oral or documentary, before the tribunal unless the Deputy or Assistant Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted or the tribunal requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause the tribunal thinks it necessary to allow such additional evidence :

Provided that whenever additional evidence is allowed to be produced by the tribunal, the tribunal shall record the reason for its admission.

(5) The tribunal may, after hearing the appellant or any person appearing on his behalf for reasons to be recorded in writing either annul, reverse, modify or confirm the findings of the order appealed against or he may direct the Charity Commissioner, Joint Charity Commissioner, Deputy or, as the case may be, the Assistant Charity Commissioner to make further inquiry or to take such additional evidence as he may think necessary.

Revision by
State
Government.

98. The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken by the Charity Commissioner, Joint Charity Commissioner, Deputy Charity Commissioner or, as the case may be, the Assistant Charity Commissioner under the provisions of this Act and against which no appeal has been preferred under any of the provisions of the Act, for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided that the State Government shall not record or pass any orders without giving the party affected thereby an opportunity of being heard.

Explanation: The Charity Commissioner, Joint Charity Commissioner, Deputy or, as the case may be, the Assistant Charity Commissioner are not parties affected under the proviso.

Review by
tribunal.

99. (1) When the State Government has, on its own motion or otherwise, reason to believe that an appeal decided by the Tribunal was filed -

- (i) by a person not affected by the decision of the Charity Commissioner, Joint Charity Commissioner, Deputy Charity Commissioner or as the case may be, the Assistant Charity Commissioner; or
- (ii) on frivolous or flimsy grounds to defeat the power of the State Government under section 98,

it may make an application to the tribunal for review of the order passed by the tribunal.

(2) On an application filed by the State Government, the tribunal shall, after hearing the parties pass such orders as it may deem fit.

- 100.** In holding inquiries under this Act, the officer shall have the same powers as are vested in Courts in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit :-
- V of 1908.**
- (a) proof of facts by affidavits,
 - (b) summoning and enforcing the attendance of any person and examining him on oath,
 - (c) ordering discovery and inspection, and compelling the production of documents,
 - (d) issuing of commissions.
- 101.** In any proceedings under this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such person on such terms and conditions as the officer holding the inquiry may order.
- 102.** All inquiries and appeals under this Act shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.
- 103.** In computing the period of appeal under this Act, the provisions of sections 4, 5, 12, and 14 of the Limitation Act, 1963 shall apply to the filing of such appeals.
- 104.** Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 shall apply to all proceedings before the tribunal under this Act.
- 105.** All sums payable under sections 20, 22, 45, 107, 110 or 112 or under any rule, if not paid, shall be recoverable as an arrears of land revenue.
- Officers holding inquiries to have powers of civil court.**
- Power of Inquiry Officer to join persons as party of proceedings**
- Inquiries to be judicial inquiries.**
- Limitation.**
- Civil Procedure Code to apply to proceedings before tribunal under this Act.**
- Recovery of sums.**

CHAPTER XV

MISCELLANEOUS

- 106.** The Charity Commissioner, Joint Charity Commissioners, the Deputy and Assistant Charity Commissioners, the Director and Assistant Director of Accounts, Inspectors and other subordinate officers appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.
- XLV of 1860.**
- Charity Commissioner and other officers to be public servants.**

- Recovery of costs and expenses incurred on legal proceedings by Charity Commissioner, etc.** 107. All costs, charges and expenses incurred by the Charity Commissioner, the Joint Charity Commissioner, the Deputy or Assistant Charity Commissioners as a party to, or in connection with, any legal proceeding in respect of any public trust shall notwithstanding anything contained in section 109, be payable out of the property or funds of the public trust, except in cases where the liability to pay the same has been laid on any party or other person personally and the right to reimbursement under this section has been negated in express terms.
- Power to finalise reconstructed record.** 108. (1) Whenever any record kept in any Public Trusts Registration Office is damaged or destroyed due to any cause whatsoever and is reconstructed, the Deputy or Assistant Charity Commissioner may, by notice in the prescribed form published in the *Official Gazette*, and also in the newspapers with wide circulation in the region concerned, announce the fact of the reconstruction of the record, and call upon all persons having interest in the public trust which are entered in such reconstructed record to show cause in writing within a period of thirty days from the publication of the notice in the *Official Gazette*, why such record should not be treated as final and conclusive. A copy of such notice may be sent also to the trustees of such public trusts.
- (2) On the expiry of the period of thirty days aforesaid, the Deputy or Assistant Charity Commissioner or the Joint Charity Commissioner shall, after hearing the trustees and persons having interest, if any, after duly considering the objections and documents produced, if any, and if necessary, after making inquiry, record his findings with the reasons therefor, and either confirm or amend the record including any entries therein accordingly. The record so confirmed or amended shall, subject to the provisions of this Act, be final and conclusive, as if such record was made or maintained under this Act.
- Costs of proceedings before Courts including High Court.** 109. The costs, charges and expenses of and incidental to any suit, appeal or application to any court including the High Court under this Act shall be in the discretion of the Court, which may, subject to the provisions of section 107, direct the whole or any part of such costs, charges and expenses to be met from the property or funds of the public trust concerned or to be borne and paid in such manner and by such persons as it thinks fit.
- Costs of proceedings before Charity Commissioner, etc.** 110. The costs, charges and expenses of and incidental to any appeal, application or other proceeding before the Charity Commissioner, the Joint Charity Commissioner, the Deputy or Assistant Charity Commissioner shall be in his discretion and he shall have full power to determine by whom or out of what property or funds of the public trust and to what extent such costs, charges and expenses are to be paid.
- Cancellation of registration of public trust.** 111. The Deputy or Assistant Charity Commissioner, as the case may be, may after due inquiry and after recording reasons in writing in that behalf, cancel the registration of any trust, -
- (i) when the whereabouts of the trustees and of the properties of the trust are not known; or
 - (ii) where one trust is merged or amalgamated into another trust and the merged or amalgamated trust loses its entity under section 89.

112. (1) If in an inquiry under the provisions of this Act, the Charity Commissioner, the Joint Charity Commissioner or the Deputy or Assistant Charity Commissioner is of the opinion that the application on which such inquiry was commenced was either frivolous or vexatious, the Charity Commissioner, the Joint Charity Commissioner or the Deputy or Assistant Charity Commissioner, as the case may be, at the request of person against whom such application was made (hereinafter referred to as 'the opponent') call upon the person making the application (hereinafter referred to as 'applicant') to show cause why the applicant should not pay compensation to the opponent and if the applicant is not present, direct the issue of summons to him to appear and show cause as aforesaid.

Compensatory costs for frivolous or vexatious proceedings before Charity Commissioner, etc.

(2) If the Charity Commissioner, the Joint Charity Commissioner or the Deputy or Assistant Charity Commissioner, as the case may be, is satisfied that the application was either frivolous or vexatious, he may, after recording reasons, order that compensation of such amount not exceeding five thousand rupees as he may determine be paid by the applicant to the opponent.

Guj. 4 of 2004.

113. Notwithstanding anything contained in the Gujarat Court-Fees Act, 2004, the documents described in columns 1 and 2 of Schedule appended hereto shall bear a court-fee stamp of the value specified in column 3 thereof.

Court fees to be paid as prescribed by Schedule.

114. Save as expressly provided in this Act, no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer under this Act, and in respect of which the decision or order of such officer has been made final and conclusive.

Bar of Jurisdiction.

115. No suits, prosecutions or other proceeding shall be instituted against the State Government or any officer in respect of anything in good faith done or purporting to be done under this Act.

Indemnity.

116. No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try an offence punishable under this Act.

Trial of offences under this Act.

117. No prosecution for an offence punishable under this Act shall be instituted without the previous sanction of the Charity Commissioner.

Previous sanction of Charity Commissioner necessary for prosecution.

118. (1) A legal practitioner shall not be entitled to appear before the Charity Commissioner, Joint Charity Commissioner, Deputy Charity Commissioner or, as the case may be, the Assistant Charity Commissioner on behalf of any public trust in any proceeding under this Act, save with the previous sanction of the Charity Commissioner.

Previous sanction of Charity Commissioner necessary for appearance.

(2) No officer or servant appointed under the provisions of this Act shall, after ceasing to be such officer or servant –

- (i) associate himself in any manner whatsoever with any public trust;
- (ii) seek employment or office under any public trust;
- (iii) represent any public trust in any proceeding before the Charity Commissioner, Joint Charity Commissioner, Deputy Charity Commissioner or, as the case may be, the Assistant Charity Commissioner.

Power to
make rules.

119. (1) The State Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

- (a) the qualifications of the Director and Assistant Directors of Accounts, Inspectors and the officers appointed under section 7;
- (b) the powers, duties and functions of the officers other than the Charity Commissioner, Deputy and Assistant Charity Commissioner appointed under this Act in addition to those provided for in this Act;
- (c) the conditions of service of all officers specified under section 9;
- (d) the limits of regions and sub-regions to be prescribed under section 16;
- (e) the books, indices and registers to be kept and maintained in a Public Trusts Registration Office, and the particulars to be entered in such books, indices and registers under section 19;
- (f) the form in which an application for the registration of a public trust is to be made and the fees to be paid for the same, the other particulars to be entered therein and the manner in which an application for such registration to be signed and verified and the value and kind of trust property in respect of which it shall not be necessary to give particulars and the form of Memorandum and the manner in which such Memorandum to be signed and verified under section 20;
- (g) the manner in which an inquiry has to be made by the Deputy or Assistant Charity Commissioner under sections 21 and 44;
- (h) the form in which the trustee has to make a report regarding the change under sub-sections (1) and (2) of section 24, and the manner of holding an inquiry under sub-section (3) of the said section;
- (i) the book in which the Deputy or Assistant Charity Commissioner shall make an entry under section 25;
- (j) the form of memorandum to be sent by the Deputy or Assistant Charity Commissioner under section 29;
- (k) the amount of annual income of a public trust exceeding which it is liable to prepare and submit budget; and the forms of such budget, under sub-section (1) section 33;

- (l) the form of account and particulars to be entered in the accounts under section 34 and the fees to be paid for special audit under section 35(4);
- (m) the manner in which the Charity Commissioner shall communicate his decision under sub-section (2) of section 38;
- (n) the form register of movable or immovable properties of public trust under sub-section (1) of section 40;
- (o) the form of register to be kept under sub-section (4) of section 47;
- (p) the manner of making an application to frame the scheme under sub-section (1) of section 54;
- (q) the form of account to be submitted under sub-section (2), and the manner of passing order under sub-section (3) of section 56;
- (r) the time within which trustees may apply to the tribunal for directions under sub-section (1) of section 57;
- (s) the conditions and restrictions subject to which the committee shall deal with the property under sub-section (2) of section 63;
- (t) the honorarium or fees and allowances to be paid to the Chairman, treasurer and members of a committee under sub-section (2) of section 67 and the manner in which such honorarium or fees and allowances shall be paid;
- (u) the interval at which a committee shall meet and the procedure it shall follow under section 68;
- (v) the terms and conditions as to service on which secretary and officers of a committee may be appointed under section 71;
- (w) the fund from which the sums payable to Secretary, officer and employee of committee under clause (c) of sub-section (2) of section 71;
- (x) the rules to exempt any sum of endowment or class of endowments under sub-section (2)(b) of section 76 and the manner in which the custody and investment of and the disbursement and payment from the Management Fund and the credit of accounts of the Fund shall be regulated under section 76;
- (y) the date on which and the manner in which every public trust shall pay the annual contribution under section 82 and the deductions to be allowed under the Explanation to sub-section (1) of that section, and the manner of obtaining the decision of State Government on whether or not, a trust falls in any of the exempted class of public trusts under sub-section (3) of that section;
- (z) the manner in which the custody and investment of the money to be credited to the Public Trusts Administration Fund and the disbursement and payment therefrom under section 85;
- (za) the procedure to be followed by the tribunal under sub-section (3) and the other powers of the tribunal under clause (d) of sub-section (4) of section 96;
- (zb) the form of notice in respect of reconstructed record under sub-section (1) of section 108;
- (zc) any other matters which are to be or may be prescribed under this Act.

(3) All rules made under this section shall be subject to the condition of previous publication :

Provided that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this section.

(4) All rules made under this Act shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made, and shall be subject to such rescission or modifications as the State Legislature may make during the session in which they are so laid or the session immediately following. Any rescission or modifications so made shall be published in the *Official Gazette*, and shall thereupon take effect on and from the date of their publication.\

Repeal and
savings.

120. (1) The Bombay Public Trusts Act, 1950 (hereinafter referred to as "the said Act") as applicable to the State of Gujarat is hereby repealed.

Bom. XXIV of
1950.

(2) Save as otherwise provided in this section, such repeal shall not in any way affect -

- (a) the previous operation of the said Act or anything duly done thereunder;
- (b) any right, privilege, obligation or liability already acquired, accrued and incurred under the said Act;
- (c) any penalty or punishment incurred in respect of any offence committed under the said Act;
- (d) any inquiry, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation, liability, penalty or punishment as aforesaid and such inquiry, legal proceedings or remedy may be instituted, continued or enforced and any such penalty and punishment may be imposed as if this Act had not been passed :

Provided that anything done or any action taken under the said Act shall, in so far as it is not inconsistent with the provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

(3) All public trusts registered or deemed to be registered under the said Act, the registration on which was in force immediately before the commencement of this Act, shall on such commencement be deemed to be registered under this Act.

(4) All proceedings pending before the Gujarat Revenue Tribunal under the said Act on the date of commencement of this Act shall stand transferred to the tribunal having jurisdiction.

Power to
remove
difficulty.

121. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by an order published in the *Official Gazette*, do any thing not inconsistent with the provisions of this Act which appears to it to be necessary or expedient for the purpose of removing the difficulty :

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

SCHEDULE
(See section 113)

Section	Description of Documents	Value Rs.
(1)	(2)	(3)
20 (2)	Application for the registration of a Public Trusts.	50/-
24 (1)	Reports of any change or proposed change in any of the entries recorded in the register kept under section 19.	10/-
27 (1)	Application of any person having interest in a Public trust to the Charity Commissioner to determine which of the Deputy or Assistant Charity Commissioners shall proceed with an inquiry under section 20 or 24 in regard to any public trusts.	20/-
30	Application by the executor of a will for the registration of a public trust created by such will	50/-
51	Application to the tribunal by the Charity Commissioner or any person having interest in a public trust or any trustee of public trust for the appointment of a new trustee or for the vesting of property or for both	100/-
53	Application to the Charity Commissioner for consent to file a suit of the nature specified in section 52.	100/-
54	Application to the Charity Commissioner for framing, amalgamating or modifying scheme.	100/-
57	Application to the tribunal for direction.	100/-
59	Application for opinion, advice or direction of the tribunal.	100/-
83	Appeal to the State Government against the order of the Charity Commissioner for the payment of contribution by bank or person from the money standing to the credit of the public trust with such bank or person.	100/-
97	Appeal to the tribunal against the finding of Charity Commissioner, Joint Charity Commissioner, Deputy or Assistant Charity Commissioner.	100/-
	<i>Mukhtarnama</i> or <i>Wakalatnama</i> when presented for the conduct of any inquiry, appeal or other proceeding to the Charity Commissioner, or the Deputy or Assistant Charity Commissioner.	3/-
	Application to the Charity Commissioner or the Deputy or Assistant Charity Commissioner for copies under the Act.	10/-
	Any other application or petition presented to the Charity Commissioner or the Deputy or Assistant Charity Commissioner.	2/-

STATEMENT OF OBJECTS AND REASONS

The Bombay Public Trusts Act, 1950 was adapted by the State of Gujarat on its formation on 1st May, 1960. It has been the policy of the State Government to convert the existing Bombay Acts into the Gujarat Acts and with a view to carrying out the intention of the Government and also to regulate and to make the working of the Charity Organization and the administration of the public trusts more effective and to remove certain infirmities, it is considered necessary to enact the law of its own relating to the public trusts. This Bill seeks to achieve the aforesaid objects.

The following notes on clauses explain the important provisions of the Bill: -

Clause 1.- This clause provides for short title, extent and commencement.

Clause 2.- This clause defines certain terms used in the Bill.

Clauses 3, 4 and 5.- These clauses provide for the appointment of the Charity Commissioner and Joint Charity Commissioner and qualifications for appointment to such posts..

Clause 6.- This clause provides for the appointment of the Deputy Charity Commissioner and Assistant Charity Commissioner and qualifications for such appointment.

Clause 7.- This clause provides for the appointment of the Director of Accounts, Assistant Director of Accounts, Inspectors and other subordinate officers in the Charity organisation and qualifications for such appointment.

Clause 8 and 9.- These clauses provide that the Charity Commissioner and other officers of the Charity organisation will be the employees of the State Government and also provides for payment of pay, allowances and pension of the Charity Commissioner and other officers and employees of the Charity organisation on reimbursement basis from the Public Trusts Administration Fund.

Clause 10.- This clause empowers the State Government to delegate its powers and functions under the Act to Charity Commissioner and other officers.

Clause 11.- This clause describes the charitable purposes.

Clauses 12, 13, 14 and 15.- These clauses provide that public trust will not be void on the grounds of uncertainty or for non-charitable or non-religious purpose, or on the ground of absence of obligation, or on the ground of failure to perform specific object.

Clauses 16 and 17.- These clauses provide for formation of regions and sub-regions by the State Government and for setting up of a Public Trust Registration Office for region and sub-region.

Clause 18.- This clause provides for the appointment of the Deputy Charity Commissioner or Assistant Charity Commissioner by the State

Government to be in-charge of one or more Public Trust Registration offices.

Clause 19.- This clause provides for maintaining books, indices and other registers by the Deputy or Assistant Charity Commissioner.

Clauses 20 and 21.- These clauses provide for the registration of public trust and inquiry to be carried out for the purpose of grant of registration of the public trust.

Clause 22.- This clause provides for making an order on findings of the Deputy or Assistant Charity Commissioner and for the payment of fee for registration of the public trust.

Clause 23.- This clause provides for entries to be made in the Register kept under clause 19 in accordance with the findings recorded by the Deputy or Assistant Charity Commissioner under clause 22 or in appeal final decision of the competent authority.

Clause 24.- This clause provides for change in the entries recorded in the Register maintained under clause 19, and also to hold inquiry for verification of correctness of the entries made in the register.

Clause 25.- This clause provides for procedure to be adopted by the Deputy or Assistant Charity Commissioner where the trust property is situated in several regions or sub-regions.

Clause 26.- This clause bars the Deputy or Assistant Charity Commissioner to proceed with an inquiry under clauses 21 and 24 with regard to any public trust which has already been registered in any other region or sub-region.

Clause 27.- This clause provides that inquiry under sections 21 and 24 regarding public trust shall not be held by more than one Deputy or Assistant Charity Commissioner.

Clause 28.- This clause provides for entries to be made or amended in the register kept under section 19 in accordance with the decision of the competent court or the Tribunal.

Clause 29.- This clause provides that copy of entries relating to immovable property shall be sent to the Sub-Registrar, the revenue and the local authorities.

Clause 30.- This clause provides for registration of a public trust which is created by a will.

Clause 31.- This clause provides that it shall be deemed to have notice of the particulars of immovable properties entered into Register kept under section 19 where a person acquires the immovable property belonging to a public trust.

Clause 32.- This clause bars the right to file a suit on behalf of the public trust, which is not registered. It provides that the Charity Commissioner shall be the necessary party in any suit or proceeding relating to the public trust before any court, Tribunal or other authority. Any suit or

proceeding decided without joining the Charity Commissioner as party shall be null and void.

Clauses 33, 34 and 35.- These clauses provide for preparation of budget by certain public trusts; and also provide for maintenance of accounts by the public trusts and balancing and auditing of accounts thereof.

Clause 36.- This clause casts duty on the Auditor to prepare balance- sheet, income and expenditure account and to report irregular, illegal or improper expenditure or failing to recover moneys belonging to the public trust to the Charity Commissioner.

Clause 37.- This clause provides for investment of public trust moneys.

Clause 38.- This clause provides for alienation of immovable property of the public trust with the prior permission of the Charity Commissioner.

Clause 39.- This clause provides for powers and duties of the trustees with respect to administration and application of the fund for the purposes and objects of the public trust.

Clause 40.- This clause provides for the maintaining a register by the public trust of movable and immovable property.

Clause 41.- This clause provides that the Charity Commissioner and other officers shall have power to enter and inspect property belonging to the public trust and to call for or inspect proceedings of trustees and also call for return, statement, account and report which he may deem fit.

Clause 42.- This clause provides for submission of the explanation by the trustee on the report of the Auditor under section 36 or of inspection under section 41 with respect to allegation of negligence, breach of trust, misappropriation or misconduct of trustees.

Clause 43.- This clause provides that the Deputy or Assistant Charity Commissioner shall send the report referred to in clause 42 to the Charity Commissioner.

Clause 44.- This clause provides for the action to be taken by the Charity Commissioner after considering the report made to him under clause 43.

Clause 45.- This clause empowers the Charity Commissioner to make an order or surcharge for the loss caused to the public trust by any person and also provides that such an order shall be final and shall be deemed to be a decree of the Court.

Clause 46.- This clause empowers the Charity Commissioner to issue directions to the trustee and other persons.

Clause 47.- This clause empowers the Charity Commissioner to issue directions subject to the general or special order of the State Government to provide for essential medical facilities to the weaker sections and indigent persons in the hospital run by the public trust.

Clause 48.- This clause empowers the Charity Commissioner or Deputy or Assistant Charity Commissioner to institute an inquiry on receipt of a complaint in writing from any persons having interest in the public trust or on receipt of direction from the State Government.

- Clause 49.-** This clause provides that the Charity Commissioner may sue or be sued in his name and be competent to acquire, hold and dispose of property, etc.
- Clause 50.-** This clause provides that the Charity Commissioner shall be the Treasurer of Charitable Endowments under the provisions of the Charitable Endowments Act, 1890.
- Clause 51.-** This clause empowers the Tribunal to appoint new trustees in certain circumstances.
- Clause 52.-** This clause provides institution of suit in the court to obtain a decree for reliefs referred to therein.
- Clause 53.-** This clause provides for obtaining the prior consent of the Charity Commissioner for institution of suit by the person having interest in the public trust.
- Clause 54.-** This clause empowers the Charity Commissioner to frame, amalgamate or modify scheme of the public trust in the interest of the proper management or administration of a public trust.
- Clause 55.-** This clause provides that a suit against an assignee for valuable consideration shall not be barred by time.
- Clause 56.-** This clause provides for the transaction made by way of 'Dharmada'.
- Clause 57.-** This clause provides that if in the opinion of the Charity Commissioner, the public trust has failed of achieve the original object, the income or any surplus balance of any public trust has not been utilized, or it is not in public interest, practicable, desirable, necessary or proper to carry out the original intention of the author of the public trust and that the property or the income of the public trust or any portion thereof should be applied to any other charitable or religious object, the directions of the Tribunal are necessary, he shall require the trustees to apply for directions to the Tribunal.
- Clause 58.-** This clause provides for Tribunal's power to hear an application made under clause 57 and to give appropriate directions.
- Clause 59.-** This clause provides that the trustee may apply for the opinion, advice or direction of the Tribunal with respect to the management or administration of trust property or income thereof and empowers the Tribunal to give its opinion, advice or directions.
- Clause 60.-** This clause prohibits the Court to proceed with the matter until the notice is given to the Charity Commissioner wherein the proceeding involves the question of public religious or charitable purpose.
- Clause 61.-** This clause provides that the provisions of Chapter IX shall apply to certain temples, mosques or endowments created for public religious or charitable purpose, which vest in the State Government.

- Clause 62.-** This clause empowers the State Government for vesting or transferring of management of certain endowments into or in a Committee.
- Clause 63.-** This clause empowers the State Government to appoint a Committee for management of the public trust transferred to it or vested in it under section 62 and provides for the power of the Committee.
- Clause 64.-** This clause provides for term of office of members of the Committee appointed under clause 63.
- Clause 65.-** This clause prescribes disqualifications for appointment of members of the Committee.
- Clause 66.-** This clause empowers the State Government to appoint a new member of the Committee in certain circumstances.
- Clause 67.-** This clause empowers the State Government to appoint the Chairman and the Treasurer of the Committee.
- Clause 68.-** This clause provides for the meeting and procedure for transaction of business of the Committee.
- Clause 69.-** This clause provides that the Committee shall have power to appoint sub-committee for general or particular purpose.
- Clause 70.-** This clause empowers the State Government to appoint the Secretary of the Committee and provides for the powers of Committee to appoint other officers and employees of the Committee.
- Clause 71.-** This clause provides for terms and conditions of the service of the Secretary and other employees of the committee.
- Clause 72.-** This clause provides for general duty, powers and functions of the Committee.
- Clause 73.-** This clause provides that no act of a committee shall be invalid on the ground of vacancy or defect.
- Clause 74.-** This clause empowers the State Government to issue directions for better management or administration of the endowment.
- Clause 75.-** This clause provides for the duties to be performed by the Committee and payment of expenses incurred for performance of such duties.
- Clause 76.-** This clause provides for creation of management fund for every managing committee and its utilisation.
- Clause 77.-** This clause empowers the State Government to supersede a committee for its inability to perform or persistent default in performing duties.
- Clause 78.-** This clause provides for removal of members of the committee and appointment of Administrator.
- Clause 79.-** This clause empowers the Committee to make regulations for carrying out its business, association of a person who is not member of Committee, terms and conditions relating to service of employees of the Committee, etc.

- Clause 80.-** This clause provides for non-application of certain provisions of this Bill to the endowments to which chapter IX applies.
- Clause 81.-** This clause provides for establishment of the Public Trusts Administration Fund.
- Clause 82.-** This clause provides for contribution to be paid by a public trust in the Public Trusts Administration Fund.
- Clause 83.-** This clause provides for penalty for failure to pay the contribution under section 82 and trustees shall be liable to penalties provided in clause 86.
- Clause 84.-** This clause provides for an application for payment of charges incidental to regulation of public trusts from the Public Trusts Administration Fund and for carrying out the provisions of this Bill.
- Clause 85.-** This clause provides for custody and investment of money of the Public Trusts Administration Fund.
- Clause 86.-** This clause prescribes penalty for the offences under sections 20, 24, 30, 34, 37 and 83.
- Clause 87.-** This clause prescribes penalty for the rest of the offences for contravention of the provisions of Act and rules made thereunder.
- Clause 88.-** This clause provides for amalgamation, transfer or division of public trusts.
- Clause 89.-** This clause provides for power to direct amalgamation and re-organization of trusts in public interest.
- Clause 90.-** This clause provides for cancellation of registration of amalgamated or divided trusts.
- Clause 91.-** This clause provides for cancellation of registration of trust.
- Clause 92.-** This clause provides for power of Charity Commissioner to give directions to trusts.
- Clause 93.-** This clause provides for power of the State Government to give directions in case of default.
- Clause 94.-** This clause provides for filing of quarterly returns by public trusts to the Deputy or the Assistant Charity Commissioner.
- Clause 95.-** This clause provides for furnishing of returns by Charity Commissioner.
- Clause 96.-** This clause provides for constitution of one or more Gujarat Public Trusts Tribunal or Tribunals and its powers and also provides the procedure of the Tribunal.
- Clause 97.-** This clause provides for appeals against findings of Charity Commissioner and other officers.
- Clause 98.-** This clause provides for power of revision by State Government.
- Clause 99.-** This clause provides for power of review by Tribunal.

- Clause 100.-** This clause provides that officers holding inquiries shall have the same powers as are vested in civil court.
- Clause 101.-** This clause provides for joining persons as party to proceedings.
- Clause 102.-** This clause provides that all inquiries and appeals under this Bill shall be deemed to be judicial proceeding for purpose of sections 193, 219 and 228 of the Indian Penal Code, 1860.
- Clause 103.-** This clause provides for application of provisions of Limitation Act, 1963 in computing period of limitation.
- Clause 104.-** This clause provides that the provisions of the Code of Civil Procedure shall apply to proceeding before the Tribunal under this Bill.
- Clause 105.-** This clause provides that all sums payable under sections 20, 22, 45, 107, 110 and 112 shall be recoverable as an arrears of land revenue.
- Clause 106.-** This clause provides that the Charity Commissioner, Deputy and Assistant Charity Commissioner and other subordinate officers appointed under the Act shall be public servants.
- Clause 107.-** This clause provides that the costs or expenses incurred on legal proceeding in respect of any public trust shall be recoverable by the Charity Commissioner, Deputy and Assistant Charity Commissioner from the public trusts.
- Clause 108.-** This clause provides for finalisation of re-constructed record.
- Clauses 109 and 110.-** These clauses provide for payment of costs of charges and expenses to any suit, appeal or proceedings to any Court including High Court and before the Charity Commissioner, Deputy or Assistant Charity Commissioner.
- Clause 111.-** This clause provides for cancellation of registration of a public trust by the Deputy or Assistant Charity Commissioner.
- Clause 112.-** This clause provides for payment of compensatory costs by the applicant to the opponent for initiating frivolous and vexatious proceedings before the Charity Commissioner, Deputy or Assistant Charity Commissioner.
- Clause 113.-** This clause provides that the documents described shall bear the court-fee stamp of the value as prescribed in the Schedule.
- Clause 114.-** This clause bars jurisdiction of the Civil Court wherein any question is to be decided or dealt with by the officer under the Act.
- Clause 115.-** This clause provides usual indemnity for acts done in good faith.
- Clause 116.-** This clause provides that no court inferior to the court of Metropolitan Magistrate or Judicial Magistrate First Class shall try offences punishable under the Act.
- Clause 117.-** This clause provides that the previous sanction of the Charity Commissioner is necessary for institution of prosecution.
- Clause 118.-** This clause provides for previous sanction of Charity Commissioner shall be necessary for appearance of legal practitioner.

Clause 119.- This clause empowers the State Government to make rules generally for carrying out the purposes of the Act and particularly for matters specified in sub-clause (2).

Clause 120.- This clause provides for the repeal of the Bombay Public Trusts Act, 1950 in its application to the State of Gujarat and effect of repeal and saving.

Clause 121.- This clause empowers the State Government to remove difficulties arising within three years from the commencement of the Act.

DILEEP SANGHANI,

FINANCIAL MEMORANDUM

The Gujarat Public Trusts Bill, 2011 seeks to replace and repeal the Bombay Public Trusts Act, 1950. The administrative set-up already exists for carrying into effect the provisions of the existing Act and the same set up shall continue for the implementation of the provisions of the present Bill, if enacted.

Clause 96 of the Bill seeks to constitute one or more Gujarat Public Trusts Tribunal consisting of the Presidents and such other members. An approximately sum of Rs. 92.37 lakhs will be required to meet the expenditure towards salary and allowances of the President, members and subordinate staff, office expense and vehicle, etc. The aforesaid expenditure shall have to be met at the first instance from the Consolidated Fund of the State but the same shall have to be reimbursed to the Government at the end of each financial year from the Public Trusts Administration Fund. As such, the Bill, if enacted and brought into force, would not involve any additional expenditure from the Consolidated Fund of the State.

DILEEP SANGHANI,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides for delegation of legislative powers in the following respects, namely :-

- Clause 1.-** Sub-clause (3) of this clause empowers the State Government to appoint by notification in the *Official Gazette* the date on which the Act shall come into force.
- Clause 3.-** This clause empowers the State Government to appoint, by notification in the *Official Gazette*, the Charity Commissioner to exercise such powers and perform such duties and functions as are conferred by or under the provisions of the Act.
- Clause 4.-** (i) Sub-clause (1) of this clause empowers the State Government to appoint, by notification in the *Official Gazette*, one or more Joint Charity Commissioners, who shall, subject to the control of the Charity Commissioner and the State Government, exercise all or any of the powers and perform all or any of the duties and functions of the Charity Commissioner;
- (ii) sub-clause (2) of this clause empowers the State Government to declare by special or general order, the Joint Charity Commissioner to be the regional head in one or more regions or sub-regions.
- Clause 6.-** This clause empowers the State Government to appoint Deputy and Assistant Charity Commissioner in the office of the Charity Commissioner or for such region or sub-regions or for such trusts or such class of trusts.
- Clause 7.-** This clause empowers the State Government to appoint the Director of Accounts and Assistant Directors of Accounts, Inspectors and other subordinate officers and also empowers the State Government to delegate, by general or special order, to the Charity Commissioner powers to appoint subordinate officers and employees.
- Clause 10.-** (i) Sub-clause (1) of this clause empowers the State Government to delegate any of its powers or functions under the Act to the Charity Commissioner or any other officer on such conditions as it think fit;
- (ii) sub-clause (2) of this clause empowers the State Government to direct that any powers exercisable and duties or functions to be performed by any officer may be performed by any other officer on such conditions as it thinks fit.
- Clause 16.-** This clause empowers the State Government to form region and sub-region and to prescribe and alter limits of such regions and sub-regions, and the same shall be notified in the *Official Gazette*.
- Clause 18.-** This clause empowers the State Government to appoint a Deputy or Assistant Charity Commissioner to be in charge of one or more Public Trust Registration Offices.
- Clause 19.-** This clause empowers the State Government to prescribe by rules the form to keep and maintain such book indices and other registers in every Public Trust Registration Office and particulars of such books, indices and registers.
- Clause 20.-** (i) Sub-clause (4) of this clause empowers the State Government to prescribe by rules fees to be paid with applications for registration of the public trust;

(ii) item (xi) of sub-clause (6) of this clause empowers the State Government to prescribe by rules such other particulars of the application;

(ii) sub-clause (7) of this clause empowers the State Government to prescribe by rules the manner of submission of application for registration of a public trust;

(iii) item (i) of sub-clause (9) empowers the State Government to prescribe the form of memorandum describing particulars of immovable property;

(iv) item (ii) of sub-clause (9) empowers the State Government to prescribe the manner in which the trustee shall sign and verify the memorandum.

Clause 21.- This clause empowers the State Government to prescribe by rules the manner for holding an inquiry for the purposes referred therein with respect to application for registration of public trust.

Clause 24.- (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules the form containing the particulars relating to any change in the immovable property of a public trust;

(ii) sub-clause (2) of this clause empowers the State Government to prescribe the form of memorandum containing such particulars which may be forwarded to the Sub-Registrar and the manner for verification thereof;

(iii) sub-clause (3) of this clause empowers the State Government to prescribe the manner in which the Deputy or Assistant Charity Commissioner may hold an inquiry.

Clause 25. - This clause empowers the State Government to prescribe by rules the book in which the Deputy or Assistant Charity Commissioner shall make an entry of trust property situate in several regions or sub-regions.

Clause 29.- This clause empowers the State Government to prescribe by rules the form of Memorandum in which entries relating to immovable property of public trust is to be made.

Clause 33.- Sub-clause (1) of this clause empowers the state Government to prescribe by rules the amount, exceeding which public trust shall be required to prepare the budget every year and also to prescribe the form in which such budget shall be prepared.

Clause 34.- This clause empowers the State Government to prescribe by rules the form containing such particular in which accounts shall be keep and maintained by every trustee.

Clause 35.- (i) Para (a) of sub-clause (4) of this clause empowers the State Government to prescribe by rules fees for special audit;

(ii) para (b) of sub-clause (4) of this clause empowers the State Government to exempt by general or special order any public trust or class of trusts from the provisions of sub-clause (2) of this clause subject to such conditions as may be specified in the order.

- Clause 38.-** Sub-clause (2) of this clause empowers the State Government to prescribe by rules the manner in which the decision of Charity Commissioner shall be published and shall be communicated to the trustees.
- Clause 40.-** Sub-clause (1) of this clause empowers the Charity Commissioner to specify the form or forms for maintaining a register relating to movable and immovable property.
- Clause 41.-** Sub-clause (1) of this clause empowers the State Government to authorise any gazetted officer, by general or special order, to enter and inspect any property belonging to a public trust, etc.
- Clause 46.-** Sub-clause (1) of this clause empowers the State Government to give directions to Charity Commissioner for ensuring proper administration of trust property, etc.
- Clause 47.-** (i) Sub-clause (1) of this clause empowers the Charity Commissioner to issue direction to the public trusts under the general or special orders of the State Government to provide medical facilities to the indigent persons and weaker sections of the society in the hospital run by public trust;
- (ii) para (b) of sub-clause (1) of this clause empowers the State Government to determine by general or special order the rates for seeking medical treatment;
- (iii) Explanation to sub-clause (1) of this clause empowers the State Government to specify, by notification in the *Official Gazette*, the indigent person and persons belonging to the weaker section of the society.
- Clause 54.-** Sub-clause (1) of this clause empowers the State Government to prescribe by rules the manner in which the interested person may make an application to the Charity Commissioner for framing a scheme for proper management of the trust.
- Clause 56.-** (i) Sub-clause (2) of this clause empowers the State Government to prescribe by rules the form in which the account shall be submitted to the Deputy or Assistant Charity Commissioner;
- (ii) sub-clause (3) of this clause empowers the Deputy or Assistant Charity Commissioner to pass the order in the manner in which the amount shall be disposed of.
- Clause 57.-** Sub-clause (1) of this clause empowers the State Government to prescribe time within which the Charity Committee shall require the trustees to apply to the Tribunal for directions.
- Clause 61.-** (i) Para (ii) of sub-clause (1) of this clause empowers the State Government to declare by notification in the *Official Gazette*, any temple, mosque or endowments created for public religious or charitable purpose to be a public trust;
- (ii) sub-clause (2) of this clause empowers the State Government to publish, by notification in the *Official Gazette*, a list of such endowments as are registered as or declared to be public trusts or by a like notification to add or delete any endowment from such register.
- Clause 63. -** (i) Sub-clause (1) of this clause empowers the State Government to appoint, by a notification in the *Official Gazette*, one or more committees for one or more districts for the purpose of vesting or transferring management of the endowments;

(ii) sub-clause (2) of this clause empowers the State Government to prescribe by rules such conditions and restrictions subject to which the Committee shall acquire, hold and dispose of the property.

Clause 67.- Sub-clause (2) of this clause empowers the State Government to prescribe by rules the manner in which it shall direct to pay honorarium or fees and allowances to the Chairman, Treasurer and other members of the committee.

Clause 68.- This clause empowers the State Government to prescribe the time, place and procedure for holding the meeting of the committee and to approve the regulations made by the Committee for its day to day proceedings and routine business.

Clause 69.- This clause empowers the Committee to make regulations to determine the manner in which it shall appoint sub-committee or association of a person with the committee or a sub-committee.

Clause 71.- This clause empowers the State Government to prescribe by rules the terms and conditions subject to which the committee shall appoint the Secretary, officer and employees and also empowers the committee to prescribe the regulations for determining terms and conditions of the Secretary, officers and employees.

Clause 72.- Item (c) of sub-clause (2) of this clause empowers the State Government to prescribe by rules, the fund from which the salaries and allowances shall be paid to the Secretary, officers and the employees of a committee.

Clause 76.- (i) Proviso to item (b) of sub-clause (2) of this clause empowers the State Government to prescribe by rules, to grant exemption to any endowment or class of endowments from the payment of sum to the management fund of the managing committee;

(ii) item (d) of sub-clause (2) of this clause empowers the State Government to specify any other sum which shall be credited to management fund of the managing committee.

(iii) sub-clause (4) of this clause empowers the State Government to prescribe by rules the manner in which the management fund shall be regulated.

Clause 77. - (i) Sub-clause (1) of this clause empowers the State Government to supersede a committee, by notification in the *Official Gazette*, for the reasons stated therein, for such period as may be specified in the notification;

(ii) sub-clause (3) empowers the State Government to reconstitute the committee in the manner provided in clause 63.

Clause 78.- Sub-clause (4) of this clause empowers the State Government by general or special order to determine salary and allowances and such other conditions of service subject to which the Administrator shall exercise its powers and perform duties and functions.

Clause 79. - This clause empowers the Committee to make regulations with the approval of the State Government.

Clause 82. - (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules the manner in which and on such date the contribution shall be made to the Public Trusts Administration Fund;

(ii) sub-clause (2) of this clause empowers the State Government to prescribe by rules the manner for adjustment of income and expenditure to be made after the contribution payable is assessed;

(ii) Sub-clause (3) of this clause empowers the State Government to provide by rules for exemption of any public trust or class of public trusts from the whole or any part of the contribution payable under clause (1).

Clause 84.- This clause empowers the State Government make general or special order in which the Public Trusts Administration Fund shall be applied.

Clause 85. - This clause empowers the State Government to prescribe by rules the manner in which custody and investment of the moneys in disbursement and payment from the Public Trusts Administration Fund shall be regulated.

Clause 96.- (i) sub-clause (3) of this clause empowers the State Government to prescribe by rules the procedure to be followed by the Tribunal.

(ii) item (d) of sub-clause (4) of this clause empowers the State Government to prescribe by rules such other powers of the Tribunal under Code of Civil Procedure.

Clause 108. - Sub-clause (1) of this clause empowers the State Government to prescribe the form of notice to be published in the *Official Gazette* for reconstruction of the damaged or destroyed records.

Clause 119. - This clause empowers the State Government to make, by notification in the *Official Gazette*, rules generally for carrying out the purposes of the Act and particularly for all or any of the matters specified in sub-clause (2).

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Gandhinagar,
Dated the 17th March, 2011.

DILEEP SANGHANI.

By order and in the name of the Governor of Gujarat,

Gandhinagar
Dated the 18th March, 2011.

C. J. GOTHI,
Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.