

LAW COMMISSION OF INDIA

191ST REPORT

ON

**REGULATION OF FUNDS COLLECTED FOR
CALAMITY RELIEF**

DECEMBER, 2004

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Dear Shri Bharadwaj ji,

I have great pleasure in presenting the 191st Report of the Law Commission of India on **Regulating Funds for Calamity Relief**. This is also the sixth report of the present Seventeenth Law Commission which came to be constituted with effect from September 1, 2003.

The genesis of the present report was an order dated August 30, 2001 passed by the Nagpur Bench of the Bombay High Court in *Anand Narain Poharkar v. Lokmat Newspaper Charitable Trust*. This was a PIL which highlighted the problem of contributions collected from the public by a charitable trust floated by a newspaper for relief to victims of the Kargil conflict. The PIL alleged that the funds collected had been either misused or misappropriated. The High Court observed that a legislation was necessary to regulate the contributions collected and monitor their utilization so that “the funds so collected really reach the beneficiaries.” The Ministry of Defence which was a party to the proceedings then referred the matter to the Department of Legal Affairs (DLA) which in its turn referred it to the Law Commission.

A Consultation Paper was initially prepared by the Law Commission and was circulated widely. Responses were received from a wide cross-section of persons including departments and ministries of Governments, State Law Commissions, legal experts and non-governmental organisations. The present report has been prepared after studying all these responses. It was decided to confine the report to recommending a regulatory framework to monitor the collection of funds by individuals and organizations towards calamity relief and that it will not extend to funds collected by the Government. The Commission has noted that the collection of funds by the Government has been dealt with by the High Powered Committee on Disaster Management (HPC) set up by the Government of India to examine various aspects of disaster management and that the provisions of the model legislations recommended by the HPC contain provisions which will take care of misappropriation of funds collected by the Government.

The report is divided into six chapters. After discussing the concept of legal trusteeship, the report explains the need to enact a separate law, details the extent, commencement and scope of the proposed law and concludes by highlighting the salient features of the proposed enactment. The report recommends the establishment of a Contribution Regulatory Authority (CRA) comprising a Chairperson and other part-time Members. The Chairperson would be ex-officio a Secretary to the Government of India. This structure, it is felt, would subserve the need to have a mechanism to deal with situations as and when they occur rather than have a permanent body in place exclusively for the purpose. The main task of the CRA would be to oversee the collection and distribution of contributions and donations for calamity relief and to ensure that proper accounts are maintained by the persons and agencies collecting funds for calamity relief. The CRA itself will ensure that its accounts are audited by the Comptroller and Auditor General of India. The proposed legislation makes mandatory the pre-requisite of registration of any agency or person who desires to collect contributions for calamity relief. Since there may be situations where emergency relief measures may be required, it is proposed to empower the Collector to grant provisional registration. Specific provisions have also been recommended for suspension or cancellation of registration of those who either do not maintain proper accounts, misappropriate funds. It is also proposed that where the funds remain unutilized by such persons or agencies, such funds will be transferred to the CRA or to the Collector for utilization for calamity relief and other similar purposes. While it is also proposed to empower the Collector and the CRA to levy stringent penalties on the defaulting agencies, the criminal proceedings would be before the regular criminal courts. Civil disputes concerning the donations and contributions will go before civil courts designated for that purpose and the said courts will be governed by principles of natural justice and not by the Code of Civil Procedure or the Indian Evidence Act.

It is hoped that the recommendations contained in the report will help addressing the recurrent problem of misuse by private actors collecting contributions from the public for calamity relief.

With regards

Yours sincerely,

(M. Jagannadha Rao)

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CHAPTER – 1

INTRODUCTION

1.1 The Reference

The Law Commission took up the subject relating to ‘misuse of donations collected during disasters and calamities’ on a reference received from the Department of Legal Affairs, Ministry of Law and Justice, Government of India. The Department of Legal Affairs, with the approval of Hon’ble Minister of Law and Justice, on 18th March, 2002, referred this subject to the Law Commission for recommending an appropriate legislation to regulate and monitor the collection of funds from public in the name of the welfare of victims of natural calamity or welfare and rehabilitation of bereaved families of the soldiers killed in a war. The reference was made by the Ministry as a consequence to the order passed by the High Court of Bombay in W.P. No.216/2001, **Anand Narain Poharkar vs. Lokmat Newspaper Charitable Trust**, which stated that a legislation in this behalf is necessary. Ministry of Defence, which is a party before the High Court, referred the matter to the Department of Legal Affairs for advice. In turn, the Department of Legal Affairs referred the matter to the Law Commission as mentioned above. A Consultation Paper was prepared and published, responses were received and thereafter, this report is prepared.

1.2 Assistance by the Individuals, Other organizations, International bodies for providing relief and rehabilitation to the victims of calamity/war or war like situation.

1.2.1 Whenever a calamity, natural or man-made occurs, a large number of people, nay, thousands or lakhs can get affected. Many people lose their lives or limbs. Their property also gets damaged. Calamity destroys not only human beings but also other living creatures, the natural habitat and the environment. Soon thereafter, rescue, relief and rehabilitation work will have to start at a massive level. Apart from the government machinery, other private organizations or individuals have also to step-in to provide help in such operations. Again, whenever a war breaks or other war-like situation occurs at the borders, hundreds or sometimes even thousand of soldiers either lose their lives or become disabled. Relief has to be provided to the dependants of the deceased as well as to those injured.

1.2.2 In these situations, every section of the society, be it individuals, or the corporate sector, or NGO's, media, professionals, or social organizations should and , in fact, do come forward for providing relief and rehabilitation to the persons affected by the calamity. International Community, organizations and Government of foreign countries also try to provide financial and other logistic support. The contribution that comes through these entities or persons or organizations is extensive. In the absence of support from these persons and organizations, no relief and rehabilitation work can indeed be taken up effectively and speedily.

1.2.3 Views of S.L. Goel and Ramkumar in their book on ‘Disaster Management’:

In respect of the people’s participation in relief work, we may reproduce a passage from the book ‘Disaster Management’ edited by S.L. Goel and Ramkumar. It is stated in Chapter I at page 30 as follows:

“Whenever disasters strike, they do not discriminate or differentiate between men and nations, poor or rich, young or old. They do not negotiate or listen and they do not wait, they simply come, kill and destroy, cause irreparable losses, which are irrecoverable. And when these hazards strike, it is the communities who are first to react, it is the communities irrespective of their profession, status, caste or culture who need to react. Therefore, it is important that capacities of communities are built to observe, understand and prepare themselves for the worst impact.”

1.2.4 D.M. Dharmadhikari C.J. (as he then was) of Gujarat High Court in *Bipin Chandra J. Diwan v. State of Gujarat*, AIR 2002 Guj. 99, has referred to the help provided by various persons and organizations, in the aftermath of the massive earthquake that hit Gujarat in the year 2001. His Lordship observed:

“In such calamity and adversity, the entire Nation has shown compassion and co-operation by extending help and providing relief material in kind and cash to the victims. It is a divine wrath, but turned into blessing, in the sense that in facing the calamity the helping hands extended by people all over the world in the shape of

help and support has united the people and brought to surface the inherent virtues and qualities of human being. There has been an exemplary display of fellowship, co-operation, mutual help and love from all over the world regardless of class, caste, creed and cultural differences. Not only from within the nation, but from all over the world from different countries, Government, social service organizations and individuals with relief material in the form of tents, clothes, medicines, construction items for erecting homes, rescue machines etc. have landed by ship, airplanes and other modes of transport. All kinds of relief material is throughout pouring in from different parts of the world.” (Para 2)

His Lordship further observed:

“Calamity is a leveler of rich and poor, strong and weak, all are suffering alike. The fall-out of the earthquake is the flow of generosity for help to the victims from within the country and all over the world. So much of relief material and money has been received that its management and distribution pose an uphill task to the Government. In the past few days, after the earthquake hit Gujarat on the morning of 26.1.2001, everyone in the country has witnessed the power of the people. Selfless service of several religious and social organizations have shown what benevolent effect religion can have on the lives of common men. The selfless service, without desire for appreciation or publicity, by religious groups and social activists have given great comfort to the victims and satisfaction to all right thinking men.” (Para 3)

1.2.5 Monetary contributions by these persons or organizations is one of the most important facets of the relief operations. Apart from money, the following other items or services are also provided:-

- (a) food; (b) clothes; (c) medicines and other medical relief and first aid; (d) drinking water; (e) shelter;
- (f) removing the persons from affected area and relocating them elsewhere.

1.3 Categories of Donors and Collection Agencies.

1.3.1 Categories of Donors –

Persons and organisations, which donate for the relief and rescue operations, may be classified into three sub-categories.

- i) In the first sub-category of donors, there are persons, organizations or agencies, who donate money or other items. But in this category, the above-said entities do not personally go to the affected site or region, but instead, they donate money or items to the Central or State Governments or to any fund set up by the Central or State Government like the Prime Minister's National Relief Fund, National Defence Fund, Chief Minister's Relief Fund etc. These are donors who send their donations directly without the intervention of any intermediary and they do not participate in the actual work of disbursement of moneys or in the relief and rehabilitation.

ii) In the second sub-category of donors are persons or organizations or agencies who contribute in cash or kind to intermediaries such as non-governmental bodies, like NGOs or individuals, trusts, etc. and in this second sub-category too the donors are entities who do not undertake the responsibility of distributing the monies or items amongst the victims of the calamity.

iii) In the third sub-category of donors are non-governmental intermediaries, being persons or organizations who, apart from giving their contributions, also provide their services personally at the place of calamity.

1.3.2 Categories of agencies which collect the items in cash or kind from donors.

In the class of the intermediaries who take up a role of service, there are various individuals, organizations, trusts, groups, NGOs etc. who start collecting funds and donations from the public for the purpose of providing relief and rehabilitation to the victims of the calamity. These entities can be sub-categorized into two groups:

i) In the first group, there are persons or organizations, who only collect the donations in cash or kind from the individuals or organizations and after collecting them, they send the said items to the Government or other agency which provide the actual relief. For example, newspaper publishers and other agencies of electronic media start collections of funds

whenever a calamity occurs. The funds so collected are usually sent to a relief fund set up by the Government or other agencies. Similarly, trusts, educational institutions, public or private sector organizations, clubs etc. also collect the donations in cash or kind from their students, staff, workers or members of the public. Thereafter, they deposit them in one or other of the funds mentioned above.

ii) In the second group of intermediaries are persons, NGOs, trusts or other organizations or agencies, which not only collect the contributions and donations from the public or other organizations, but also who, instead of sending them to Governmental agencies, themselves provide service personally at the place of calamity instead of sending the monies to Governmental Funds or agencies. Some of these entities also get donations or grants from the Government or from funds set up by the Governments or from International Community and Organizations.

1.4 Contribution from Foreign Source: The Foreign Contribution (Regulation) Act, 1976

Contribution for providing relief to the victims of calamity is not only raised within the country but from foreign and International sources also. The enactment which regulates the acceptance and utilization of foreign contributions is the Foreign Contribution (Regulation) Act, 1976.

Section 6(1) of this Act provides that any association (other than an organization of a political nature), which is having definite culture, economic, educational, religious or social programme, shall not accept

contribution in cash or in kind from a foreign source unless (a) such association is registered with Central Government, and (b) agrees to receive such foreign contribution only through such of the branches of a bank as specified in its application for registration. Apart from this, after receiving the foreign contribution, every registered association is also required to give an intimation to the Central Government as to the amount of each foreign contribution received by it, source and manner in which foreign contribution was received, and also the purpose for which and the manner in which such foreign contribution was utilized. Moreover, where such association (a) obtains any foreign contribution through any bank branch other than through which it has agreed to receive foreign contribution, (b) fails to give intimation or gives false intimation, the Central Government may by notification direct that such association shall not accept any foreign contribution without prior permission of the Central Government. Even otherwise, the Central Government may in certain circumstances, require any association to obtain prior permission. (sec. 10)

As per sub-section (1A) of section 6, every association of the nature referred to above, if it is not registered with the Central Government may, also accept foreign contribution, however, after obtaining prior permission of the Central Government. Such association, after receiving the foreign contribution shall also be required to give intimation referred to above, to the Central Government.

‘Foreign source’, according to clause (e) of sub-section (1) of section 2, includes, the Government of any foreign country and any agency of such Government, any international agency, a foreign company, any

corporation incorporated in a foreign country, a multinational corporation, any trust, society or other associations of individuals, formed or registered in a foreign country, a trade union in any foreign country, a citizen of a foreign country, but does not include United Nations or any of its specialized agencies, the world Bank, International Monetary Fund or such other agency as may be notified by the Central Government. It also does not include any foreign institution which has been permitted by the Central Government to carry on its activities in India.

In certain circumstances, the Central Government may require any person or association to furnish the intimation mentioned above. (sec. 10)

As per section 13, every association referred to in section 6, shall maintain (a) an account of any foreign contribution received by it; and (b) a record as to the manner in which such contribution, as well as any record may be inspected by an officer who has been authorized by the order of the Central Government. Their accounts and records may be seized and produced before the Court (sec. 14). If necessary, the Central Government may by order, ask any officer to audit such accounts.

The Central Government, under section 31 has power to exempt any association, organization or individual from the operation of all or any of the provisions of the Act, if it is necessary or expedient in the interests of justice.

1.5 Misuse, misappropriation, mismanagement and diversion of donations and contributions

We shall next refer to misappropriation, mismanagement or diversion of donations. As mentioned earlier, whenever there is a natural or other calamity or war or war like situation some public and private organizations, institutions, individuals etc. start collecting funds and other items in cash and kind from the public, for the ostensible purpose of the welfare and rehabilitation of the victims of such calamity though in fact, they do not intend to do so. The funds or material collected do not reach the actual victims either in whole or in part, and instead, are misappropriated or misused. In some cases persons, NGOs, organizations, groups start collecting the donations from the public or other institutions for the purpose of sending them to the Government or any fund set up by the Government like Prime Minister, National Relief Fund (PMNRF), Chief Minister's Relief Fund, National Defence etc. but they do not send them to the Government fund either wholly or in part, and instead, they misuse or misappropriate such donations.

This conduct clearly amounts to breach of trust. People and organizations who give contributions wholeheartedly and generously in the belief that the contributions will be helpful for the welfare of the persons affected by the calamity, have thereafter no idea as to whether the contributions in cash or in kind has reached the affected party or whether the contributions have been misappropriated or mismanaged by the persons or agencies who have collected them.

1.6 Donations collected for victims of Kargil conflict and Gujarat earthquake.

1.6.1 Lokmat Newspaper Trust case:

We shall refer to a few cases where serious allegations of misappropriation have been made and are under investigation.

One of such recent cases of alleged misappropriation and mismanagement of public contributions is the subject matter of a writ petition in the Bombay High Court (at Nagpur Bench) No. 216 of 2001 (**Anand Narayan Rao Poharkar v. Lokmat Newspaper Charitable Trust, Nagpur**). It has been stated in the petition that a trust called ‘Lokmat Newspaper Charitable Trust, Nagpur’ has collected donations from the public approximately amounting to two crore rupees in the name and style of ‘Lokmat Kargil Shahid Nidhi’ during the Kargil conflict in 1999 and even later, for taking care of victims of the Gujarat earthquake. It is alleged in the writ petition that the funds collected from the public have not been utilized for the purpose for which they were contributed but have been misused or misappropriated. Petitioners in the said writ petition had, in fact, also made donations to the said trust. In respect of the allegation of misappropriation of funds, the Division Bench of the Bombay High Court, in its order dated 30.8.2001, observed thus:

“but we fail to understand why the Government i.e. Central as well as State Government has not regulated the collection of such funds from the public at large. It has now become a common feature that in case of any calamity man- made or natural, organizations spring up like mushrooms and appeal to the public at large by invoking

their sentiments and emotions which facilitate them to collect huge funds and appropriate in the manner they feel it proper. There is no Government Agency to regulate the collection of such funds and to monitor that the funds so collected really reach the beneficiaries”.

1.6.2 Tema Sugar Factory Scam

It was reported in ‘The Indian Express’, New Delhi dated 1st June, 2004 that the Justice Sawant Commission of Enquiry is probing into the charges levelled by a social activist Anna Hazare against a State Minister from Maharashtra.. These charges include various irregularities in Tema Sugar Cooperative Factory in Osmanabad (Maharashtra). It was alleged that Rs. 51.97 lakhs were collected from the farmer shareholders of the society in the name of ‘Kargil’ and ‘Gujarat earthquake’, but were diverted for reviving a sinking sugar factory. As reported in the newspaper, Kargil Funds of Rs. 1,505,153/- were not submitted to the authority concerned. Similarly, Gujarat Flood Victim Relief Fund of Rs. 10,60,708/- and Gujarat Earthquake Relief Fund of Rs. 10,36,336/- were also not submitted.

1.6.3 Mismanagement of contribution during Gujarat Earthquake (Bipinchandra case (2002)).

As observed by the Gujarat High Court in **Bipin Chandra Diwan v. State of Gujarat** AIR 2002 Gujarat 99, after the earthquake in Gujarat, on 26.1.2001, a lot of relief material in cash and kind was provided by various

sections of society within the nation and relief came from outside the country. There were certain reports in the newspapers and other media that the Government had failed to meet the challenges posed by the calamity and had not adequate infrastructure to satisfactorily discharge the stupendous task of providing relief and rehabilitation to the quake victims. On the basis of these reports, a Public Interest Petition was filed by five prominent citizens representing different walks of life (a retired Chief Justice of the Gujarat High Court, an eminent lawyer, an industrialist, an artist and a social activist) seeking intervention of the Court to ensure speedy and effective relief to quake victims. In the petition, apprehensions were raised and doubts were also expressed as to how the large quantities of relief material and money received or were likely to be received in future would be dealt with. It was stated that the collections were or are likely to be misappropriated, leaving the victims high and dry. It was prayed in the petition that relief fund and material should be entrusted to an independent committee or commission manned by experts from different fields, to ensure proper utilization of the material and fund for the benefit of the victims and to avoid their diversion, misappropriation and loss.

1.7 Reference to the Law Commission.

1.7.1 The observations of the Bombay High Court in Writ Petition No. 216 of 2001, (**Anand Narain Poharkar vs. Lokmat Newspaper Charitable Trust**) referred to above, and the absence of a Central legislation or Authority to regulate and monitor the collection and utilization of contribution and funds, prompted the Central Government to

refer this matter to the Law Commission for recommending appropriate legislation to regulate and monitor the funds collected from the public in the name of the welfare and rehabilitation of victims of calamities or welfare and rehabilitation of the bereaved families of the soldiers killed/injured in war.

1.7.2 The Law Commission has examined the issues relating to collection and utilization of the funds as well as other items received in kind, in the name of providing relief etc. to the victims of calamity and the welfare of bereaved families of the soldiers killed or injured in war or other operations. The Commission was of the tentative view that there was an urgent need to bring into force a Central enactment specifically intended to regulate the collection of contributions to compel the maintenance of proper accounts and to monitor the distribution of contributions so collected with a view to subserve the purpose for which the donations were made and for their proper utilization and distribution.

1.8 Law Commission's Consultation paper

1.8.1 In order to obtain the views of the Government at the Centre and States, and also of the media, NGO's, and all sections of the society, the Law Commission prepared and circulated a Consultation Paper on the subject, in May, 2003 suggesting various proposals for drafting a Central enactment which would refer to the main features of the proposed legislation. Copies of the Consultation Paper were sent to the concerned Departments and Ministries of the Central Government, all State Governments, Union Territories, Bar associations, NGOs and other

concerned persons and institutions. The consultation paper was also placed on the Law Commission's website namely: <http://lawcommissionofindia.nic.in>

1.8.2 *Suggestions made in the Consultation Paper.*

Following were the important suggestions made in the consultation paper:

- i) A law may be made by the Parliament to regulate the collection and utilization of contributions.
- ii) All contributions and donations collected or received by any person, organization or agency from any other person, organization or from any Government including Government of a foreign country, for the purpose of providing relief and rehabilitation to the victims of any natural or other calamity or the welfare and rehabilitation of soldiers killed or injured in war or war like situation, shall come under the purview of the proposed enactment.
- iii) In order to regulate the collection and distribution of the funds or other items received in kind, a Regulatory Authority known as 'Contribution Regulatory Authority' (CRA) should be constituted by the Central Government.
- iv) The Regulatory Authority should consist of a Chairperson, Member Secretary, 3 Members chosen amongst the officials of the Central

Government and one Member from the Indian Audit and Accounts Service, and five Members from the general public.

v) There should be compulsory registration of those who receive the contributions, under the name, 'authorized person or agency'. The District Collector could be the Registering Authority. He could be authorized to register such persons or agencies who are making the collections.. The procedure of registration and the grounds for refusal of registration were suggested in the Consultation Paper. It was also suggested that any order of refusal of registration be appealable. Another suggestion was that in case of urgency, provisional registration could also be granted.

vi) It was proposed that retrospective operation shall be given to the proposed legislation to the extent practicable.

vii) The authorized persons and agencies should maintain proper accounts of all contributions collected and about their utilization. Details of such accounts should be furnished to the Collector and Regulatory Authority.

viii) Funds and other items received in kind should be used only for the purpose for which they were collected or received.

ix) Collections shall not be made without issuing proper receipts.

x) While providing relief or rehabilitation, there shall no discrimination on the grounds of religion, race, caste, sex etc.

xi) The Regulatory Authority and the Collector shall be in-charge of the overall supervision of distribution and management of the contributions. In case of violation by any persons or agencies, the Regulatory Authority and the Collector should take appropriate action, which action shall include seizure of the contributions. He could initiate civil or criminal proceedings against any person or agency.

xii) The District Judge of every district should be designated as the Judicial Authority under the Act for the receipt or disposal of any complaint filed against any authorized person or agency and to pass appropriate orders on the complaint.

xiii) The Judicial Authority, after making such inquiry as it deems fit, should pass appropriate orders. The Judicial Authority should have some of the powers of a civil court.

xiv) Responses were to be given on the question whether contributions made from Government's funds, like Prime Minister's National Relief Fund, CM Relief Fund and other calamity funds set up by the Government, should also be dealt with by the proposed enactment for the purpose of introducing a measure of accountability.

1.8.3 *Responses to the consultation paper.*

The overall response to the Consultation Paper was positive. Most of the State Governments (except the Government of Madhya Pradesh) had

welcomed the proposal for enacting a legislation on the subject. Detailed response from the Maharashtra State Law Commission and the Government of West Bengal have been received. These suggestions would be discussed at the appropriate place in the Report. So far as Central Government Ministries and Departments are concerned, the Ministry of Defence and the Department of Personnel and Training and the Department of Rural Development have responded on some particular issues. The Governments of Uttar Pradesh, Orrisa, Himachal Pradesh, Kerala and Pondicherry briefly responded and were in total agreement with the Law Commission's proposals. The Government of Haryana forwarded the responses of the various Deputy Commissioners of the Districts. There were no responses from the NGOs except the Citizen Welfare Council, Rup Nagar, Punjab which agreed with the proposals.

1.9 Present Report

The present Report is based on further study on the questions involved, after taking into account the suggestions made in the responses received to the Consultation Paper. Though, the management of a calamity or disaster is a much wider subject, the present Report deals only with a particular aspect i.e. regulation of collection and utilization of contribution collected or received for the purposes of providing relief and rehabilitation to the victims of any calamity or for the welfare and rehabilitation to the soldiers killed or disabled in war or other similar operations. In the subsequent Chapters of this Report the following issues are discussed:

- i) Whether a person making the collection or receiving the funds is in the position of the trustee?
- ii) Whether a new law is really required to regulate such contributions? Legislative competence of the Parliament to enact such a law.
- iii) Which are the kinds of contributions which should be subjected to the proposed law?
- iv) In what manner could the collection and utilization of such contributions be regulated?
- v) Constitution, powers, and functions of Regulatory Authority and other officials.
- vi) Duties of persons, bodies or agencies authorized to collect contributions, including the manner of collection and utilization thereof.
- vii) Territorial extent, commencement and scope of the proposed law.
- viii) Designated Court, its procedure and power.

CHAPTER-II

Collection of Contributions – is in trust.

2.1 Legal status of contributions

As stated earlier, whenever a calamity occurs or a war or war like operation commences, large amounts of contributions and donations in the form of cash and other items in kind are contributed or donated by various individuals organizations, corporate sector etc. for the purpose of providing relief and rehabilitation to the victims of such calamity or welfare and rehabilitation of soldiers and their family members killed or disabled. These contributions are made to the Government as well as to other NGOs, trusts, other bodies and individuals. They may be in cash or kind. In the hands of Government or NGOs, or other organization or individuals, who receive them for the particular charitable purpose, the collections are in the nature of a 'trust'. Those who donate to these NGOs or individuals, do so out of faith, trust and confidence that the amounts will reach the victims of the disaster. The recipient, in each case, is a trustee and the victims of the disaster are the beneficiaries. There is obviously a fiduciary relationship of 'trusteeship'.

2.2 Indian Trust Act, 1882: applies only to private trusts: hence, general principles of English law apply here.

The Indian Trusts Act, 1882 applies only to private trusts and not to public trusts. Sec. 1 of the Act states that the Act does not apply to public or private charitable “endowments”.

As per section 3 of the Act, “A trust is an obligation annexed to the ownership of property, and arising out of the confidence reposed in and accepted by the owner; or declared and accepted by him, for the benefit of another, or of another and the owner.”

The person who reposes or declares the confidence is called the ‘author of the trust’; the person who accepts the confidence is called the ‘trustee’; the person for whose benefit the confidence is accepted is called the ‘beneficiary’. Sec. 3 also defines a ‘breach of trust’: it says that ‘a breach of any duty imposed on a trustee, as such, by any law for the time being in force is a ‘breach of trust’. Sections 11 to 30 of the Act deal with the ‘Duties and Liabilities of Trustees’ and sections 31 to 45 deal with the ‘Rights and Powers of Trustees’. Sections 46 to 54 refer to the disabilities of trustees while ss. 55 to 69 refer to the rights of the beneficiary. Sec. 23 of the Act refers to the ‘Liability for breach of trust’ and sec. 51 states that a trustee may not use or deal with the trust property for his own benefit or for any other purpose unconnected with the trust.

The Bombay High Court pointed out in **Shivramdas v. Nerurkar** AIR 1937 Bom 374 that we should not also apply the provisions of the Act as guidelines in the matter of private trusts. The correct position is that in matters relating to public charitable trusts, Courts in India have to be governed by the general principles and rules of English law and practice,

unless that law or practice is inconsistent with the rule or practice of the Courts in India. It is true that many provisions of the Trust Act reproduce the general law of trust as administered by the equity Courts in England, but that does not mean that the provisions of the Act should be applied.

Thus, a trust is an obligation whereby the trustee is bound to perform or forbear some act for the beneficiary. This obligation must relate exclusively to property and the obligation must also arise out of confidence which the author of the trust reposes in the trustee. It is a fiduciary obligation voluntarily accepted by the trustee.

2.3 Trust – its meaning under the general law.

2.3.1 A trust, as per **Salmond's jurisprudence by Glanville Williams** (11th Edn. Page 297), "is an encumbrance in which the ownership of property is limited by an equitable obligation to deal with it for the benefit of some one else. The owner of the encumbered property is the trustee; the owner of the encumbrance is the beneficiary."

2.3.2 Meaning of trust as given in **Halsbury's Laws of England** (Vol. 48, reissue 4th Edn. para 501) is as follows:-

"Where a person has property or rights which he holds or is bound to exercise for or on behalf of another or others, or for the accomplishment of some particular purpose or particular purposes, he is said to hold the property or rights in trust for that other or those others or for that purpose or those purposes, and he is called a

trustee. A trust is a purely equitable obligation and is enforceable only in a court in which equity is administered.”

2.3.3 As per a leading jurist **Underhill**, ‘A trust is an equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestuisque trust), of whom he may himself be one, and any of whom may enforce the obligation’. Any act or neglect on the part of a trustee which is not authorized or excused by the terms of the trust instrument, or by law is called a breach of trust. (Underhill’s Law of Trust and Trusteeship 10th Edn. at Page 3)

2.4 Purpose of Trusteeship.

As per ‘**Salmond**’ on Jurisprudence (11th Edn. By Glanville William, at page 308), the purpose of trusteeship is to protect the rights and interests of persons who for any reason are unable effectively to protect them for themselves. It is further stated that the chief classes of persons in whose behalf the protection of trusteeship is called for are four in number. According to the learned author, among these four classes of persons which are as follows:-

“In the first place, property may belong to persons who are not yet born; and in order that it may be adequately safeguarded and administered.”

“In the second place, similar protection is required for the property of those who live under some incapacity in respect of the administration of it, such as infancy, lunacy, or absence.”

“Thirdly, it is expedient that property in which large numbers of persons are interested in common should be vested in trustees.”

“Fourthly, when persons have conflicting interests in the same property it is often advisable that the property should be vested in trustees.”

Here we can say that collection for benefit of the victims of the calamity fall under the third category.

2.5 Concept of Trust in collection of contribution.

2.5.1 This concept of ‘trust’ can very well be found in the collection of funds and other items for the purpose of providing relief to the victims of calamities. Person who donates or contributes the funds can be said to be ‘author of the trust’. The donor declares or reposes confidence in the collector or receiver of such donations and such collector or receiver of the fund is, therefore, in the position of a ‘trustee’. The donor or in other words, the author of the trust, donates the contribution in cash or in kind to the NGOs or individual with the intention that such contribution shall be used for the purposes of providing relief and rehabilitation to the victims of the calamity. The NGOs or individual accept and undertake the obligation and responsibility of distributing the money or item received,

amongst the victims of calamity. These ‘victims’ are the beneficiaries of the trust. Contributions in cash and kind are trust property. Therefore, whenever a contribution in cash or kind is given to any individual, NGO or other organization or even to the Government, for the purpose of providing relief and rehabilitation of victims of calamity or (say) for the welfare and rehabilitation of the soldiers and their families, who are victims of war or war like operations, a ‘trust’ is always created.

2.5.2 Judicial pronouncements

There are judicial pronouncements which suggest that collection of contribution and donations for the purpose of providing relief to the victims of calamity, comes under purview of ‘trust’. In this regard, the following observations of the Gujarat High Court in **Bipinchandra J Diwan** case, already referred to, can be quoted:

“The donations and contributions in cash and kind have been received by the Government wholeheartedly and spontaneously from various sections of the society and people in India and abroad. These donations and contributions in cash and kind are not parts of the recognized Revenue or Fund of the State or the Centre as envisaged in the Constitution. These contributions and donations constitute a fund raised by people all over the world with specific aim to extend help and support to the quake victims. Such donations and contributions are in the hands of Government in the nature of a trust” (Para 18).

Similarly it can be said that when such contributions or donations are given to any private individual or NGO, they become trustees of the money or items received.

There is an English case which we would like to refer. That is, **Re North Devon and West Somersat Relief Fund Trusts v. Wright** 1953 (2) All. ER 1032. Facts of the case were as follows:-

On August 15, 1952, torrential rain fell over a wide area in north Devonshire and West Somersetshire, causing disastrous floods and great damage and devastation. On 18th August, 1952, an appeal by the Lords lieutenant was issued in these terms, “We invite not only the people of the west country, but everyone who has known and loved Lynmouth and the quiet villages of north Devon and west Somerst, which have suffered so grievously in this disaster, to contribute to a fund for the relief of all who have suffered”... The response to the appeal was very great. In addition to donations sent direct to the treasurer, large sums were collected in streets from the passers by, from collecting boxes placed in hotels and boarding houses, and at stations and other public places, and by means of collection in churches. Local authorities made collections, and organizations such as the Red Cross contributed. The fund so collected was in excess of the amount necessary to meet claims in respect of distinct personal loss by persons mentioned in the appeal.

The question arose whether the ‘trust’ fund was charitable and whether the surplus should be applied cy-pres or be payable to donors to the fund in

proportion to their donation. **Wynn Parry J.** held that fund so collected falls in the category of valid charitable trust and surplus funds must be applied cy-pres.

2.6 Obligations and duties of persons and agencies who collect contribution.

When contributions and donations are collected by NGOs or some other people, they keep such contributions in the nature of trust and when there is a trust, obviously there are obligations and duties on the trustees to execute the wishes of the authors of the trust i.e. the donors. These donations and contributions should reach the beneficiaries i.e. victims of the calamity or war, as the case may be. Obligation of the trustee towards the beneficiary, as per **Salmond**, is known as ‘innominate obligation’, failure to perform duties or obligation will amount to breach of trust, civil or criminal.

As stated above, the donors of contribution are authors of the trust and as such they have the right to execute the trust. On the other hand, the collectors of such contribution are trustees, and they have obligations towards the author of the trust i.e. donors. In this regard, the observations of the Gujarat High Court in **Bipinchandra J. Diwan Case**, already referred to, can be quoted. It was observed:

“In our opinion, therefore, all those donors and contributors who have extended help in cash and kind to the victims have enforceable right, in a representative capacity to seek directions to the

Government to ensure that the relief and rehabilitation material meant for quake victims reaches them in time and hour of need. For the same purpose they have claimed a right to demand account of receipt and expenditure of such relief and rehabilitation material in cash and kind”.

The beneficiaries have also a right to demand that the trustees implement the purposes of the trust effectively.

2.7 Violation of obligations by trustee amounts to breach of trust: civil action.

2.7.1 Whenever contributions or donations are collected by individuals, bodies or other NGOs, necessarily a trust is created and the trustees who violate the obligations cast on them by the authors of the trust, become liable for the breach of trust. If the trustees have not utilized the money, or misutilised the money, or diverted the money or misappropriated the money, there is a clear breach of trust. A civil action can be in a Court of law for taking over the moneys and vesting them in Court Receivers. Section 92 of Code of Civil Procedure, 1908 can also be invoked.

2.7.2 Criminal breach of trust: sec. 405 Indian Penal Code – technicalities of creation of trust do not apply:

The Supreme Court in **Jaswantrai v. State of Bombay** AIR 1956 SC 575, while considering a case of criminal breach of trust as defined in Section 405 of the Indian Penal Code, 1860 has observed:

“But when S. 405 which defines ‘criminal breach of trust’ speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust.

It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening a certain event”. (Para 13)

From the above observations, it is clear that for the purpose of ‘criminal breach of trust’, it is not necessary that ‘trust’ has to be created with all legal technicalities required under the law of trust. For the purpose of ‘trust’, there should be entrustment of property and the owner of the property should repose confidence in the person taking the property. The Supreme Court in **State of Gujarat v. Jaswant Lal**, AIR 1968 SC 700, has held:

“Before there can be any entrustment there must be a trust, meaning thereby, an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust..... Further, the person handing over the property must have confidence in the

person taking the property so as to create a judicial relationship between them.”

The rights of the persons to whom property is entrusted is explained by the Supreme Court in **Jaswant Rai vs. State of Bombay AIR 1956 SC575** in the following words:

“The person who transfers possession of the property to the second party still remains the legal owner of the property and the person in whose favour possession is so transferred has only the custody of the property to be kept or disposed of by him for the benefit of the other party, the person so put in possession only obtaining a special interest by way of a claim for money advanced or spent upon the safe keeping of the thing or such other incidental expenses as may have been incurred by him”. (Para 13)

2.8 Special legislations relating to trusts:

2.8.1 There are various special legislations, both Central and State, which deal with the law relating to trusts, apart from the Indian Trusts Act, 1882. That Act, as stated earlier, applies only to private trusts and it does not apply to charitable endowments, public or private.

(1) **The Charitable Endowments Act, 1890.** It was enacted to provide for the vesting and administration of property held in trust – for charitable purpose. As per section 2 of the Act, ‘Charitable purposes includes relief of the poor, education, medical relief and the advancement of any other

object of general public utility, but does not include a purpose which relate exclusively to religious teaching or worship.

(2) **‘The Charitable and Religious Trusts Act, 1920’**. The object of this Act is to secure more effectual control over the administration of Charitable and Religious Trusts.

As per sec. 3, any person having an interest in any express or constructive trust, created for a public purpose of a charitable or religious nature, can file a petition in a Court for obtaining an order for any of the following directions, namely

- (1) directing the trustee to furnish the petitions, with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject matter of the trust, and of the income belonging thereto;
- (2) directing that the accounts of the trust shall be examined and audited.

Any trustee of a trust of a kind mentioned above, under sec. 7 may apply to the court for the opinion, advice or direction of the court on any question affecting the management of the trust property and the court shall give its opinion, advice or direction as the case may be.

(3) **Section 92 of the Civil Procedure Code, 1908**: It deals with the Trusts. This section 92 authorizes the filing of suit in respect of breach of

any express or constructive trust created for the public purposes of a charitable or religious nature by the Advocate General or by two or more persons with the leave of court.

(4) **Income Tax Act, 1961** grants exemptions in respect of any contribution or donations given to a trust created for charitable or religious purposes (section 80G). Again, income from such trusts is also exempted in certain circumstances (section 11,12,12A and 13).

(5) **Indian Penal Code 1860**: It deals with offences relating to trusts and punishment for such offence. Sections 405 to 409 deals with criminal breach of trusts.

(6) **State legislations**: Apart from the Central legislations there are certain legislation of State legislature regarding Charitable trusts.

2.9 Existing special legislations do not specifically cover the present issue:

The Central legislation and a large number of State legislations that at present govern the functioning of trusts, are premised on the legal principle of trusteeship and of trusts having to expend the funds at their disposal in a manner permitted by these laws. However, some of these legislations apply only to express trusts and some to implied trusts but they are too general in nature and cover all types of trusts. The present Report, however, has a specific purpose in relation to funds collected during Disasters and Calamities. It is felt that the principle of constructive

trusteeship must govern these other organizations and individuals who or which may not be express trusts. It is proposed to make detailed regulations to govern all agencies in relation to funds collected specifically for Disaster or Calamity Relief. The need for a special detailed legislation on the subject need not be overemphasized.

We have here to address two main issues (i) how to regulate the collection of contribution and (ii) how to check the misappropriation and diversion of funds so collected, so that funds reach the real victims of calamity or victims of war, in time. In case of any violation of or breach of trust a special and fast mechanism has to be provided so that the victims as well as donors are able to make an immediate complaint before an appropriate authority and such complaint is heard and disposed of quickly.

CHAPTER – III

Need to have a special law relating to contributions made in the context of calamities

3.1 Need for comprehensive law on calamity collections and prevention of misappropriation thereof.

As stated in the earlier Chapters, as of now there is no comprehensive law either made by Parliament or the State legislatures to regulate collections made by persons or organizations in times of calamity or disaster. Hence, the need for a special comprehensive law.

3.2 The High Powered Committee Recommendation: Calamity management law:

The High Powered Committee (HPC) on Disaster Management, appointed by the Government of India felt that there is a need for having a Disaster Management Legislation. Consequently, HPC prepared a ‘National Calamity Management Act’. Draft of the said Act was circulated to all the States as well as all the concerned Ministries of Government of India for their comments. The suggested Act aimed at ensuring efficiency and effective management of natural and other calamities, for achieving greater coordination and responsiveness with respect to prevention and mitigation of disasters, so as to provide better relief and rehabilitation of victims of disasters. The HPC also constituted a committee to prepare a ‘Model State Disaster Management Act.’ The said committee finalized the

draft of the Model State Disaster Management Act. A copy of this draft Act was also circulated to the State Chief Secretaries and Relief Commissioners of all States and DGs of all State Administrative Training Institute for their comments, suggestion and further follow up actions. These drafts were submitted as a part of Interim Report I of the HPC, and were accepted by the Central Government, and circulated to all Chief Ministers. The drafts of the 'National Calamity Management Act' and 'Model State Disaster Management Act' are annexed in the final Report of the HPC (October, 2001) as Annexure 5 and Annexure 8 respectively.

3.3 Need for separate law on prevention of misappropriation of collections and speedier remedies:

3.3.1 Although as mentioned above, various drafts have been recommended and suggested by various committees and individuals, still on the specific issue of collection and distribution of funds and other items in the form of donations or contributions by various persons and bodies and the prevention of misappropriation or remedies in case of misappropriation, have not been addressed in any of these drafts. It is not provided in any of these drafts as to how the collection of contributions can be regulated and how the malpractices, and misappropriation of monies or other items can be curbed, so that contributions may reach the victims and also in time. The draft legislations referred above only deal with the management of calamity.

3.3.2 Our present purpose is to deal not only with the contributions and donations received for providing the relief and rehabilitation to the victims

of calamity but also in regard to the collections received for the welfare and rehabilitation of the soldiers and their families who have been killed or disabled in a war or other operations, such as the Kargil conflict, which issue is pending before the Bombay High Court. Therefore, there is a need of a separate law which deals with the issue of regulation and monitoring the collection of funds and other items in the form of donation or contribution by individuals, NGOs other organization or trust for the purpose of providing relief and rehabilitation of the victims of natural or other calamity and for welfare and rehabilitation of the soldiers and their family killed or disabled in a war or war like other operation.

3.3.3 The Bombay High Court in Lokmat Trust case (supra) out of which the present reference arises, has felt the need to have a law to regulate collection of contributions. In that case, the Division bench of the High Court in its order passed on 30.8.2001 observed thus:

“...but we fail to understand why the Government i.e. Central as well as State Government has not regulated the collection of such funds from the public at large. It has now become a common feature that in case of any calamity man made or natural, organizations spring up like mushrooms and appeal to the public at large by involving their sentiments and emotions which facilitate them to collect huge funds and appropriate in the manner they feel it proper. There is no Government Agency to regulate the collection of such funds and to monitor that fund so collected really reaches the beneficiaries”. (para 2)

The court further observed:

“..In our opinion, collection of funds for such causes by person, Institutions, Trusts, Corporate houses and NGO’s should not be allowed without having control over it by the State, which is necessary in public interest. Otherwise, its misappropriation would go unchecked leaving the donor helpless as after one donates, it is left to the sweet choice of the collector of such funds how to appropriate it”. (para 5)

3.4 Law Commission’s view in the Consultation Paper

The Law Commission in its consultation paper on this subject (at para 3.1) had suggested that there is urgent need to bring into being a Central enactment specifically intended to regulate the collection and proper accounts of contribution and donations and to monitor contributions so collected with a view to see that they are properly utilized and distributed.

3.5 Responses to the Consultation Paper

The suggestions of the Law Commission made in the Consultation Paper have been widely accepted and welcomed in every response which the Commission has received.

(i) The Ministry of Defence in its letter dated 30 September, 2004 has agreed with most of the proposed provisions but suggested that so far as

the regulatory authority is concerned, a representative of the Defence Forces of the level of Adjutant General or equivalent may be included, to oversee the interests of the defence personnel and their families. It is also for its view that a representative of the concerned State Government also be co-opted. With regard to judicial authority, one Judge Adjutant General from Army may also be included.

(ii) The Government of Orissa is of the view that the proposals of the Law Commission are wholesome and indeed it will curb unauthorized collection of contributions by non-government agencies under self-styled Relief Fund or War Fund. It will also help in monitoring the distribution of the contribution so that the fund/materials so collected would reach the real beneficiaries.

(iii) The Government of Himachal Pradesh is of the view that the proposed enactment has become need of the hour, keeping in view the experience gained in dealing with disasters, both natural and men made, over a considerable period of time.

(iv) Maharashtra State Law Commission has stated that there can be no two opinions as to the dire necessity of the proposed Central legislation. The background and necessity of such legislation make it obvious that such legislation is in fact overdue.

(v) The Government of Uttar Pradesh is of the view that the proposed legislation will definitely curb the malpractices. It also stated that the

legislation is in public interest and the State Government accords its approval for enacting such a law.

(vi) The Government of Pondicherry has stated that the proposal of the Law Commission for a enacting a law, is agreed to.

(vii) The Government of West Bengal has also agreed to the proposal of enacting a law.

(viii) The Government of Haryana through its various Deputy Commissioner, has also welcomes the suggestion of enacting law.

(ix) The Government of Kerala has welcomed the proposals. However, it is suggested that instead of a Regulatory Authority, the same functions can be performed by a Special Audit Team, in the Finance Department. The discretion not being a regular feature, a permanent regulatory authority may lead to waste of money. For some reasons there is no need to have a separate judicial authority. The role of the Red Cross or Bharat Sevak Samaj may be kept separate.

(x) NGOs, like Citizen Welfare Council (Regd.) Rup Nagar (Punjab), are also of the view that inasmuch as there is no legislation to regulate and monitor collections of these funds/assets by persons/institutions/trusts/NGOs, legislation is absolutely necessary to prevent misappropriation of these funds.

(xi) The Department of Rural Development, under the Ministry of Rural Development, Government of India has stated that so far as the Department of Rural Development is concerned, it agrees with the views expressed in the consultation paper.

(xii) However, the Government of Madhya Pradesh has sent a short reply stating that it has not accepted the suggestions for enacting a special law. No reasons have been assigned for the view so expressed.

3.6 Conclusions

In the light of the above responses, the Commission recommends **that a law should be enacted to regulate the collection of funds including contributions and donations in cash and kind, collected or raised for the purposes of providing relief and rehabilitation to the victims of natural and man-made calamity or for welfare and rehabilitation to soldiers or their family members who are killed or have become disabled in war or war like operations and also to monitor the proper utilization and distribution of such contribution so collected. The details of the proposed law are mentioned in Chapter V.**

CHAPTER – IV

PROPOSED ENACTMENT – LEGISLATIVE POWER, ITS EXTENT, COMMENCEMENT AND SCOPE

4.1 In Chapter III, we have recommended that a law should be enacted to regulate the collection of contributions and donations in cash and kind, which are collected or raised for the purposes of providing relief and rehabilitation to the victims of natural or other man-made calamities or for welfare and rehabilitation of the soldiers and their family who are killed or disabled in war or war-like other operations and also to monitor the proper utilization and distribution of contributions so collected.

In this chapter, we will discuss certain preliminary issues concerning legislative competence of Parliament to enact law on this subject, its territorial extent, commencement and scope of the enactment.

4.2 The evil of misappropriation of collections or contributions is not confined to a particular State or locality. It pervades the whole nation. Whenever any person or body starts collection of contributions, generally he may collect them from every part of the country and even outside the country. A calamity may, in fact, affect people in more than one State. It is necessary to prevent misappropriation and therefore there is need to have a uniform law to regulate the contributions and such a law must be applicable to the whole nation. We are, therefore, of the view that there should be a Central legislation to regulate the collection and utilization of contributions covering collections or misappropriations thereof anywhere in the country.

4.3 Legislative Power of Parliament to enact law on the subject.

4.3.1 It is necessary to go into the question whether Parliament has legislative competence to enact a law on the subject matter now under discussion.

4.3.2 Entries in the Concurrent List: Entry 10 and 28 of List III:

Object of the law is the main criterion to ascertain the legislative power of any particular legislature.

The object sought to be achieved by the proposed law is to curb the misappropriation, and misuse of the contributions and donations collected or raised for the purposes of providing relief and rehabilitation to the victims of any natural or other man-made calamity, as well as, for welfare and rehabilitation of soldiers and their families who are killed or disabled in war or war-like other operation. In order to achieve the above object it is necessary:

- i) To regulate the collection of contributions and donations in cash and kind; and
- ii) To monitor the utilization of contributions and donations so collected.

The subject of Trusts and Trustees is contained in Entry 10 of List III of the Seventh Schedule of the Constitution of India. In view of the Commission, the present subject falls within this entry. As explained in Chapter II, whenever any contribution or donation is given for such

charitable purpose, the person or body, to whom such contribution is given, keeps such contribution in the nature of trust. In addition we may state that the subject of Charities and Charitable Institutions, Charitable and Religious Endowment falls under Entry 28 of the List III (Concurrent List) of the Seventh schedule to the Constitution of India. The proposed law incidentally also deals with aspect of relief and rehabilitation process of the victims of calamity. Hence, it is clear that Parliament has the legislative power on the subject under discussion.

In any event, apart from Entry 10 of List III, which is directly relevant, the Parliament has residuary power to legislate as stated in Entry 97 of List I read with Art 248 of the Constitution of India.

In fact, there is a need to have a ‘non-obstante’ clause to override all existing legislations relating to trusts, to the extent of inconsistency.

4.4 Territorial extent of the proposed law.

4.4.1 In the Consultation Paper (at para 3.2.1), it was suggested that the proposed law should extend to the whole of India. As discussed in preceding paragraphs, there is need for having a uniform law on the subject which will be applicable to the whole of the territory of India.

4.4.2 Position in regard to Jammu and Kashmir

When we say whole of India, it certainly includes State of Jammu and Kashmir also. But, we have to keep in mind the Constitutional

provisions relating to the State of Jammu and Kashmir. As per Article 370 (1)(b) of the Constitution, the power of the Parliament to make laws for the State of Jammu and Kashmir is limited to those matters of Union list and Concurrent list which are declared by the President of India as corresponding to the Instrument of Accession. The President with the concurrence of the State Government of Jammu and Kashmir can add and declare other matters on which the Parliament can enact the law, which may be applicable to Jammu and Kashmir.

4.4.3 As discussed above, the subject matter of the proposed law falls under entry 10 and 28 of list III, and in any event, under residuary powers of the Parliament under entry 97 of list I read with Article 248 of the Constitution.

In exercise of the powers conferred by Article 370 (1) of the Constitution, the President with the concurrence of the State Government of Jammu and Kashmir, has made the 'Constitution (Applicability to Jammu and Kashmir) Order 1954, (CO48). As per section 2 (22) (c) of this Order, entries 10 and 28 of the Concurrent List are not applicable to Jammu and Kashmir. Provisions of Article 248 and entry 97 of the Union list which deals with residuary of the Parliament, have been substituted for the Jammu and Kashmir vide sections 2(6)(b) and 2(22) (a) (iv) of the Constitution Order 1954. It means the provisions of Article 248 and entry 97 of the Union List, as applicable to the rest of the India, are not applicable to the State of Jammu and Kashmir. Therefore, the law made by Parliament under its residuary powers, are not applicable to Jammu and Kashmir.

4.4.4 In view of the special provisions applicable to Jammu and Kashmir and in order to avoid controversy it will be more appropriate if the proposed Central enactment be not made applicable to the State of Jammu and Kashmir. As this enactment relating to prevention of misappropriation of funds collected during calamities and destruction is in the public interest, it may be more appropriate that State Legislature of Jammu and Kashmir itself enacts such a legislation in this behalf for that State.

4.4.5 On the basis of discussion above we recommend that the proposed law shall be applicable to entire territory of India except the State of Jammu and Kashmir.

4.5 Operation of the proposed law- prospective or retrospective.

4.5.1 Proposals in Consultation Paper. Parliament can make a law with prospective or retrospective effect. On the question whether the proposed law should be prospective or retrospective, in the light of the complaint procedure proposed, it was suggested in the Consultation Paper that the proposed law should necessarily have to come into force prospectively. But in view of the present reference and with a view to cover the contributions already collected between 1.5.1999 (the tentative date when the Kargil conflict began) and the date from which the proposed enactment would come into force, it was proposed in the Consultation Paper that such persons or agencies shall be deemed to have been provisionally registered. It was further proposed that a formal application for registration has to be given within one month from the date of coming

into force of this proposed enactment. It was proposed that if the registration is refused by the Collector, all the unutilized contributions shall be taken over by the Regulatory Authority or by the Collector from such person or body as stated above and thereafter the Authority and the Collector will have a right to transfer it to some other authorized person or agency. We shall discuss the responses to this proposal. But, at this stage, we may state that our final view is that the proposed Act need not be retrospective.

4.5.2 Response of Govt. of Pondicherry.

On this issue Government of Pondicherry through its Law Department in its response to the Consultation Paper has stated that the proposal to have retrospective operation for the enactment may not stand the test of law and may not be acceptable to the courts. The Law Department has expressed its reservations for such retrospective operation of the proposal enactment.

4.5.3 Law permits retrospective legislation but in the present context, it is felt that the proposed law by prospective only.

There are considerable authorities in support of a settled principle of law that in India, because of plenary powers, the Parliament as well as State Legislatures can enact legislations prospectively as well as retrospectively, however, subject to Constitutional restrictions. (see *M/s. Nanumal Girdharilal v. State of UP* AIR 1992 SC 2084, *Govt. of AP v. Hindustan Machine Tools*, AIR 1975 SC 2037, *JK Jute Mills Co. v. State*

of UP, AIR 1961 SC 1534, *Jadao Bahuji v. Municipal Committee Khandwa*, AIR 1961SC 1486, *MPV Sundaramnier and Co. v. State of AP*, AIR 1958 SC 468). Competence to make a law for past period on a subject depends upon present competence to legislate on that subject. (see. *A- Hajee Abdul Shukoor and Co. Vs. State of Madras* AIR 1964 SC 1724). The Courts have applied Art 14 to strike down certain laws which are retrospective.

Now, we analyze the proposal made in the Consultation Paper. Three major points were made in the consultation paper. These are: (i) in general, the proposed law shall be prospective in nature;(ii) persons or agencies who had collected contributions in past shall be deemed to have provisionally registered under the new law, however, they will be required to make a formal application for registration within a prescribed period, and (iii) if registration is refused, all unutilized contribution shall be taken over by the Regulatory Authority or Collector and the contribution so recovered may be handed over to some other person or agency.

The net effect of the proposal made in the Consultation Paper was that the persons or organizations who had collected contributions in past are required to apply for registration. If their application is accepted, they will be eligible to collect contribution in future also. And if their application for registration is rejected, all unutilized contributions kept by them shall be taken over by the Regulatory Authority or Collector. After all, the collections are not their personal property, but belong to public.

These persons or organizations cannot claim that they are losing any interest in the property.

The only question which now arises is that whether it can be contended that the taking over of such unutilized contributions by the Regulatory Authority or Collector amounts to punishment or penalty falling within the prohibition of Article 20(1) of the contribution? If so, such provision will, of course, be liable to be held ultra vires. The answer to this question may be traced in the judgment of the Five Judge Bench of the Supreme Court in State of West Bengal v. S.K. Ghosh, AIR 1963 SC 255.

The Supreme Court held:

“We are, therefore, of opinion that forfeiture provided in section 13 (3) in case of offences which involve the embezzlement etc. of Government money or property is really a speedier method of realizing government money or property as compared to a suit which it is not disputed the Government could bring for realizing the money or property & is not punishment or penalty within the meaning of Article 20(1)”.(Para 14)

4.5.4 Final view of the Law Commission : Proposed Act to be prospective:

When the Law Commission suggested in the Consultation Paper about giving retrospective operation of the proposed enactments, it was

felt that there are allegations of misuse and misappropriation of contributions which had been made during ‘Kargil conflict’ (May, 1999) and ‘Gujarat Earthquake 2001’, and that the proposed law should be retrospective. It was felt that large amounts of contributions could be recovered if they were not utilized. It was in those circumstances that such a provision was suggested. But since then (1999 and 2001), a lot of time has already passed and it may take further time before any law is finally enacted and is brought into existence. By that time the unutilized contributions may not even be traceable. Moreover certain technical difficulties may also arise, in searching for the unutilized contributions. In regard to such past collections, the existing law can, if so desired, be always resorted to, though the remedies are different from the special and speedy remedies proposed in this Report.

In these circumstances, now the Law Commission is of the view that the proposal relating to giving retrospective operation to the proposed law need not be pursue. We recommend that the whole of the proposed enactment should be made prospective only.

4.6 Scope of the proposed law – whether contributions received by the Government to any fund should also be brought into purview of the enactment.

4.6.1 Contributions and donations are collected or raised by the Government or their agencies as well as by private individuals, organizations, NGOs, trusts, etc. The issue is whether the proposed law should be applicable to all contributions or donations or whether it should

be applicable only to those contributions or donations which have been collected by private individuals, bodies or agencies.

4.6.2 Proposals in the Consultation Paper as to Government funds.

In the Consultation Paper, it was proposed that all contributions or donations collected or received either in cash or in kind, by any person, association, agency, body corporate or non corporate, institution, firm or other organizations should come under the purview of the proposed enactment (para 3.2.1). In the Consultation Paper, contributions collected or raised by the Government or their agencies were kept out of the purview of the proposed enactment, but suggestions were invited on the question.

4.6.3 Responses to the Consultation Paper.

4.6.3.1 Some of the responses suggested that contributions made out of the State funds, (like Prime Minister's Relief Fund, Chief Minister's Relief Fund, and other calamity Relief Funds set up by the Government) should also be dealt with by the proposed enactment for the purpose of introducing a measure of accountability in the administration of the above funds. Of course, some other responses suggested that such funds need not be covered by the proposed law, as there were other safeguards.

4.6.3.2 The Pondicherry Government in its response has stated that Chief Minister's Welfare Fund of Pondicherry, need not be brought within the purview of the proposed enactment. It also stated that adequate safeguards have been provided for the proper administration of this fund by virtue of

rules and scheme framed under the Charitable and Endowments Act, 1890. Provisions have also been made for proper accounting and auditing of utilization of the funds under the said scheme.

4.6.3.3The **Maharashtra State Law Commission** is of the view that Prime Minister's Fund and Chief Minister's fund should not be brought within the purview of this Act.

4.6.3.4The **Department of Rural Development, Ministry of Rural Development, Government of India**, has brought in the notice of the Law Commission about a centrally sponsored scheme, namely "Sampoorna Grameen Rozgar Yojana (SGRY) of that Ministry. Under the scheme, no funds are released to any Institution, person or organization for the welfare of victims of natural and other calamities or war like emergent situations. However, in the wake of natural calamities, additional assistance is provided to the affected State Governments in the form of food grains under the special component of the SGRY. This assistance is provided only on the basis of the decision of a Task Force headed by the Deputy Prime Minister. In addition to this, 5 per cent of total allocation is kept reserved for calamity affected areas under the SGRY and Indira Awas Yojana.

4.6.3.5The **Secretary, Rajya Sainik Board, Haryana** in its response has also stated about another fund namely 'Haryana Chief Minister War Relief Fund' which was set up by the Haryana Government. It is stated that this fund is meant for providing financial assistance to the next of kin of martyrs or to the disabled, at once, without any delay. The fund got

registered under the Societies Registration Act with the Registrar of Firms and Societies, Haryana as a Society. The fund was collected through the Deputy Commissioners in the shape of cheques and Bank drafts and proper receipts were give to the donors. To monitor the fund, a high level committee in which Chief Minister, Chief Secretary, Financial Commissioners of Finance and Home Departments, Director Resettlement, Secretary, Rajya Sainik Board, are members, had been constituted. The accounts of the Funds are audited by the Auditors of Local Fund and a Chartered Accountant.

4.6.3.6 On the other hand, the **Government of West Bengal** (Legislative Department) has opined that contributions made out of the State Funds should also be dealt with by the proposed enactment for the purpose of introducing a measure of accountability in the above funds and ensure transparency in the system, as also in view of the increasing recognition of a citizen's right to information by the State.

4.6.3.7 The Deputy Commissioner Panchkula (Haryana) is also of the view that State Funds should be covered under the proposed enactment for the purpose of avoiding misappropriation of funds collected in this regard.

4.6.4 **Our Discussion.** At the Government level, various kind of funds are set up to provide help and assistance. Some of these funds are permanent in nature and do not relate to a particular situation, calamity or war – For example, Prime Minster's National Relief Funds, National Defence Fund, Army Central Welfare Fund, Indian Naval Benevolent Fund or National Calamity Contingency Fund, Chief Minster's Relief

Fund of different States. Apart from these, sometime a particular fund is set up to deal with a particular calamity or other eventualities. For example Chief Minister Earth Quake Relief Fund of Maharashtra, was set up to deal Latur earthquake. We also have Andhra Pradesh Chief Minister Cyclone Relief Fund, Prime Minister Armenia Earthquake Relief Fund, Prime Minister Drought Relief Fund, Pondicherry Chief Minister Cyclone Relief Fund, Gujarat Earthquake Rehabilitation and Construction Fund. Donations and Contributions from general public are accepted in most of these funds, however, in some funds, Government itself contributes to these funds. Sometimes surcharge is also levied to cover the budgetary provisions. Other government agencies also raise contributions and donations. It is one of the functions of the Gujarat State Disaster Management Authority, which is constituted by the Government of Gujarat, to obtain funds in the form of grant, aid, assistance, from the Government, Central as well as State, World Bank, ADB, USAID, DFID, IFRC, and donors, NGOs and from financial institutions, Public and Private Trust or any other organization. These funds are normally being managed by a committee. Proper accounts are maintained, proper receipt are given and these funds are subject to audit as well.

The Prime Minister's National Relief Funds depends entirely on voluntary donations received from the public. The Fund renders assistance to individuals facing distress situations. Its resources are utilized for the provision of immediate relief to the families of those killed in natural calamities. It also grants assistance to families affected by major disturbances, riots and accidents. Besides, the Funds extend assistance to indigent persons to defray the cost of expensive medical treatment.

Contributions to the fund can be deposited in select Bank branches through cheques and bank draft. A formal receipt for the contribution is issued from the Fund. The Fund does not accept any contributions in kind.

The National Defence Fund is intended to take charge of voluntary donations in cash and kind received for the national Defence effort, and to decide on their utilization. The Fund is being used for all purposes connected with defences including welfare of the members of the Armed Forces and Para Military Forces and their dependants. The fund is administered by an Executive Committee consisting of the Prime Minister as Chairman, and the Defence, Finance and Home Ministers as Members, Joint Secretary to the Prime Minister is the Secretary of the Executive Committee. Disbursement from the fund are made after obtaining approval of all members. This is a Public Fund, and the account and balance are kept with the Reserve Bank of India. Its accounts are audited by the Comptroller and Auditor General of India. (<http://pmindia.nic.in/funds> dated 1.8.2002).

Government of India has constituted a 'National Calamity Contingency Fund (NCCF) for the purpose of dealing natural calamity of severe nature. The Fund is classified in the public account of the Government of India. The Central Government provided initial corpus of Rs. 500 crores. A National Center for Calamity Management (NCCM) has been constituted by the Ministry of Home Affairs, which will assess how much of the fund be utilized for immediate relief and rehabilitation. The above recommendation of NCCM is required to be considered by the High Level Committee on Calamity Relief constituted by the Ministry of Home

Affairs. As per the decision of the High Level Committee, the Fund is released to the State Government. The Ministry of Home Affairs shall oversee that the money drawn from NCCF is applied by the State Government for the purpose for which the Fund was set up. The account of NCCF is maintained by the Chief Controller of Accounts, Ministry of Finance, and audited annually by the Comptroller and Auditor General

As stated above, the Chief Minister's Welfare Fund of Pondicherry is being administered under a scheme notified under the Charitable and Endowments Acts, 1890. The said scheme contains provisions for proper accounting and auditing of the utilization of the funds.

The above discussion makes it clear that so far as contributions and donations collected by the Government or their agencies are concerned, there are provisions for proper accounting and auditing of those collections and utilization. Still, in the light of Freedom of Information Act, 2002, (when it becomes effective on framing Rules), citizens may be able to obtain necessary information regarding amount of collection and utilization of these funds. It is also possible that even otherwise, a large amount of information may be available on the internet in the official website of the Government or their agencies. Some of the Funds set up by the Government are general funds which can be used in case of any eventuality.

However, there may still be cases of misappropriation of moneys by officials or non-officials. But for that purpose, there are provisions in the Penal Code and other anti corruption laws. The HPC in its Draft of

National Calamity Management Act (Clause 14) and Model State Disaster Management Act (clause 21) has already suggested provisions for civil liability for misuse of funds by the official functionaries who are entrusted with or engage in any relief or rescue operation. Penalty can be imposed equivalent to 150 per cent of the total loss of public money or damages to public property caused by such officials. This penalty is apart from the criminal prosecution that may be launched against him. Such a law, if enacted, will, in our view, sufficiently take care of misappropriation of funds, if any, by the government officials.

In Bipin Chandra Diwan Case (Supra), the Gujarat High Court has observed that it should be ensured that funds raised by the Government should be safe and subject to periodical audit to ensure proper utilization of funds and materials. Further, in our view, an exhaustive audit cannot be done hurriedly and especially when the relief and rescue operations are going on. Therefore, if funds collected by Government or its agencies are to be omitted from the applicability of the proposed law, it can be treated as a reasonable basis of classification between two classes, namely, collections and utilization of contributions and donations by the Government and its agencies, and by the private individuals bodies, NGOs, trusts etc. The apex court in various judgments has held that, in certain circumstances, one law may apply to non-state entities and a different law may be made for the State (see *Sagir Ahmed v. State of UP*, AIR 1954 SC 728, *Kondala Rao v. A.P.S.R.T.C.*, AIR 1961 SC 82, *Nav Rattamal v. State of Rajasthan*, AIR 1961 SC 1704).

Final view of the Law Commission

4.6.5 In these circumstances, the Law Commission is of the view that the proposed enactment should be made applicable only to those contributions and donations which are received or collected by private individuals, bodies, organizations, trust or NGOs or other private entities. The contributions or donations collected or received by the Government or its agencies or bodies establish by the Government or for any fund set up by the Government should be kept out of the purview of the proposed enactment.

Therefore, we recommend that the proposed enactment should be made applicable to all those contributions or donations collected or received, either in cash or kind, by any person, association, agency, body, institution, firm, NGO, trust or other organization. The purpose of the proposals is to regulate collections and provide relief and rehabilitation to the victims of any natural or man made calamity or for welfare and rehabilitation to the soldiers and their family who are killed or disabled in a war or war like other operation, whenever such collections and relief work is taken up by non-governmental organizations. It is further recommended that contributions received by the private parties referred to above from the Government or any fund set up by the Government, shall be brought into the purview of the enactment. However, any contribution received by the Government, or any fund set up by any government, or by any authority or agency established by any government shall not be brought into the purview of the proposed enactment.

Discussion and final recommendation of the Commission made in this chapter may be summarized as follows:

- 1) Parliament has legislative competence to enact law on the subject.**
- 2) The proposed law should be made applicable to the whole of India except the State of Jammu and Kashmir.**
- 3) The proposed law should be prospective in operation and there should be no retrospective operation of the law.**
- 4) Contribution and donations received by any Government or its agencies for any fund set up by any Government shall be kept out of the purview of the proposed enactment. However, where such contributions are received by non-governmental bodies, the proposed law shall apply to them.**

CHAPTER V

SALIENT FEATURES OF PROPOSED LAW

5.1 In this chapter, we shall discuss the manner in which collection of contributions and donations can be regulated and also the manner in which utilization of such contributions can be monitored and action taken. As stated in the previous chapters, the main purpose of regulation is to ensure that no contribution is misappropriated or misutilised and to ensure that it reaches to the actual needy person or persons in time and provides speedy and efficacious remedies.

5.2 **Establishment of Regulatory Authority**

5.2.1 In order to achieve the above object, it is desirable that there should be a Regulatory Authority to regulate the collections and utilization of the contributions. It has been suggested that the said Regulatory Authority should be independent and impartial, and has to be established by the Central Government, and should consist of persons of high integrity, semi or government officials and non-governmental representatives of good reputation also.

5.2.2 A question arises as to whether such non-governmental representative must be included in the proposed Regulatory Authority. Obviously, these NGOs should be of repute and other than those connected with even remotely with the present subject. In our view, in such kind of Authority there is always a need that it should also consist of non-

government members. For example, there was 'District level Natural Calamities Committee' for the Districts of Kalahandi and Koraput in the State of Orissa, consisting of the District Collector, other officials and local MPs and MLAs of districts. The Committee was required to review the progress of relief work and the measures taken to meet the drought conditions from time to time. In Kishen Pattnayak v. State of Orissa, A.I.R. 1989 SC p.677, the Supreme Court directed the Orissa Government to nominate at least five persons belonging to the recognized voluntary organisations as members of the said Natural Calamities Committees of these districts. The Court also directed that the functions of the said Committees be not confined only to the cases of starvation deaths, but it shall also be responsible for looking after the welfare of the people to the district. The Committee shall also keep watch over the working of the social welfare measures which were being taken and may be taken in future. It is on the basis of the above decision that the Commission had recommended for inclusion of representatives of reputed NGOs to be included in the Regulatory Authority in the Consultation Paper.

5.2.3 Proposals in the Consultation Paper: Regulatory Authority's constitution: It was accordingly suggested in the Consultation Paper that a Regulatory Authority be established by the Central Government, which shall consist of representatives of NGOs and others also. The constitution suggested was:

a) A Full time Chairperson, having special knowledge or practical experience in respect of matters relating to rehabilitation with adequate

knowledge of accounting and management of funds or grants, to be appointed by the Central Government.

b) A Full time Member Secretary, having special knowledge or practical experience in respect of matters relating to rehabilitation with adequate knowledge of accounting and management of funds or grants, to be appointed by the Central Government from amongst the officials of its Ministries, not below the rank of Joint Secretary.

c) Three members nominated by the Central Government from amongst the officials of its ministries or departments, who have practical experience in respect of matters relating to rehabilitation with adequate knowledge of accounting and management not below the rank of Joint Secretary.

d) One member from the Indian Audit and Accounts service not below the rank of Accountant General.

e) Five members nominated by the Central Government to represent the interests of the general public. These may belong to NGOs, media (print and electronic), legal or medical profession, chartered accountants.

5.2.4 Responses to the Consultation Paper

5.2.4.1 Department of Personnel & Training: In response to the Consultation Paper, the Department of Personnel and Training (DoPT), Government of India has drawn our attention on one O.M. No.3115/99-Estt. dated 18.11.1999 of the said Department, which provides that any Chairperson and Member(s) of Regulatory Authority, Statutory bodies and Tribunals, who, on the date of his appointment to such Authority or body was in the service of the Central/State Government shall be deemed to

have retired from such service with effect from the date of his respective appointment as such Chairman/Member. However, this provision will not apply to the cases where the provisions in the statutes under which the body is constituted contain a provision contrary to the aforesaid OM. The DoPT has stated that prerequisite and other terms and conditions of Chairperson and other members should be strictly as per the above O.M. The O.M. further provides that pay upon such appointment as Chairman/Member, will be regulated in accordance with the prevailing orders of Govt. of India applicable to the reemployed pensioners, i.e. pay minus pension.

5.2.4.2 Maharashtra State Law Commission has expressed its view that in the proposed Regulatory Authority, majority of members are bureaucrats. It is stated that though they may be in a better position to regulate and monitor the functioning of the collections and distributions with necessary integrity and ability, still they suffer from certain problems like delay, technicality, lack of proper approach etc. The State Law Commission has proposed and suggested that for maintaining balance and equilibrium, an equal number of members both from the bureaucrats and others like social workers etc. should be taken. State Law Commission has further suggested that there should be one post of Joint Secretary, to be filled in from those social workers or NGOs etc.

5.2.4.3 The Ministry of Defence, Government of India has suggested that a representative of the Defence Forces of the level of Adjutant General or equivalent may be included in the proposed Regulatory Authority to oversee the interests of the defence personnel and their families. It is

further suggested that a representative of the concerned State Government may also be co-opted.

5.2.4.4 Department of Power, Government of West Bengal has suggested that apart from the Central Regulatory Authority, there should also be a State Level Regulatory Authority.

5.2.4.5 Deputy Commissioner, Sonapat, Haryana in his response has made a suggestion that in the proposed Regulatory Authority, higher officials of State level should also be included.

5.2.4.6 Government of Kerala, however, has not agreed to the proposal of having a Regulatory Authority. It is stated in their response that calamities are not a continuous phenomenon. There are of sporadic occurrence and for that purpose there is no need to set up a permanent machinery.

5.2.5 **Our Discussion**

5.2.5.1 Past Experience:

In the past various Regulatory Authorities have been established by the Central Government under different statutes. For example, there is Insurance Regulatory and Development Authority (IRDA) established under the IRDA Act 1999, Telecom Regulatory Authority under the Telecom Regulatory Authority of India Act 1997, Electricity Authority and Electricity Regulatory Commission under the Electricity Act 2003,

Security and Exchange Board of India (SEBI) under the SEBI Act 1992, Central Pollution Control Board under the Water (P&Co) Pollution Act 1974.

These Authorities generally consist of (a) Chairman (b) Full Time Members (c) Part-Time Members, appointed or nominated by the Central Government. These members may be officials of the Government or non-officials also. Full time members and Chairman get salary and other benefits while part-time members normally get allowances and fees.

5.2.5.2 In view of the O.M. of DoPT, Govt. of India, it is now proposed that the Regulatory Authorities should consist of (a) Chairman; (b) One Part-time member who is expert in matters relating to rehabilitation who shall be from the Central Government not below the rank of Joint Secretary; (c) One Part-time member who must be from the Indian Audit and Accounts Service not below the rank of Accountant General; (d) Three Part-time non-official members to represent general public. This would make a committee of six members of whom three are non-governmental members.

5.2.5.3 In respect of suggestion made by the Ministry of Defence, that in the Regulatory Authority a representative of the Defence Force should be included, we are not proposing that when the calamity in regard to which collections are made relates or concern to Defence Forces, a Part-time Member from the Defence Force of the level of Adjutant General or equivalent may be co-opted.

5.2.5.4 The view of the Maharashtra State Law Commission that in the proposed Regulatory Authority, majority of the members are from the bureaucracy, has been taken into consideration, though the said statement is not wholly correct. In the Consultation Paper, it was proposed that five members including Member-Secretary, will come from the bureaucracy and five members were proposed from the general public. In the final recommendation, we are now proposing six members and at least three will be non-officials as stated earlier.

5.2.5.5 In respect of suggestions of the Department of Power, Govt. of West Bengal that a State level Regulatory Authority should also be established, we are of the view that if any State Government deems it fit, it may establish a State level Regulatory Authority by issuing an executive order. Even a State law can be enacted for that purpose. It is upto the State Government to take appropriate decision in this regard.

5.2.5.6 We do not agree with the view of the Kerala Government that a Regulatory Authority is not necessary. It appears that they only meant that there is no need for a permanent Regulatory Authority with a large number of permanent members. We agree calamities occur only once in a few years. But now, we are proposing one Chairman (ex officio) and the rest will be Part-time Members. Hence, expenses can be saved.

5.2.6 Therefore, we recommend that the Central Government shall establish a Regulatory Authority to be described as 'Contribution Regulatory Authority' consisting of --

- (a) A Chairperson, having special knowledge or practical experience in respect of matters relating to relief and rehabilitation of victims of calamities with adequate knowledge of law, accounting and management of funds or grants, to be nominated by the Central Government. The Chairperson will be a person holding a post not below the rank of Secretary to the Government of India. The Chairperson shall hold this office in addition to the post he is holding.
- (b) One part-time member having special knowledge or practical experience in respect of matters relating to relief, welfare or rehabilitation with adequate knowledge of accounting and management of funds or grants to be nominated by the Central Government. He shall be a person who is holding a post not below the rank of Joint Secretary in the Central Government.
- (c) One part-time member to be nominated by the Central Government from the members of Indian Audit and Accounts Service not below the rank of Accountant General.
- (d) Three part-time members to be nominated by the Central Government to represent the interest of general public. These may be NGOs, media, legal or medical profession, Chartered Accountants, social workers.
- (e) If the calamity in regard to which collections are made, relates or concerns Defence Forces, a part-time Member from the Defence Forces not below the rank of Adjutant General or equivalent may be co-opted by the Regulatory Authority.

5.2.7 Place of sitting:

The place of the head office of the Regulatory Authority may be such as may be notified by the Central Government. However, under the Act, the Regulatory Authority is to be empowered to hold its sittings in the form of a camp or circuit at the place where the natural or other man made calamity has occurred and also at such other place where substantial part of contributions or donations are collected or are being distributed. The Central Government shall also prescribe rules of procedure which will be followed by the Regulatory Authority in regard to the transaction of business at its meeting including quorum. But the time and place of meeting shall be decided by the Chairman.

5.2.8 Finances:

It is obvious that the Regulatory Authority will require necessary funds to meet various expenditure, which includes payment of allowances, other administrative expenditure and miscellaneous expenses. Therefore, it is recommended that the Central Government shall provide necessary funds required, so that the Regulatory Authority may perform its functions effectively.

The Regulatory Authority shall deposit all monies received by it including those received from the Central Government or by way of any fees or otherwise in an account in a nationalised bank. This account of the Authority shall be applied for the purpose of meeting all its expenditure.

5.2.9 Maintenance of accounts by the Authority

5.2.9.1 As mentioned earlier, the main task of the Regulatory Authority is to work as watchdog over the collection and distribution of the contributions and donations and to oversee that proper accounts are maintained by the persons and agencies who have collected the funds.

It has also to see that there is no misuse of the contributions, and, therefore it becomes imperative that the funds and accounts of the Authority itself are maintained properly and in transparent manner. Therefore, we recommend that the Regulatory Authority shall maintain proper accounts and other relevant records of its funds and shall also prepare an annual statement of accounts, in such form which may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India. The accounts of the Authority shall be audited by the Comptroller and Auditor General of India.

5.2.9.2 In subsequent paragraphs, we shall be referring to a proposal that the Regulatory Authority shall have power to seize any contribution in case it finds that any person or agency is found misusing or misappropriating the contributions and donations.

5.2.9.3 All these contributions and donations and amount recovered by the Regulatory Authority should not be mixed with the other amounts of the Regulatory Authority and should be kept separate by the Authority. It is public money, it cannot be used by the Authority for the expenditure of the Authority. In fact, if the collectors of the monies were trustees, the moneys received from the collectors, will, in the hands of the Regulatory

Authority be of the same character and will be trust money. Therefore, we recommend that the Regulatory Authority shall keep and maintain a separate account of all the contributions or donations received, seized, or recovered by it. The Regulatory Authority shall be empowered to distribute this contribution to any other authorised person or agency, or to victims of calamity in connection with the similar calamity or disaster, natural or man-made. In case there is any surplus, it must deposit it in any fund set up by the Central Government or handed over to some other authorized person, body or agency. A statement of all the receipts and distribution under this head has to be prepared by the Authority. Such statements of accounts shall also have to be audited by the Comptroller and Auditor General of India.

5.3 Registration as Authorised Person or Agency

5.3.1 In order to regulate the collection of contributions and donations, it is necessary that they should be collected only by those who are authorised to collect it. We find that under some State enactments, such as the one in force in Maharashtra, every charity is required to be registered. No doubt, some State Acts contain provisions for action if a person or organization does not register and still indulges in collections and misappropriation. But, it must be noted that the present effort is to make a special law to deal speedily with collections and donations made to private individuals or organisations during calamities and disasters. As of now, in the wake of any calamity or disaster anybody can start collection of contributions without any kind of authorization. There is no check which ensure that only genuine persons or agency can collect. It is proposed that collections

made by any unauthorized agency or persons will be an offence. In order to save delays, we are providing for provisional registration also. Absence of any kind of mechanism to check may lead to allow misuse and misappropriation of contributions so collected.

5.3.2 That was why, therefore, it was proposed in the Consultation Paper that after the coming into force of the proposed enactment, no person or agency shall be entitled to collect contributions unless it is get registered itself as 'Authorised person or agency', either provisionally or finally.

5.3.3 As the office of the proposed Regulatory Authority shall be only at one place, we felt that it will cause great inconvenience to the persons if we require that all applications for registration have to be made to the Regulatory Authority. It is more appropriate that place of registration as Authorised person, body or agency must be easily accessible to the persons in the local area, where the calamity or disaster occurred or to places near about. It should also be accessible easily for any person or organization to start collections, at places where there is likelihood of large donations or contributions. Therefore, in the Consultation Paper it was proposed that application for registration can be submitted to the 'District Collector' of any District where the person applying actually resides or body or agency applying has its place of work. Applications can also be made to the District Collector of such District where the contribution is proposed to be collected and where relief or rehabilitation is proposed to be provided.

5.3.4 The Collector after inquiry and verifying the facts narrated in the application and seeing the documents filed in support of the application,

may either register the person or body or refuse to register. Procedure required to be followed by the Collector for deciding the application, was also mentioned in the Consultation Paper. It was also proposed that in case the Collector rejects the application for registration, aggrieved party can prefer an appeal to the Regulatory Authority. Provision for provisional registration was also mentioned in the Consultation Paper.

5.3.5 It is necessary that only those persons or bodies should be allowed to collect contributions who have some kind of experience in the field of social service. Therefore, it was proposed that in respect of eligibility to obtain registration, such person or body or agency should have at least three years experience in social service.

At the same time it is also necessary that persons or bodies whose track record is not sound, should not be allowed to raise the contributions. To achieve this purpose, it was proposed that a person should not be registered, (a) if he was adjudged as insolvent under the Insolvency law or (b) if he is a person against whom either charges have been framed by the court or (c) if he is a person who has been convicted by a court for an offence involving moral turpitude or (d) if he is a person or body who is already debarred or banned under any law or under order issued by the government, such person or organization shall not be entitled for registration.

5.3.6 Responses to Consultation Paper

In response to the Consultation Paper, there were only few suggestions made in respect of provisions relating to registration of authorised person or agency.

5.3.6.1 Legislative Department, Govt. of West Bengal, is not in favour of laying down the requirement of three years experience in social service for registration because according to them it is likely to frustrate the object of providing relief to disaster victims, as this requirement of experience will exclude well-meaning organisations, bodies or persons who may otherwise be ready and willing to generously contribute towards relief work.

5.3.6.2 We would like to make it clear that we never intended that registration is necessary for all persons doing all types of social work during calamities. We only stated that for collecting contributions or donations for providing relief to disaster victims, at least three years experience in social work is necessary. If any person or organisation wants to engage in relief work without any kind of collection of contribution, it can certainly do it without any registration. But when such person or organisation intends to collect contribution, it is in the interest of the general public that such person or organisation should be screened and for that purpose, he should have at least three years of experience in the field of social service.

5.3.6.3 In respect of the Commission's proposal in the Consultation Paper that when a person is provisionally registered, he can collect contributions but cannot disburse it till final decision is taken by the Collector, the Legislative Department of Govt. of West Bengal has stated that this

proposal may prove to be self defeating in as much as this will unduly delay the whole process of providing relief and distribution of relief materials to the victims, which is opposed to the very object of raising such relief fund. It was urged that such provision either may be omitted or relaxed in some genuine cases.

5.3.6.4 The main purpose for allowing provisional registration is to allow the collection of contribution without awaiting final orders on the application for registration, in case of urgency. The Collector is supposed to take final decision expeditiously. Persons or bodies who are provisionally registered, and accordingly have started collection of contributions are supposed to wait only for a short period, for distribution of such contributions so collected. Moreover, we have to maintain some distinction between those who have been provisionally registered and those who have got registration finally. A person or organization, once registered need not apply again and again. If persons or organisations who are provisionally registered, are allowed to distribute the contribution, and ultimately if their application for registration is rejected, then the main object of making a provision for mandatory registration for collection of contributions would certainly be defeated and it may also encourage back door entry of non-eligible persons or organisations. As stated above, registration is required only at one time. It is not necessary that for every calamity, fresh registration is needed. When once any person or organisation is registered, and is maintaining proper accounts and is filing the required returns regularly, he or it can collect contributions whenever there is a calamity or disaster and distribute the contributions. The result is that the views of the Govt. of West Bengal are, in our view, not tenable.

5.3.6.5 The Maharashtra State Law Commission has suggested that registration shall be for a period of three to five years. It is also suggested that there should also be special registration for a short period for a particular calamity.

5.3.6.6 We have considered this suggestion closely, but we are of the view that there is no need to prescribe a period during which the registration shall be in force. Once a person or organisation is registered (unless the registration is suspended or cancelled), it can collect the contributions and distribute it, subject to the procedure followed by such person or organisation, in regard to maintaining the proper accounts and filing of required returns. Similarly, registration for a shorter period is also not required because there cannot be two sets of duties required to be performed, one by those who are registered for shorter period and one by those who are registered for longer period. When the duties and obligations are same, it will not serve any purpose for providing two kinds of registration.

5.3.6.7 It has also been urged by the Maharashtra Law Commission that upon receiving the application for registration, the Collector should make an enquiry to verify the correctness of facts stated in the application and ascertain the eligibility and fitness of applicant for registration. These measures have already been suggested in the Consultation Paper itself. An application can be rejected on such enquiry and the provisional registration shall automatically come to an end.

5.3.6.8 In regard to Commission's proposal for appeal before the Regulatory Authority against the order of refusal of registration or cancellation of registration by the Collectors, it has been suggested by the Maharashtra Law Commission that the said appeal should lie before the proposed Judicial Authority and a revision may be provided to the Regulatory Authority. Reason behind this suggestion, as stated, is the office of the Regulatory Authority is likely to be at Delhi, and it would be very difficult, expensive and time consuming specially for small and sincere agencies to prefer appeal at Delhi.

5.3.6.9 The function of the proposed Judicial Authority (as proposed in the Consultation Paper) was to entertain and dispose off complaints against any person or agency in relation to alleged misappropriation, misuse or not utilisation of any contribution collected or received by such person or agency. The Commission's view was that proposed Judicial Authority is not to deal with the cases relating to the administrative functions of Collector. Order of refusal or cancellation of registration is an administrative function, however, subject to the principle of natural justice being followed. Therefore, it is not desirable to suggest appeal before the Judicial Authority against the order of Collector regarding registration and cancellation of registration. Further, providing revision before the Regulatory Authority against the order of Judicial Authority, as suggested by the State Commission cannot be said to be appropriate. Therefore, we propose to retain the proposal of an appeal to the Regulatory Authority

5.3.6.10 The Department of Power, Govt. of West Bengal is of the view that the procedure for registration is cumbersome and needs to be

simplified. We do not see how it can be made more simpler, without sacrificing public interest. Procedure for registration suggested by us is a simple one. In fact, the above Department has not come forward with a simpler procedure.

5.3.6.11 In another response, the Deputy Commissioner, Yamuna Nagar (Haryana) has requested that some modalities may be worked out, such as where once application of a person for registration is rejected by the Collector, he should not be able to get himself registered in the office of any other Collector in the country. This idea has already been suggested in the Consultation Paper at para 3.3.1. We reiterate our proposal in the Consultation Paper and recommend accordingly.

5.3.7 In view of the above discussion, final recommendations of the Law Commission in regard to registration are as follows:

Final recommendations as to Registration: mandatory registration & other procedures

i) From the date of commencement of the proposed legislation, no person, or body or agency shall collect or receive contributions or donations for the purpose of providing relief or rehabilitation to the victims of any natural or other man-made calamity or for welfare and rehabilitation of soldiers and their family members who are killed or disabled in a war or other similar operation, unless such person or body or agency is registered or provisionally registered as Authorised person or agency under the proposed legislation. Any person, body or agency

making collections contrary to the prohibition shall be guilty of an offence of collection without such registration punishable with imprisonment upto 3 years or fine upto Rs.50,000 but not less than Rs.25,000 and the provisions of the Code of Criminal Procedure, 1973 will apply. In the case of such offence by non-individuals, the punishment shall be inflicted on the persons mentioned hereinbelow.

When an offence mentioned above is committed by any agency or body, every person who at the time of commission of the offence, was in charge of and was responsible for the conduct of business of such agency or body, and the person who had collected the contribution as well as who had made appeal for contribution, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, any of the persons mentioned above shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

For the removal of doubts, it is made it clear that though an organisation, body or agency might be registered or recognized under any other law, like, the Companies Act, 1956, Society Registration Act, Trust Act or any other law applicable to charitable institutions, still registration under the proposed law, as Authorised person, body or agency is necessary, if the collections are proposed in the context of a calamity or disaster. Excepted categories are Government and Government agencies.

ii) Any person, body, organisation or agency may apply for registration, to the Collector of any district in whose jurisdiction either,

- (a) the person applying for registration actually resides or agency or body applying has its principal office or place of work; or
- (b) the contribution or donations is proposed to be collected; or
- (c) the relief or rehabilitation work is to be done.

Provided that only one application shall be made and no second application will be maintainable unless the first application has been rejected on technical grounds.

iii) Application for registration has to be made in the form and manner prescribed by the Central Government. However, it will be necessary for every applicant to state the facts by way of an affidavit including details as to whether any previous application for registration has been rejected by any Collector, and if so, for what reasons.

iv) (a) A person or body or agency shall not be eligible for registration unless he or it has three years experience in the field of social service.

(b) A person or body or agency shall not be registered if such person, body or agency has already been debarred or blacklisted or banned under any law or instrument having force of law or under any order issued by the Collector or the Government.

(c) A person shall not be registered if (a) he is adjudged as insolvent under Insolvency laws; or (b) against whom either charges have been framed by the court or if he has been convicted by any court, for an offence involving moral turpitude.

- v) (a) Upon receiving the application for registration, the Collector shall enquire and verify the correctness of the facts mentioned in the application along with documents filed in support of application and the affidavit. On the basis of the findings of such inquiry, the Collector shall either register such person, body, or agency; or refuse to register as Authorised person or agency and reject the application. However, before rejecting any application, the Collector shall give opportunity of hearing to the applicant and also give reasons for rejecting the application. Copy of the order of rejection shall be given to the applicant.
- (b) The Collector shall decide the application for registration within 15 days unless there are sufficient reasons to be recorded in writing for not deciding the application in that period.
- vi) Whenever there is an urgent need of collection of contributions, the Collector may provisionally register any person or agency, after due verification of particulars and fitness of such person or agency as the case may be. Provisional registration shall be valid till the final decision is taken on the application, by the Collector.
- vii) A person, body or agency who is provisionally registered, shall be entitled to collect the contribution, but cannot distribute or utilize it till the final decision on registration is taken and communicated. No contribution in cash or kind shall be collected without granting stamped receipts to the donors. All the monies collected shall be deposited in a nationalized bank and proper account of all such collections has to be maintained. In case

registration of such person or agency is finally refused, all the contributions collected by such person or agency shall vest in the Collector and he may make appropriate orders for attachment of such contributions and their seizure and their distribution.

Suspension or Cancellation of Registration

viii) I. Registration of any person or agency or organisation can be cancelled by the Collector –

- (a) If such person is adjudged as insolvent under Insolvency law applicable to him; or
- (b) If charges have been framed by any court against such person for alleged involvement in an offence involving moral turpitude; or
- (c) If such person is convicted by any court for committing an offence involving moral turpitude; or
- (d) If such person, body or agency does not comply with the directions issued by the Regulatory Authority or Collector; or
- (e) If such person, body or agency violates any provision of the proposed enactment or any rules made thereunder.

Provided, no registration shall be cancelled, unless an opportunity of being heard is given to such person or agency.

II. During the pendency of the inquiry proposing cancellation, the Collector may suspend the registration or the provisional registration.

III. The Collector shall communicate his decision on registration, provisional registration, suspension or cancellation of registration along with reasons to such person, body or agency.

IV. The Collector shall make public announcement of every decision on the question of registration, provisional registration, suspension or cancellation of registration in the manner prescribed by the Central Government. The Collector shall forthwith also communicate all these decisions to the Regulatory Authority and the said Authority shall immediately publish the information on website so that the applicant may not apply before any Collector, by furnishing incorrect or misleading facts.

V. Whenever the registration of a person, body or agency is cancelled, all unutilized contributions, possessed by such person, body or agency shall stand vested in the Collector inasmuch as it is difficult to identify the individual donors in relation to the unspent money. The Collector shall use the said sum only for matters connected with disaster relief.

(ix) Any person or agency aggrieved by the order of the Collector rejecting the application for registration, or cancelling the registration, may prefer an appeal to the Regulatory Authority within 30 days of the receipt of the order.

(x) The Regulatory Authority shall maintain and update the data of all registered persons and agencies and details of those in respect of whom applications of registration have been rejected by the Collector and in respect of those whose registrations have been cancelled and put them on

its website so that all District Collectors may check the same to see if a person or body whose application has been rejected is making application elsewhere.

(xi) Once a person or agency is registered at any place, it shall be lawful for it to collect or receive contribution from any part of the country or even from outside the country and distribute the same but those who have provisionally registered shall not be entitled to disburse the same. However, collections from outside the country shall be in accordance with the laws governing remittances of monies from abroad.

(xii) Any person, body or agency whose application for registration is rejected by the Collector of any district, he or it shall not be eligible to get it registered at any other district. However, this rule will not be applicable where a registration is refused for want of some technical formalities or want of sufficient experience in social work.

5.4 No collections to be made without passing receipts:

5.4.1 There is a need to maintain financial discipline, in collecting the contributions. Apart from the mandatory registration for collection of contributions, it is equally necessary that the authorised person or agency while receiving any contribution in cash or kind, should give a proper receipt to the donor. Such receipt shall be valid proof of donation, in the hands of donors. The Authorised person, body or agency who or which has collected such contribution can be held accountable for such contribution on the basis of the above receipt.

5.4.2 In the Consultation Paper, it was proposed that every authorised person or agency while collecting any contribution, shall issue a stamped receipt of its collection to the donor.

5.4.3 The Commission has received few suggestions for making this provision more stringent. Deputy Commissioner, Yamuna Nagar (Haryana) has suggested that receipt books shall be submitted in the office of Collector and authenticated by the Collector, so that authorised person or agency may not misuse the receipt books. Similar kind of suggestion has been made by the Maharashtra State Law Commission, which states that these receipts should be used only from the authorised book and which are to be distributed from the government office only. Citizen Welfare Council, Rup Nagar (Punjab), which is a registered body, has stated that there should be no printed receipts by any individual, club or society without the permission of the government and the printing press involved in the printing of such receipt books should also be made answerable under the law. Some of these above suggestions are certainly good and can be accepted.

5.4.4 We recommend that, every authorised person or agency, while receiving any contribution in cash or kind, shall issue a stamped receipt for receiving such contribution, and the receipt shall be given to the donor of such contributions. Receipt shall be given from a receipt book, authenticated by the Collector in the manner prescribed by the Central Government under the Rules. Such receipt should clearly mention the

name and full address of authorised person or agency, name and full address of donor, details in regard to the contributions, such as the total amount of cash or cheque or demand draft and details of other items in kind and the purpose for which such donations are given, date and place of receiving the contributions, name, address and signature of the person who has received such contributions. The receipt book must be a printed one and the name and address of the printing press should also be indicated in the receipt. A duplicate copy or counterfoil of receipt should be kept by authorised person, body or agency. The receipt must be a receipt duly stamped according to the law application for collection of such stamp-duty in that locality. The person collecting can use a rubber stamp to indicate his or its name, at the appropriate place in the receipt.

No printing press shall print the receipts for the aforesaid purpose, without the written authority of the Collector.

5.5 Maintenance of proper accounts.

5.5.1 A number of suggestions were made in the Consultation Paper regarding maintenance of proper accounts by authorized person, body or agency. Each agency must nominate a person to be called ‘authorised person’ who will be in charge of maintenance of accounts. One of the main objects of recommending suitable legislation is to curb malpractices on the part of persons or body, who collect the donations. These persons and agencies should therefore be obligated to maintain a fair and proper account and record of collections.

5.5.2 The Maharashtra State Law Commission in its response has stated that the contributions should be deposited in the name of the agency in the Schedule Bank on a day to day basis. But its withdrawal and disbursement should be under the direction of the Collector in the manner stated and consistent with the special and general directions of the Regulatory Authority.

5.5.3 The Govt. of West Bengal, Deptt. of Power has suggested that Receipt Heads can be created in the District Treasuries, in which cheques collected by authorised person or agency have to be compulsorily deposited. The Treasury Officer may issue cheque against bills drawn by the Collector on account of specific schemes. The scheme should be vetted by the Regulatory Authority on the recommendations of a committee formed by the District Magistrate from among the representatives of the authorised persons or agencies and Govt. officials, who will remain responsible for selection of beneficiaries and scheme. In the Metropolitan cities, the branches of the Reserve Bank of India may be involved.

5.5.4 We have considered these suggestions. As stated above, the purpose of regulating the contribution is to curb the misuse of funds. At the same time, if there are too many procedures prescribing restrictions or controls, the very purpose of speedy aid to the victims of disaster, will be frustrated. We do not want to take away the right of the person or agency to provide speedy relief to the victims. All that is required is regulation of the whole process of collection and distribution. Too much

of involvement of government and administrative machinery in the process of providing relief will lead to red-tapism and delay.

5.5.5 For the purpose of maintaining proper accounts, we recommend that the proposed legislation should contain provisions to the following effect:

- i) Every authorised person or body or agency should maintain an account with a nationalized bank, where all monetary contributions shall be deposited forthwith, i.e. to say immediately after receiving the same.
- ii) Every authorised person or body or agency should also maintain proper accounts of all contributions collected and distributed or spent by it, in accounts books maintained in the ordinary course.
- iii) The legislation may permit rules in regard to the following: (a) A register must be maintained as to the manner in which the donations are distributed. The account book shall be maintained on a day-to-day basis. (b) There should be correlation between the accounts and the Register. (c) The details of the distribution must be such that there can, if need be, proper verification of the distributions. (d) Where the money is utilised for purchase of clothes, utensils or food items or other articles or goods, the bills must be preserved for verification. (e) Monthly returns of the account have to be furnished to the Collector in-charge of the area where the office of the authorized person, body, agency which has collected the donation, is located.

- iv) Every authorised person or body or agency should inform the Collector immediately about the receipt of money or item in kind, the name of the donors, and other details as may be prescribed.
- v) Annual audit of the accounts has to be conducted by a qualified chartered accountant and the audit report should also be sent to the Collector as well as to the Regulatory Authority within such time as may be prescribed.
- vi) The concerned nationalized Bank where the deposits are made shall also submit monthly statements of account of the authorised person, body or agency to the Collector and the Regulatory Authority. This is for the purpose of verifying the information that may have been furnished by the authorized person or body or agency to the Collector.
- vii) The person, body or agency should submit a half-yearly report of its activities and accounts to the Collector and Regulatory Authority.

5.6 Other duties of authorised person or agency

Apart from the regulation of the collections of these contributions, it is equally necessary that the utilisation of such contributions should also be monitored and regulated. In this regard, certain duties of authorised persons or bodies or agencies were proposed in the consultation paper.

5.6.1 These were as follows: (a) there should not be any kind of diversion of the contributions to other purposes. The contribution should be utilized by authorised person or agency only for the purpose for which it was

collected or received. Any kind of diversion of fund will amount to breach of trust; (b) no authorised person or body or agency shall, in the matter of distribution of the donations discriminate against any person on the ground of caste, religion, rank, language or sex; (c) after providing relief, if any, the contributions is left unutilized in the hands of any authorised person, body or agency, such person or agency should hand over such unutilized contribution to any fund set up by the Central or State Government or to the Regulatory Authority or Collector; (d) every Authorised person, body or agency shall co-operate and give full assistance to the Regulatory Authority and the Collector while discharging their duties prescribed under the law.

5.6.2 On the question of prohibition of diversion of contributions, the Govt. of West Bengal, Legislative Deptt. has opined that absolute and total prohibition on diversion of contributions is not desirable in as much as such total and absolute restriction will prevent the well meaning organisation etc. from using or applying the unutilized funds toward the welfare and relief of disaster victims. Therefore, it was suggested by the Govt. of West Bengal that instead of imposing a total ban on diversion of unutilized contribution, a relaxation may be provided by incorporating a provision to the effect that such diversion may be allowed subject to prior permission of the Regulatory Authority.

5.6.3 We may clarify that when we stated in the Consultation Paper that diversion of funds must be prohibited, we meant that funds should be utilized only for the purpose for which they were collected. It should not be utilized for any other purposes. For example, if a fund was collected for

providing relief to the victims of a particular disaster such as an earthquake, the donations should be spent and utilized for giving relief to the victims of that particular earthquake. It should not be utilized for some other relief operation, say for construction of a school building at another place which is not affected by earthquake. Otherwise, it will be a violation of the purpose of the collection and also of the wishes of the donors. It is the paramount duty of the authorised person, body or agency which has made the collection that it should honour the wishes of the donors. They should utilise and distribute the collections in terms of the wishes of the donors. After providing total relief and rehabilitation in terms of the wishes of the donors, if any amount or other items in kind are left unutilized, it will be necessary, in our view, that such funds and items be handed over to the Collector or the Regulatory Authority for utilization for relief in other calamities or disasters.

5.6.4 Cypres Doctrine

5.6.4.1 In this connection we would like to refer to the ‘Cypres Doctrine’ as applicable to trusts. It literally means ‘as near to’. It is a rule in equity which may be stated thus: ‘when a definite function or duty is to be performed, and it can not be done in exact conformity with the scheme of the person or persons who have provided for it, the duty may be performed with as close an approximation to that scheme as is reasonably practicable.’ (see The Law Lexicon by P.R. Aiyar).

In England, the law distinguishes between the charitable intention and the mode of executing it. The particular mode of application indicated

by the donor is not considered to be of the essence of the gift and the law make provision for charitable intention to be carried into effect. ‘Cypres’, that is to say, by substituting for the mode indicated by the donor, by another mode as similar as possible to the mode indicated. (see Tudor on Charities – Published by Sweet & Maxwell (1967) page 215).

5.6.4.2 Cases in UK

Arden M. R. in Attorney Genl. Vs. Bourtbec (1876) 2vs 380 (387) has held that in cases where the execution of a trust cannot be done literally as intended by the author of the trust, another mode of execution may be adopted, considered with the general intention of the author. If the mode prescribed by the instrument of trust becomes, by subsequent circumstances, impossible, the general object is not to be defeated if it can be attained by other means consistent with the object of the trust.

In ReWelsh Hospital (Netley) Fund (1921) 1 Ch.655, there had been a generous response by large and small subscribers to an appeal to the public in Wales, launched in 1914, to give money to establish a hospital for sick and wounded Welsh soldiers. The hospital was built, equipped and maintained by voluntary subscription and donations until the year 1919. When it was closed, its staff was disbanded and its assets were sold to the war office. The trustees of the fund had a large surplus in their hands. P.O. Lawrence J. held that it must be applied cypress under a scheme. The learned Judge held that subscribers had intended to part with their money out and out and they had intention to benefit sick and wounded Welshmen. Similarly, in Re North Devon and West Somerset

Relief Fund Trusts (1953) (2) ALLER 1032 (already referred to) the public had responded generously to an appeal for funds for the relief of the victims of a flood disaster. After all the victims had been relatively a large surplus was left in the hands of the trustees of the fund. Wynn Parry J. held that this surplus must be applied cypres for other charitable purposes. He said that the main underlying object of the appeal was to benefit the people of 'the district' in question.

5.6.4.3 Indian Cases

The Supreme Court of India in Ratilal vs. State of Bombay, AIR 1954 SC 388, considered the provisions of ss.55 and 56 of the Bombay Public Trusts Act, 1950. These sections purport to lay down how the doctrine of cypres is to be applied in regard to the administration of public trust of a religious or charitable character. The Supreme Court held:

“The doctrine of ‘Cypres’ as developed by the Equity Courts in England, has been adopted by our Indian Courts since a long time past”.

The Supreme Court also said:

“When the particular purpose for which a charitable trust is created, fails or by reason of certain circumstances the trust cannot be carried into effect either in whole or in part, or where there is a surplus left after exhausting the purposes specified by the settler, the Court

would not, when there is a general charitable intention expressed by the settler, allow the trust to fail but would execute it ‘cypres’ that is to say, in some way as nearly as possible to that which the author of the trust intended.” (page 19).

5.6.4.4 Section 83 of the Indian Trusts Act, 1882, provides that if for certain reasons the trust is incapable of being executed, or where the purpose of the trust is fulfilled without exhausting the trust properly completely, the trustees must hold the trust property as a whole or the residuary as the case may be, for the benefit of the settler of the trust. In State of U.P. vs. Bansi Dhar, AIR 1974 SC 1084, Kirhna Iyer J held that though public charitable trusts are expressly excluded from the application of the Indian Public Trusts Act, 1882, but certainly there is a common area of legal principle which covers all trusts private and public. The Supreme Court ordered refund of the donation money made by the father of the respondent for the purpose of establishment of the hospital, which could not be built up.

5.6.4.5 We are of the view, therefore, that a provision should be made in the proposed law that if any amount or other items in kind are left unutilized in the hands of any authorized person, body or agency, it should be handed over to the collector or Regulatory Authority, who or which as per the ‘cypres’ doctrine shall transfer it to some other authorized person, body or agency or to any fund set up by the Central or State Government, to be used for the purpose of the calamities or disaster covered by the proposed Act.

The first priority should thus be to utilize the collection only for the purpose for which it was collected. Any kind of relaxation to this rule as suggested by the Govt. of West Bengal cannot be accepted.

5.6.5 Therefore, we recommend that, apart from the maintaining proper accounts etc., every authorised person, body or agency should perform the following other duties:

- i) Every authorised person, body or agency should utilize the contribution exclusively for the purpose for which it was collected. There should not be any kind of diversion of such contribution for a different purpose.
- ii) Every authorised person, body or agency shall utilize the contribution in the manner best suitable for the purpose for which it was collected.
- iii) Every authorised person, body or agency, shall not while providing relief and rehabilitation, discriminate against any victim of calamity on the ground of religion, race, caste, language sex, place of birth or residence.
- iv) After providing total relief and rehabilitation to the victims of calamity or war, if any contribution is left unutilized in the hands of any authorised person, body or agency it shall hand over, such unutilized contribution either to the Collector or to the Regulatory Authority for being used for relief in any other calamity or disaster.
- v) Every authorised person or agency shall provide full cooperation and assistance to the Regulatory Authority and the Collector in the discharge of their functions and duties under the law. Every

authorised person and agency shall also follow their directions and instructions.

5.7 Other powers, functions and duties of the Regulatory Authority and the Collector

Apart from the powers relating to registration and cancellation of registration and recovering the unutilized contributions from the person, body or agency, the Regulatory Authority and the Collector shall have all other powers to achieve the objects of the proposed law. In this regard, certain proposals were suggested in the Consultation Paper.

5.7.1 Earlier, we have recommended that the contributions can only be collected by those persons, bodies or agencies who are registered as authorised person, body or agency, either finally or provisionally. When registration is mandatory, it becomes necessary to see that no person or agency shall collect contributions without registration. And if collections are made without such registration, the contributions collected by them have to be recovered and appropriate action has also to be taken. Every person interested on the utilization of the collection, including a donor, should be entitled to make a complaint to the Regulatory Authority or the Collector in respect of collection of contribution by an unregistered person, body or agency. As the Regulatory Authority and the Collector are the main functionaries under the law, they should be authorised to deal with such cases.

Therefore, it is recommended that any person interested, as stated above, who has any information that any other person or agency is collecting or receiving contributions without registration (final or provisional), he may complain to the Regulatory Authority or the Collector.

The Regulatory Authority and the Collector shall have power to inquire suo motu or upon receiving any complaint as to whether any person, body or agency which is not registered, is collecting or receiving contribution. If the Regulatory Authority or the Collector, as the case may be, finds that any person, body or agency is collecting contributions without registration, it shall have power to attach, seize and recover such contributions. The Regulatory Authority or the Collector shall also have power to attach, seize and recover other ancillary documents which are in possession of such unregistered persons or agency.

5.7.2 As mentioned in the earlier chapters, there can be allegations of misappropriation, diversion and misutilisation of contributions on the part of the persons, bodies or agencies collecting the donations. Such misappropriation, diversion or misutilisation of contribution may be done by person, body or agency who are registered and authorised to collect.

Therefore, it is also recommended that it will open to any person interested, as stated above, to make a complaint to the Regulatory Authority or the Collector in respect of any misappropriation, misutilisation or diversion by any person, body or agency. The Regulatory Authority or the Collector shall have power to inquire suo motu or upon

receiving any complaint, as to whether any authorised person, body or agency is misutilising, misappropriating or diverting; or has misappropriated, misutilised or diverted such contribution collected. If the information or complaint contains prima facie material or basis suggesting misutilisation or misappropriation, the Regulatory Authority or the Collector can suspend the registration before conducting a regular inquiry, and exercise powers of attachment of the monies or contribution.

If the contributions relate to perishable items (such as fruits, cooked food etc.) and the inquiry is likely to take time, the Collector or Regulatory Authority may give possession thereof to some other registered person, body or agency for distribution or sell them and keep the money in deposit.

If after enquiry, the Regulatory Authority or the Collector finds that any authorised person, body or agency is misutilising or misappropriating or diverting the contribution, any of these authorities shall have powers to do following:

- a) to direct the bank in which such person, body or agency is maintaining his account to forthwith stop withdrawals of any amount therefrom and to further direct the bank to transfer such amount to the account of some other authorised person or agency, or to any fund of the Centre/State Government;
- b) to attach and seize the contributions, books of account or other material from such persons, bodies or agencies and for that purpose, enter the premises of such person, body or agency with or without assistance of police;

- c) to direct such authorised person or body or agency that any contribution be handed over to the donor or to some other authorised person or body or agency;
- d) to direct such authorised person, body or agency to stop further collection of contributions and to stop them for distribution or utilization.

5.7.3 In order to regulate the collection, distribution and utilisation of contribution, we recommend that the Regulatory Authority and the Collector shall also have following powers:

- a) to take such measures as they deem fit and expedient for the purpose of regulating contributions by authorised persons, bodies or agencies;
- b) to ensure that the distribution and the providing of relief and rehabilitation by any authorised person, body or agency is accomplished in an equitable and impartial manner without any discrimination on the ground of race, religion, caste, sex, language, residence, place of birth;
- c) to call for any information about the collection and receipt of any contribution and also the management and utilisation of such contribution from any authorised person, body or agency;
- d) to issue directions to any authorised person, body or agency, about the manner of collection, management and utilisation of contributions;

- e) to issue directions to officials of the Central or State Government engaged in relief and rehabilitation work related to natural and other calamities;
- f) to collect or receive contributions and transfer them to any Fund or authorised person, body or agency in the manner prescribed;
- g) to take appropriate proceedings, civil or criminal, in any court or Tribunal against the authorised person, body or agency or against any person or agency which is not registered or provisionally registered under the proposed legislation;
- h) to do any other act for effectual discharge of the functions of the said Regulatory Authority and the Collector; and
- i) to take the assistance from govt. officials in the discharge of their official functions.

5.8 Criminal and civil liability

When any person, body or agency misappropriates or misuses any contribution, civil as well as criminal action can be taken against such person, body or agency under the existing laws, as stated below.

5.8.1 Remedy under criminal law

5.8.1.1 Misappropriation of contributions amounts to offence of criminal breach of trust, which is defined in sec. 405 of the Indian Penal Code,

1860 and is punishable under sec. 406 to 409 of the IPC. Sec. 405 of the IPC is as follows:

“405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes that property in violation of any direction of law prescribing the mode in which is such trust is to be discharged, or of any legal contract, express or implied which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

Explanation 1.....

Explanation 2.....”

As stated earlier, whenever contributions are collected, necessarily a trust is created and the trustees who violate the obligations cast upon them by the authors of the trust (donor) become liable for breach of trust. If the trustees have not utilized the money, or have misutilised or diverted the money or misappropriated the money, they are liable for criminal breach of trust. Offence of criminal breach of trust is punishable under sec. 406 of the IPC, therefore there is no need to create a separate offence under this proposed enactment.

Further, on the basis of the same or connected facts, there may be forgery or wrong information being sent to the Collector or Regulatory Authority, or other related offence – all in connection with the collection

and distribution of contributions, there is no need to create separate offences.

But, in all such cases, we are proposing a special procedure as stated below.

We have already recommended that the Regulatory Authority as well as the Collector can enquire into any allegation either suo motu or upon any complaint made to it by any interested person that a person, body or agency has misappropriated or misused the contributions. Any interested person can make a complaint to the Regulatory Authority or the Collector. After conducting inquiry, if the Regulatory Authority or the Collector finds that there are substances in the allegations, it can initiate criminal proceedings against such person, body or agency. 'Interested person' means any person interested in seeing that the contributions are not misused or misutilised and include donors.

5.8.1.2 The Regulatory Authority or the Collector can file a complaint before a Judicial Magistrate First Class or Metropolitan Magistrate. When a complaint is filed, it will have to be tried in accordance with the procedure prescribed under chapter XIX of Criminal Procedure Code, 1973. In this chapter, procedure for trial of warrant cases by magistrates is provided. This chapter is sub-divided into three parts – Part A (governing the cases instituted on a police report), Part B (governing the cases instituted otherwise than as police report and Part C (relating to conclusion of trial). The main difference between the procedure in Part A and Part B is that in cases governed by Part A, the magistrate can frame

charges straightaway after perusing the police report and accompanying documents. Whereas in cases governed by Part B (i.e. in cases instituted otherwise than as police report), the procedure is different and elaborate. In such cases, the magistrate has to first hear the prosecution and take all such evidence as may be produced in support of the prosecution and on consideration of such evidence, he may either discharge the accused or frame charges. Thereafter, the accused is asked whether he pleads guilty and if he denies the charge he will be asked to cross-examine the witnesses and then the trial proceeds. The reason behind the distinction is that, a police report is filed pursuant to and as a result of investigation done by the police or other independent agency, whereas in case of complaint, such an investigation is absent.

But when the Regulatory Authority or the Collector while acting under the proposed law, files complaint for criminal breach of trust or related offences, necessarily they will inquire prior to filing the complaint before the magistrate. We are of the view that such complaint should be proceeded with under Part A of chapter XIX of the CrPC 1973, as per our recommendation stated below.

5.8.1.3 In fact, the Law Commission in its 178th Report on 'Recommendations for Amending various Enactments, both Civil and Criminal' (2001) considered the issue of procedure followed in cases where the authorities under the various enactments like Income-tax Act, Central Excise Act, Customs Act, FERA/FEMA, ESI Act, 1948 and the Companies Act, 1956, file complaints before the Criminal Court. The Law Commission recommended that such cases should be proceeded with

under Part A of chapter XIX of the CrPC. The Law Commission observed in the Report:

“It must be provided that where a complaint is filed by the appropriate authority under any of the aforesaid enactments or similar enactment, it should be proceeded with Part A. This is for the reason that appropriate authorities under these enactments also file complaints after a good amount of investigation, inquiry and verification.”

It is further stated in the Report:

“Treating the complaints filed after such elaborate enquiry ought not to be equated with the complaints filed by private individuals and should not be subjected to the procedure in Part B of chapter XIX. Applying Part B is resulting in inordinate delay in processing these complaints, which in fact relate to economic offences, which must be given priority over the ordinary law and order crimes. It is just and appropriate that the complaints filed by the appropriate authorities under taxing enactments and other enactments mentioned hereinabove, should be governed by the procedure contained in Part A of chapter XIX.”

Consequently, the Commission recommended amendment in sections 190, 238, 239, 244, 249, 256 of the Code of Criminal Procedure, 1973. Further, substitution of heading of Part A and Part B under chapter XIX and insertion of new section 207A was also recommended. As

mentioned above, the purpose of recommending these amendments was that “complaint made by a public servant acting or purporting to act in discharge of his official duties”, should be governed by Part A of chapter XIX of the CrPC, 1973.

5.8.1.4 Offence of criminal breach of trust and related offences like forgery, wrong information etc., all connected with collection and distribution of contributions, when committed by persons, bodies or agencies, relate to contribution, is certainly an economic offence. And when the Collector or the Regulatory Authority are public authorities acting in discharge of their official duties prescribed under the proposed law, and they file a complaint before a criminal court, it should, in our view, be governed by Part A of chapter XIX of the CrPC. Unfortunately, the above mentioned recommendations made in its 178th Report (2001) has not been implemented so far. We reiterate the recommendations made in its 178th Report.

For the purpose of the present proposed enactment, and without waiting for the implementation of the 178th Report, we are of the view that provision can be made in the proposed enactment that for complaint made by the Collector or the Regulatory Authority shall be governed and proceeded with under Part A, along with a non-obstante clause.

5.8.1.5 Section 4(1) of the Code of Criminal Procedure, 1973 provides that all offences under the IPC shall be investigated, inquired into and tried, according to the provisions of the Code. However, as per sec. 5 of the

Code, special form of procedure may be prescribed by any law. Sec. 5 reads as follows:

“5. Saving.- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

A different procedure can therefore be prescribed under the proposed law, and such law prescribing different procedure can be saved under sec. 5 of the CrPC. When a different procedure is prescribed, under a special law, that procedure will prevail over the procedure prescribed by the CrPC.

In Bhagat Singh v. Foran Singh, 1988 Cr LJ 72 (All) there was a question before the Allahabad High Court, as to whether in a case governed by the provisions of the UP Dacoity Affected Areas Act, 1983, the provisions of sections 200 and 202 of the CrPC (which provides examination of complainant and his witnesses) would apply. That case was under sec. 395 of the IPC, which was a scheduled offence under the UP Act. Section 7 of the UP Act provided the procedure and powers of special Courts. The High Court held:

“Offence of dacoity under sec. 395 IPC being a scheduled offence, procedure for taking cognizance, issuing process would be governed by sec. 7 of the Act, consequently, the provisions of sec. 200 and

202 of the Code providing procedure in a complaint case to a Magistrate would not apply.”

A Division Bench of the Calcutta High Court in Ram Gopal v. State 1977 Cr LJ 1048, has held that the special procedure laid down in sec. 5(1) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, would prevail in view of sec. 5(2) of the CrPC, 1898. That case also related to offences under the IPC under sec. 467/471.

5.8.1.6 In view of ss. 5 and 4(2) of the CrPC, 1973, the special procedure prescribed under any law, would prevail over the procedure prescribed under the CrPC. Therefore, we recommend that a provision should be made in the proposed law that, when under the proposed law the Regulatory Authority or the Collector files any complaint in the criminal Court for an offence of criminal breach of trust or other related offences stated above, such a complaint shall be governed and proceeded with under Part A of chapter XIX of the CrPC, notwithstanding anything to the contrary contained in the Criminal Procedure Code, 1973.

Further, a provision should also be made that in such cases the Magistrate shall without delay furnish to the accused, free of cost, a copy of the complaint and other documents referred to therein.

5.8.2 Remedy under civil law

5.8.2.1 A breach of trust may lead to civil action also. CROSS & JONES (in their book Introduction to Criminal Law 9th Ed para 1.3 at page 2) have stated:

“A breach of trust occurs where someone who holds property as trustee for another fails to carry out the duties of his office, for example by making an important investment or wrongfully converting the trust property to his own use. He is then civilly liable to make good the loss occasioned to those on whose behalf the property was held.”

The Supreme Court in Jaswant Rai v. State of Bombay, AIR 1956 SC 575 has stated that the same set of facts may give rise to both a civil liability and a criminal prosecution. But if there is no mens rea or if the other essential ingredients of an offence are lacking, the same facts may not sustain a criminal prosecution, though a civil action may lie (see also Madhavrao J. Scindia v. S.C. Angrey, AIR 1988 SC 709).

Every offence of criminal breach of trust involves a civil wrong in respect of which complainant may seek a civil redress for damages in civil Court. (see L. Dhanga Naik v. State, 1977 CrLJ 654)

When any person, body or agency misappropriates or misuses any contribution collected by them, civil action may be taken for recovery of the sum misappropriated. There is a need that such civil action be disposed of expeditiously. The Civil Court may be specially designated.

5.8.2.2 The Law Commission in its Consultation Paper has suggested that there should be ‘judicial authority’ in each district to entertain, enquire into allegations of misappropriation and misuse of contributions, by persons, bodies or agencies who or which have collected such contributions. Proposals regarding powers and the procedures of the judicial authority were referred to in the Consultation Paper. It was proposed in the Consultation Paper that the judicial authority after inquiry can pass orders directing the person, body or agency who is found guilty, deposit with the Regulatory Authority or the Collector, the amount misappropriated. The Judicial Authority may also direct the police to register a case against such person or agency under the penal law. Certain powers of the civil Court were also proposed to be given to the Judicial Authority.

5.8.2.3 But we find that the above procedure can be shortened. Hence, now we are of the view that so far as criminal cases are concerned, they can straightaway be dealt with by the regular Criminal Courts but according to the procedure indicated above. The Regulatory Authority and the Collector can make complaint before the Criminal Court and these complaints shall be governed and proceeded with under Part A of Chapter XIX of the CrPC, as recommended earlier. Likewise, instead of a separate Judicial Authority, a Civil Court of the rank of a Senior Civil Judge may be designated to deal with civil cases in respect of alleged breach of trust or related issues.

Since this type of work is not likely to come up frequently, we recommend that such Courts be designated in each district, to try civil cases of breach of trust and related issues arising out of the proposed law.

There are many advantages in designating serving judicial officers in the designated Courts. They are under the disciplinary control of the High Court. There will be no need to provide a separate mode of appointment of members nor to provide fresh staff. This procedure will also save time. In Bipinchandra case (supra) the Gujarat High Court gave a direction to the District Judge of each District, that he shall act as an ‘Ombudsman’ for rectifying complaints made by individuals and organizations with regard to contributions received during calamities.

We, therefore, recommend that High Court shall designate a senior Civil Judge in the District to act as designated Courts for dealing with Civil disputes arising under the proposed law. These designated Courts shall have unlimited pecuniary jurisdiction.

5.8.2.4 Jurisdiction of the designated Courts

The Designated Court shall have jurisdiction to try all cases of civil nature in respect of alleged misappropriation and misutilisation and diversions of contribution by any person, body or agency who or which have collected such contributions or other related issues.

All cases irrespective of pecuniary value can be tried by the designated Court. We recommend accordingly.

5.8.2.5 Procedure before the Designated Court

So far as procedure in the designated Court is concerned, we are of the view that it should be simple. Principles of natural justice, however, have to be followed. The Regulatory Authority or the Collector, either suo motu or upon receiving a complaint from any interested person may file a petition before the designated Court for any relief of a kind of civil nature. Any other interested person shall also be entitled to file a petition before the Designated Court. However, order for recovery of money or other item in kind shall be made in favour of the Collector or the Regulatory Authority. 'Interested person' shall be defined as mentioned earlier.

In respect of procedure, the Law Commission in its 186th Report on 'Proposal to Constitute Environment Courts' (2003) made certain recommendations regarding procedures of proposed Environment Courts. Recommendation No.6 is relevant, which is as follows:

“6(a) The proposed Court shall not be bound to follow the procedure prescribed under the Code of Civil Procedure, 1908, but will be guided by the principles of natural justice. The Court shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872”

On the same analogy, we recommend that the proposed Designated Courts shall not be bound to follow the procedure prescribed under the Code of Civil Procedure, 1908, but will be guided by the principles of natural justice. Further, the said Court shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

5.8.2.6 Powers of the Designated Court

It was proposed in the Consultation Paper that the Judicial Authority shall have certain powers of the Civil Court. But, now we are of the view that the Designated Court, as proposed, should have all the powers of a Civil Court. In 186th Report referred above, the Law Commission recommended that proposed Environment Court should have all the powers of a Civil Court. The Law Commission's recommendation was as follows:

“(b) The proposed Court shall have all powers of Civil Court including power to punish for contempt, as discussed in Chapter IX”

On the same analogy, we recommend that the Designated Courts shall have all powers of Civil Court including power to take steps to punish for contempt as provided by the law at present.

5.9 **Penalties**

We have earlier recommended that no person, body or agency can start collection of contribution without registration or provisional registration and any such collection would be an offence. There are other aspects which must be taken care of. The authorized person or agency are required to open an account with nationalized bank, and further to deposit all the monies in that bank account. They are also required to maintain proper account books, registers, and also file periodical returns to the Collector and the Regulatory Authority. Accounts are also required to

be audited by a qualified chartered accountant. At the time of receiving the contribution, stamped receipt is also required to be given to the donors. A penalty provision is necessary in case if any of these conditions is violated. The Collector can impose penalty. Provisions for penalty can be found in many statutes like the Income-tax Act, 1961 (chapter XXI, sections 270 to 275), the SEBI Act, 1992 (chapter VIA sections 15A to 15J), the FEMA, 1999 (section 15).

Therefore, we recommend that

When any person, body or agency –

- i) does not give receipt of the contribution in the form and manner as prescribed in the enactment;
- ii) makes any kind of discrimination on the ground of religion, race, language, sex, caste, place of birth or residence in distribution of contribution;
- iii) does not deposit the monetary contribution in the nationalised bank, as prescribed in the enactment;
- iv) does not maintain account books and register as prescribed in the rules;
- v) fails to file returns to the Collector or the Regulatory Authority in time, as prescribed in the enactment and rules;
- vi) fails to get audited the accounts from a qualified Chartered Accountant; or
- vii) violates any other provision of the proposed Act (which is not an offence);

such person, body or agency shall be liable to a penalty as stated below.

The Collector or the Regulatory Authority, after giving opportunity of hearing, may impose penalty on such person, body or agency, which shall not be less than Rs.10,000/- (rupees ten thousand) but may extend to Rs.25,000/- (rupees twentyfive thousand).

5.10 Rule making powers of the Central Government.

In the preceding paragraph of this chapter, we have recommended that certain things will be as “prescribed” i.e. as prescribed by the Central Government. Therefore, it is necessary that the Central Government should have rule making powers under the Act. We recommend that the Central Government shall by notification in the official Gazette make rules for carrying out the purposes of the Act.

These Rules may, in particular, provide for following matters:

- A) Manner in which registers and account books shall be maintained by authorized person, body or agency.
- B) The procedure to be followed by the Regulatory Authority at meeting including the quorum necessary for transaction of business.
- C) The manner in which the Regulatory Authority shall maintain proper account and other relevant records of its fund.

- D) The manner and form in which application for registration has to be submitted.
- E) The manner in which the Collector shall impart information in respect of registration, provisional registration or suspension and cancellation of registration of any authorised person, body or agency.
- F) Manner in which the Collector shall authenticate the receipt book.

Every rule made by the Central Government under the Act, shall be laid, as soon as after it is made, before each House of Parliament.

5.11 Overriding effect of the proposed enactment.

As the proposed enactment is a special law, we recommend that the proposed enactment shall have overriding effect over any other law or scheme, so far as such law or scheme is inconsistent with the proposed enactment.

We recommend accordingly.

CHAPTER VI

SUMMARY OF RECOMMENDATIONS

Following is the summary of recommendations made in this Report:

1. The Commission recommends that a law should be enacted to regulate the collection of funds including contributions and donations in cash and kind, collected or raised for the purposes of providing relief and rehabilitation to the victims of natural and man-made calamity or for welfare and rehabilitation to soldiers or their family members who are killed or have become disabled in war or war like operations and also to monitor the proper utilization and distribution of such contribution so collected. The details of the proposed law are mentioned in Chapter V.

(para 3.6)

2. We recommend that the proposed law shall be applicable to entire territory of India except the State of Jammu and Kashmir.

(para 4.4.5)

3. We recommend that the whole of the proposed enactment should be made prospective only.

(para 4.5.4)

4. We recommend that the proposed enactment should be made applicable to all those contributions or donations collected or received, either in cash or kind, by any person, association, agency, body, institution,

firm, NGO, trust or other organization. The purpose of the proposals is to regulate collections and provide relief and rehabilitation to the victims of any natural or man made calamity or for welfare and rehabilitation to the soldiers and their family who are killed or disabled in a war or war like other operation, whenever such collections and relief work is taken up by non-governmental organizations. It is further recommended that contributions received by the private parties referred to above from the Government or any fund set up by the Government, shall be brought into the purview of the enactment. However, any contribution received by the Government, or any fund set up by any government, or by any authority or agency established by any government shall not be brought into the purview of the proposed enactment.

(para 4.6.5)

5. We recommend that the Central Government shall establish a Regulatory Authority to be described as 'Contribution Regulatory Authority' consisting of --

- (a) A Chairperson, having special knowledge or practical experience in respect of matters relating to relief and rehabilitation of victims of calamities with adequate knowledge of law, accounting and management of funds or grants, to be nominated by the Central Government. The Chairperson will be a person holding a post not below the rank of Secretary to the Government of India. The Chairperson shall hold this office in addition to the post he is holding.

- (b) One part-time member having special knowledge or practical experience in respect of matters relating to relief, welfare or rehabilitation with adequate knowledge of accounting and management of funds or grants to be nominated by the Central Government. He shall be a person who is holding a post not below the rank of Joint Secretary in the Central Government.
- (c) One part-time member to be nominated by the Central Government from the members of Indian Audit and Accounts Service not below the rank of Accountant General.
- (d) Three part-time members to be nominated by the Central Government to represent the interest of general public. These may be NGOs, media, legal or medical profession, Chartered Accountants, social workers.
- (e) If the calamity in regard to which collections are made, relates or concerns Defence Forces, a part-time Member from the Defence Forces not below the rank of Adjutant General or equivalent may be co-opted by the Regulatory Authority.

(para 5.2.6)

6. The place of the head office of the Regulatory Authority may be such as may be notified by the Central Government. However, under the Act, the Regulatory Authority is to be empowered to hold its sittings in the form of a camp or circuit at the place where the natural or other man made calamity has occurred and also at such other place where substantial part of contributions or donations are collected or are being distributed. The Central Government shall also prescribe rules of procedure which will be followed by the Regulatory Authority in regard to the transaction of

business at its meeting including quorum. But the time and place of meeting shall be decided by the Chairman.

(para 5.2.7)

7. It is recommended that the Central Government shall provide necessary funds required, so that the Regulatory Authority may perform its functions effectively.

The Regulatory Authority shall deposit all monies received by it including those received from the Central Government or by way of any fees or otherwise in an account in a nationalised bank. This account of the Authority shall be applied for the purpose of meeting all its expenditure.

(para 5.2.8)

8. We recommend that the Regulatory Authority shall maintain proper accounts and other relevant records of its funds and shall also prepare an annual statement of accounts, in such form which may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India. The accounts of the Authority shall be audited by the Comptroller and Auditor General of India.

(para 5.2.9.1)

9. We recommend that the Regulatory Authority shall keep and maintain a separate account of all the contributions or donations received, seized, or recovered by it. The Regulatory Authority shall be empowered to distribute this contribution to any other authorised person or agency, or to victims of calamity in connection with the similar calamity or disaster,

natural or man-made. In case there is any surplus, it must deposit it in any fund set up by the Central Government or handed over to some other authorized person, body or agency. A statement of all the receipts and distribution under this head has to be prepared by the Authority. Such statements of accounts shall also have to be audited by the Comptroller and Auditor General of India.

(para 5.2.9.3)

10. Final recommendations as to Registration: mandatory registration & other procedures

i) From the date of commencement of the proposed legislation, no person, or body or agency shall collect or receive contributions or donations for the purpose of providing relief or rehabilitation to the victims of any natural or other man-made calamity or for welfare and rehabilitation of soldiers and their family members who are killed or disabled in a war or other similar operation, unless such person or body or agency is registered or provisionally registered as Authorised person or agency under the proposed legislation. Any person, body or agency making collections contrary to the prohibition shall be guilty of an offence of collection without such registration punishable with imprisonment upto 3 years or fine upto Rs.50,000 but not less than Rs.25,000 and the provisions of the Code of Criminal Procedure, 1973 will apply. In the case of such offence by non-individuals, the punishment shall be inflicted on the persons mentioned hereinbelow.

When an offence mentioned above is committed by any agency or body, every person who at the time of commission of the offence, was in charge of and was responsible for the conduct of business of such agency or body, and the person who had collected the contribution as well as who had made appeal for contribution, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, any of the persons mentioned above shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

For the removal of doubts, it is made it clear that though an organisation, body or agency might be registered or recognized under any other law, like, the Companies Act, 1956, Society Registration Act, Trust Act or any other law applicable to charitable institutions, still registration under the proposed law, as Authorised person, body or agency is necessary, if the collections are proposed in the context of a calamity or disaster. Excepted categories are Government and Government agencies.

- ii) Any person, body, organisation or agency may apply for registration, to the Collector of any district in whose jurisdiction either,
- a. the person applying for registration actually resides or agency or body applying has its principal office or place of work; or
 - b. the contribution or donations is proposed to be collected; or
 - c. the relief or rehabilitation work is to be done.

Provided that only one application shall be made and no second application will be maintainable unless the first application has been rejected on technical grounds.

- iii) Application for registration has to be made in the form and manner prescribed by the Central Government. However, it will be necessary for every applicant to state the facts by way of an affidavit including details as to whether any previous application for registration has been rejected by any Collector, and if so, for what reasons.
- iv) (a) A person or body or agency shall not be eligible for registration unless he or it has three years experience in the field of social service.
(b) A person or body or agency shall not be registered if such person, body or agency has already been debarred or blacklisted or banned under any law or instrument having force of law or under any order issued by the Collector or the Government.
(c) A person shall not be registered if (a) he is adjudged as insolvent under Insolvency laws; or (b) against whom either charges have been framed by the court or if he has been convicted by any court, for an offence involving moral turpitude.
- v) (a) Upon receiving the application for registration, the Collector shall enquire and verify the correctness of the facts mentioned in the application along with documents filed in support of application and the affidavit. On the basis of the findings of such inquiry, the Collector shall either register such person, body, or agency; or

refuse to register as Authorised person or agency and reject the application. However, before rejecting any application, the Collector shall give opportunity of hearing to the applicant and also give reasons for rejecting the application. Copy of the order of rejection shall be given to the applicant.

(b) The Collector shall decide the application for registration within 15 days unless there are sufficient reasons to be recorded in writing for not deciding the application in that period.

vi) Whenever there is an urgent need of collection of contributions, the Collector may provisionally register any person or agency, after due verification of particulars and fitness of such person or agency as the case may be. Provisional registration shall be valid till the final decision is taken on the application, by the Collector.

vii) A person, body or agency who is provisionally registered, shall be entitled to collect the contribution, but cannot distribute or utilize it till the final decision on registration is taken and communicated. No contribution in cash or kind shall be collected without granting stamped receipts to the donors. All the monies collected shall be deposited in a nationalized bank and proper account of all such collections has to be maintained. In case registration of such person or agency is finally refused, all the contributions collected by such person or agency shall vest in the Collector and he may make appropriate orders for attachment of such contributions and their seizure and their distribution.

Suspension or Cancellation of Registration

- viii) I. Registration of any person or agency or organisation can be cancelled by the Collector –
- (a) If such person is adjudged as insolvent under Insolvency law applicable to him; or
 - (b) If charges have been framed by any court against such person for alleged involvement in an offence involving moral turpitude; or
 - (c) If such person is convicted by any court for committing an offence involving moral turpitude; or
 - (d) If such person, body or agency does not comply with the directions issued by the Regulatory Authority or Collector; or
 - (e) If such person, body or agency violates any provision of the proposed enactment or any rules made thereunder.

Provided, no registration shall be cancelled, unless an opportunity of being heard is given to such person or agency.

II. During the pendency of the inquiry proposing cancellation, the Collector may suspend the registration or the provisional registration.

III. The Collector shall communicate his decision on registration, provisional registration, suspension or cancellation of registration along with reasons to such person, body or agency.

IV. The Collector shall make public announcement of every decision on the question of registration, provisional registration, suspension or cancellation of registration in the manner prescribed by the Central

Government. The Collector shall forthwith also communicate all these decisions to the Regulatory Authority and the said Authority shall immediately publish the information on website so that the applicant may not apply before any Collector, by furnishing incorrect or misleading facts.

V. Whenever the registration of a person, body or agency is cancelled, all unutilized contributions, possessed by such person, body or agency shall stand vested in the Collector inasmuch as it is difficult to identify the individual donors in relation to the unspent money. The Collector shall use the said sum only for matters connected with disaster relief.

(ix) Any person or agency aggrieved by the order of the Collector rejecting the application for registration, or cancelling the registration, may prefer an appeal to the Regulatory Authority within 30 days of the receipt of the order.

(x) The Regulatory Authority shall maintain and update the data of all registered persons and agencies and details of those in respect of whom applications of registration have been rejected by the Collector and in respect of those whose registrations have been cancelled and put them on its website so that all District Collectors may check the same to see if a person or body whose application has been rejected is making application elsewhere.

(xi) Once a person or agency is registered at any place, it shall be lawful for it to collect or receive contribution from any part of the country or even from outside the country and distribute the same but those who have

provisionally registered shall not be entitled to disburse the same. However, collections from outside the country shall be in accordance with the laws governing remittances of monies from abroad.

(xii) Any person, body or agency whose application for registration is rejected by the Collector of any district, he or it shall not be eligible to get it registered at any other district. However, this rule will not be applicable where a registration is refused for want of some technical formalities or want of sufficient experience in social work.

(para 5.3.7)

11. We recommend that, every authorised person or agency, while receiving any contribution in cash or kind, shall issue a stamped receipt for receiving such contribution, and the receipt shall be given to the donor of such contributions. Receipt shall be given from a receipt book, authenticated by the Collector in the manner prescribed by the Central Government under the Rules. Such receipt should clearly mention the name and full address of authorised person or agency, name and full address of donor, details in regard to the contributions, such as the total amount of cash or cheque or demand draft and details of other items in kind and the purpose for which such donations are given, date and place of receiving the contributions, name, address and signature of the person who has received such contributions. The receipt book must be a printed one and the name and address of the printing press should also be indicated in the receipt. A duplicate copy or counterfoil of receipt should be kept by authorised person, body or agency. The receipt must be a receipt duly stamped according to the law applicable for collection of such stamp-duty

in that locality. The person collecting can use a rubber stamp to indicate his or its name, at the appropriate place in the receipt.

No printing press shall print the receipts for the aforesaid purpose, without the written authority of the Collector.

(para 5.4.4)

12. We recommend that the proposed legislation should contain provisions to the following effect:

- i) Every authorised person or body or agency should maintain an account with a nationalized bank, where all monetary contributions shall be deposited forthwith, i.e. to say immediately after receiving the same.
- ii) Every authorised person or body or agency should also maintain proper accounts of all contributions collected and distributed or spent by it, in accounts books maintained in the ordinary course.
- iii) The legislation may permit rules in regard to the following:
 - (a) A register must be maintained as to the manner in which the donations are distributed. The account book shall be maintained on a day-to-day basis.
 - (b) There should be correlation between the accounts and the Register.
 - (c) The details of the distribution must be such that there can, if need be, proper verification of the distributions.
 - (d) Where the money is utilised for purchase of clothes, utensils or food items or other articles or goods, the bills must be preserved for verification.
 - (e)

Monthly returns of the account have to be furnished to the Collector in-charge of the area where the office of the authorized person, body, agency which has collected the donation, is located.

- iv) Every authorised person or body or agency should inform the Collector immediately about the receipt of money or item in kind, the name of the donors, and other details as may be prescribed.
- v) Annual audit of the accounts has to be conducted by a qualified chartered accountant and the audit report should also be sent to the Collector as well as to the Regulatory Authority within such time as may be prescribed.
- vi) The concerned nationalized Bank where the deposits are made shall also submit monthly statements of account of the authorised person, body or agency to the Collector and the Regulatory Authority. This is for the purpose of verifying the information that may have been furnished by the authorized person or body or agency to the Collector.
- vii) The person, body or agency should submit a half-yearly report of its activities and accounts to the Collector and Regulatory Authority.

(para 5.5.5)

13. We recommend that, apart from the maintaining proper accounts etc., every authorised person, body or agency should perform the following other duties:

- i) Every authorised person, body or agency should utilize the contribution exclusively for the purpose for which it was collected. There should not be any kind of diversion of such contribution for a different purpose.
- ii) Every authorised person, body or agency shall utilize the contribution in the manner best suitable for the purpose for which it was collected.
- iii) Every authorised person, body or agency, shall not while providing relief and rehabilitation, discriminate against any victim of calamity on the ground of religion, race, caste, language sex, place of birth or residence.
- iv) After providing total relief and rehabilitation to the victims of calamity or war, if any contribution is left unutilized in the hands of any authorised person, body or agency it shall hand over, such unutilized contribution either to the Collector or to the Regulatory Authority for being used for relief in any other calamity or disaster.
- v) Every authorised person or agency shall provide full cooperation and assistance to the Regulatory Authority and the Collector in the discharge of their functions and duties under the law. Every authorised person and agency shall also follow their directions and instructions.

(para 5.6.5)

14. It is recommended that any person interested, as stated above, who has any information that any other person or agency is collecting or receiving contributions without registration (final or provisional), he may complain to the Regulatory Authority or the Collector.

The Regulatory Authority and the Collector shall have power to inquire suo motu or upon receiving any complaint as to whether any person, body or agency which is not registered, is collecting or receiving contribution. If the Regulatory Authority or the Collector, as the case may be, finds that any person, body or agency is collecting contributions without registration, it shall have power to attach, seize and recover such contributions. The Regulatory Authority or the Collector shall also have power to attach, seize and recover other ancillary documents which are in possession of such unregistered persons or agency.

(para 5.7.1)

15. It is also recommended that it will open to any person interested, as stated above, to make a complaint to the Regulatory Authority or the Collector in respect of any misappropriation, misutilisation or diversion by any person, body or agency. The Regulatory Authority or the Collector shall have power to inquire suo motu or upon receiving any complaint, as to whether any authorised person, body or agency is misutilising, misappropriating or diverting; or has misappropriated, misutilised or diverted such contribution collected. If the information or complaint contains prima facie material or basis suggesting misutilisation or misappropriation, the Regulatory Authority or the Collector can suspend the registration before conducting a regular inquiry, and exercise powers of attachment of the monies or contribution.

If the contributions relate to perishable items (such as fruits, cooked food etc.) and the inquiry is likely to take time, the Collector or Regulatory

Authority may give possession thereof to some other registered person, body or agency for distribution or sell them and keep the money in deposit.

If after enquiry, the Regulatory Authority or the Collector finds that any authorised person, body or agency is misutilising or misappropriating or diverting the contribution, any of these authorities shall have powers to do following:

- a) to direct the bank in which such person, body or agency is maintaining his account to forthwith stop withdrawals of any amount therefrom and to further direct the bank to transfer such amount to the account of some other authorised person or agency, or to any fund of the Centre/State Government;
- b) to attach and seize the contributions, books of account or other material from such persons, bodies or agencies and for that purpose, enter the premises of such person, body or agency with or without assistance of police;
- c) to direct such authorised person or body or agency that any contribution be handed over to the donor or to some other authorised person or body or agency;
- d) to direct such authorised person, body or agency to stop further collection of contributions and to stop them for distribution or utilization.

(para 5.7.2)

16. In order to regulate the collection, distribution and utilisation of contribution, we recommend that the Regulatory Authority and the Collector shall also have following powers:

- a) to take such measures as they deem fit and expedient for the purpose of regulating contributions by authorised persons, bodies or agencies;
- b) to ensure that the distribution and the providing of relief and rehabilitation by any authorised person, body or agency is accomplished in an equitable and impartial manner without any discrimination on the ground of race, religion, caste, sex, language, residence, place of birth;
- c) to call for any information about the collection and receipt of any contribution and also the management and utilisation of such contribution from any authorised person, body or agency;
- d) to issue directions to any authorised person, body or agency, about the manner of collection, management and utilisation of contributions;
- e) to issue directions to officials of the Central or State Government engaged in relief and rehabilitation work related to natural and other calamities;
- f) to collect or receive contributions and transfer them to any Fund or authorised person, body or agency in the manner prescribed;
- g) to take appropriate proceedings, civil or criminal, in any court or Tribunal against the authorised person, body or agency or against any person or agency which is not registered or provisionally registered under the proposed legislation;
- h) to do any other act for effectual discharge of the functions of the said Regulatory Authority and the Collector; and

- i) to take the assistance from govt. officials in the discharge of their official functions.

(para 5.7.3)

17. We recommend that a provision should be made in the proposed law that, when under the proposed law the Regulatory Authority or the Collector files any complaint in the criminal Court for an offence of criminal breach of trust or other related offences stated above, such a complaint shall be governed and proceeded with under Part A of chapter XIX of the CrPC, notwithstanding anything to the contrary contained in the Criminal Procedure Code, 1973.

Further, a provision should also be made that in such cases the Magistrate shall without delay furnish to the accused, free of cost, a copy of the complaint and other documents referred to therein.

(para 5.8.1.6)

18. We are of the view that so far as criminal cases are concerned, they can straightaway be dealt with by the regular Criminal Courts but according to the procedure indicated above. The Regulatory Authority and the Collector can make complaint before the criminal Court and these complaints shall be governed and proceeded with under Part A of Chapter XIX of the CrPC, as recommended earlier. Likewise, instead of a separate Judicial Authority, a Civil Court of the rank of a Senior Civil Judge may be designated to deal with civil cases in respect of alleged breach of trust or related issues.

Since this type of work is not likely to come up frequently, we recommend that such Courts be designated in each district, to try civil cases of breach of trust and related issues arising out of the proposed law.

We, therefore, recommend that High Court shall designate a senior Civil Judge in the District to act as designated Courts for dealing with Civil disputes arising under the proposed law. These designated Courts shall have unlimited pecuniary jurisdiction.

(para 5.8.2.3)

19. The Designated Court shall have jurisdiction to try all cases of civil nature in respect of alleged misappropriation and misutilisation and diversions of contribution by any person, body or agency who or which have collected such contributions or other related issues.

All cases irrespective of pecuniary value can be tried by the designated Court. We recommend accordingly.

(para 5.8.2.4)

20. We recommend that the proposed Designated Courts shall not be bound to follow the procedure prescribed under the Code of Civil Procedure, 1908, but will be guided by the principles of natural justice. Further, the said Court shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(para 5.8.2.5)

21. We recommend that the Designated Courts shall have all powers of Civil Court including power to take steps to punish for contempt as provided by the law at present.

(para 5.8.2.6)

22. We recommend that

When any person, body or agency –

- i) does not give receipt of the contribution in the form and manner as prescribed in the enactment;
- ii) makes any kind of discrimination on the ground of religion, race, language, sex, caste, place of birth or residence in distribution of contribution;
- iii) does not deposit the monetary contribution in the nationalised bank, as prescribed in the enactment;
- iv) does not maintain account books and register as prescribed in the rules;
- v) fails to file returns to the Collector or the Regulatory Authority in time, as prescribed in the enactment and rules;
- vi) fails to get audited the accounts from a qualified Chartered Accountant; or
- vii) violates any other provision of the proposed Act (which is not an offence);

such person, body or agency shall be liable to a penalty as stated below.

The Collector or the Regulatory Authority, after giving opportunity of hearing, may impose penalty on such person, body or agency, which shall not be less than Rs.10,000/- (rupees ten thousand) but may extend to Rs.25,000/- (rupees twentyfive thousand).

(para 5.9)

23. We recommend that the Central Government shall by notification in the official Gazette make rules for carrying out the purposes of the Act.

These Rules may, in particular, provide for following matters:

- A) Manner in which registers and account books shall be maintained by authorized person, body or agency.
- B) The procedure to be followed by the Regulatory Authority at meeting including the quorum necessary for transaction of business.
- C) The manner in which the Regulatory Authority shall maintain proper account and other relevant records of its fund.
- D) The manner and form in which application for registration has to be submitted.
- E) The manner in which the Collector shall impart information in respect of registration, provisional registration or suspension and cancellation of registration of any authorised person, body or agency.
- F) Manner in which the Collector shall authenticate the receipt book.

Every rule made by the Central Government under the Act, shall be laid, as soon as after it is made, before each House of Parliament.

(para 5.10)

24. We recommend that the proposed enactment shall have overriding effect over any other law or scheme, so far as such law or scheme is inconsistent with the proposed enactment.

(para 5.11)

We recommend accordingly.

(Justice M. Jagannadha Rao)
Chairman

(Dr. K.N. Chaturvedi)
Member-Secretary

(Dr. S. Muralidhar)
Part-time Member

Dated: 15th December, 2004

