IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
W.P.(C) NO. 276/2025 / W.P.(C) NO. 314/2025 / W.P.(C) NO. 284/2025 / W.P.(C) NO. 331/2025 / W.P.(C) NO. 269/2025

IN THE MATTER OF

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (1)
IN RE: THE WAQF (AMENDMENT) ACT, 2025 (2)
IN RE: THE WAQF (AMENDMENT) ACT, 2025 (3)
IN RE: THE WAQF (AMENDMENT) ACT, 2025 (4)
IN RE: THE WAQF (AMENDMENT) ACT, 2025 (5)

SHORT NOTE ON BEHALF OF TUSHAR MEHTA SOLICITOR GENERAL OF INDIA

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ON BEHALF OF TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA

A. PRELIMINARY SUBMISSIONS

1. At the outset, it is respectfully submitted that as per the hearing which took place on 16.04.2025 and 17.04.2025, the issues of immediate concern were debated where the court *prima facie* felt that on certain issues there was an apprehension about irreversible change by the time the matter is heard finally. This Note only deals with the issues flagged during the earlier hearing. This Hon'ble Court identified the following three issues for consideration at the interim stage:

i. Challenge to Section 3(r), which de-recognises 'Waqf by user' prospectively;
ii. Challenge to special provision for Government Properties under Section 3C; and
iii. Changes in the composition of the Central Waqf Council and State Waqf Board under Sections 9 and 14, respectively.

2. It is submitted that the Preliminary Counter Affidavit dated 25.04.2025 ["**Counter Affidavit**"] filed by the Union of India addresses only these three issues and clearly states as under :

> "4. At the outset it is respectfully submitted that this Affidavit in reply is being filed as a preliminary reply and only to deal with the issues flagged during the earlier hearing on 16.04.2025. I reserve my rights to file a further and detailed affidavit along with further material as and when necessary before further hearing and / or before final hearing."

3. The Respondent has also reserved its rights to file a further and detailed affidavit along with further material as and when necessary before further hearing and / or before final hearing. The statements made on behalf of the Union of India, as recorded *vide* order dated 17.04.2025, were also confined to the challenges related to Sections 3(r), 3C and Sections 9 and 14 of the Waqf (Amendment) Act, 2025.

Therefore, the scope of this note is limited to the issues highlighted by this Hon'ble Court.

B. THERE CANNOT BE A STAY OF STATUTE & THERE IS A PRESUMPTION OF CONSTITUTIONALITY

4. It is a settled position in law that constitutional courts would not stay a statutory provision, either directly or indirectly, and will decide the matter finally. [See ***Bhavesh D. Parish v. Union of India*, (2000) 5 SCC 471; *Health for Millions v. Union of India*, (2014) 14 SCC 496**; ***State of U.P. v. Hirendra Pal Singh*, (2011) 5 SCC 305**; ***Dr. Jaya Thakur and Ors. v. Union of India and Anr.*, (2024) 9 SCC 538 – Counter Affidavit – Pg 149-156].**

5. There is a presumption of constitutionality that applies to laws made by Parliament [***Chiranjit Lal Chowdhuri v. Union of India*, 1950 SCR 869 [Para 11, 45, 46, 67]**; ***Ram Krishna Dalmia v. Justice S.R. Tendolkar*, 1959 SCR 279 [Para 11]**; ***Mohd. Hanif Quareshi v. State of Bihar*, 1959 SCR 629 [Para 15]**; ***Special Courts Bill, 1978, In re*, (1979) 1 SCC 380 [Para 72.9]**; ***B. Banerjee v. Anita Pan*, (1975) 1 SCC 166 [Para 12]**; ***Karnataka Bank Ltd. v. State of A.P.*, (2008) 2 SCC 254 (Para 19)]**.

6. In the absence of specific pleadings on fact and actual instances of breach of fundamental rights, since the present petitions are PILs based on hypotheticals, and order injuncting the operationalisation of a statute, that too at a nascent stage wherein it has not even been allowed to take full effect, would be counter-productive. Judicial review is the cornerstone of the 2025 amendments, which allow the Hon'ble High Courts revisionary powers over any decision taken under the enactment.

7. Moreover, "every order" under the enactment, of any nature, is subject to judicial review before the specialised Waqf Tribunal under Section 83(2). Thus, contrary to the submissions of the Petitioners, no grave national urgency arises which warrants a stay of the enactment, as every situation which may arise during the operationalisation of the enactment can be tackled judicially at the appropriate forum.

8. Further, more fundamentally, the petitions confuse the creation of waqf and property regulation associated with Waqf, with religious rights under Articles 25

and 26. The Waqf Act [including the amendments] do not touch any religious aspects of the Waqf, such as functions of the *Sajjadanashin* or any other essential religious practices of Muslims in general. The enactment merely seeks to efficiently regulate the secular aspects of waqf, grounded in property management and regulation, which is intrinsically public in nature, affecting the rights of the *public at large.*

9. The elements of charity or religious dedication of property are common across all religions and specifically held by this Hon'ble Court to be a "purely secular exercise".[1] The fundamental purpose of the Waqf Act is to confer statutory validity upon dedications while imposing certain duties and responsibilities. It is always open to Parliament to alter the statutory framework which conferred statutory validity to such dedications.

The primary religious right being the right to make a dedication is not interfered with, and neither is the administration of any specific waqf interfered with, as the same continues to be vested with the *mutawalli* as per the purpose behind such waqf.

10. It may be noted that Waqf, by its very nature, is a secular concept. This is so since waqf merely means dedication of property. The word "waqf" is derived from the Arabic word, which means 'to hold'. In case of religious waqf, a part of the activities being carried out by the individual waqf may be religious in nature, while other secular aspects of "administration of property" in "accordance with law" remain.

C. CHALLENGE TO SECTION 3(R) WHICH DELETES 'WAQF BY USER'

11. The concept of "Waqf by user" emerged during a period when formal documentation was uncommon. The prospective denial of the creation of new auqaf through the means of '*waqf by user*' does not deprive a person of the Muslim community to create a waqf. There are various other ways of creation of auqaf and merely de-recognition of means [that too prospective], cannot be held to be violative of any fundamental rights. The de-recognition is ***prospective in nature,*** as is clear from the changes brought about to Section 3(r), which reads as under :

[1] See John Vallamattom and Another v. Union of India, (2003) 6 SCC 611 [Pg 101 – Counter Affidavit]

"**(r)** "waqf" means the permanent dedication by ~~any person, of any movable or immovable property~~ any person showing or demonstrating that he is practising Islam for at least five years, of any movable or immovable property, having ownership of such property and that there is no contrivance involved in the dedication of such property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

~~(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;~~

(ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

(iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare, or maintenance of widow, divorced woman and orphan, if waqif so intends, in such manner, as may be prescribed by the Central Government, and such other purposes as recognised by Muslim law,

and "waqif" means ~~any person~~ any such person making such dedication;

Provided that the existing waqf by user properties registered on or before the commencement of the Waqf (Amendment) Act, 2025 as waqf by user will remain as waqf properties except that the property, wholly or in part, is in dispute or is a government property."

12. The proviso clearly ensures that any waqf, which was registered before the concerned authorities, would be protected. The said requirement and protection based on registration is a logical corollary and is derived through the consistently mandated legislative intent of registration for all waqfs, including "waqf by user," since the Mussalman Wakf Act, 1923.

13. The Act of 1923 made registration mandatory, with the Statement of Objects and Reasons highlighting concerns about misuse and misappropriation of waqf properties. Section 3 required mutawallis to furnish details such as property description, income, expenses, and any written deed (only if available). Crucially, even if no deed existed, the origin, nature, and objects of the waqf had to be reported. Failure to comply with registration was made punishable under Section 10. The Act also mandated annual account submissions under Section 5 and audits under Section 6, emphasizing that non-registration was not an empty formality but a statutory obligation. [2] The necessity for registration was also reinforced by

[2] For a detailed analysis – See Counter Affidavit – Pg 16 – 22.

subsequent provincial Acts like the Bengal Wakf Act, 1934, which explicitly recognized "waqf by user."

14. Post-independence, the Wakf Act, 1954 retained mandatory registration and continued recognizing "waqf by user." Section 4 empowered the state to conduct surveys of all waqfs through the "Survey Commissioner." Section 5 mandated the publication of waqf lists, allowing challenges in civil courts under Section 6. Section 25 reiterated the registration requirement for all waqfs, specifying that no formal deed was necessary if unavailable. Section 26 required the creation of a Register of Wakfs specifying the class of waqf, including "waqf by user". Sections 27 and 28 empowered the Board to collect information regarding any property and declare it as waqf property. Section 41 penalized failure to register with fines and imprisonment.[3]

15. The Wakf Enquiry Committee (1976) noted the persistent issue of unregistered waqfs and recommended stricter measures[4]. As a result, the Wakf (Amendment) Act, 1984 introduced Section 55E, barring the enforcement of rights on behalf of unregistered waqfs, though this amendment could not be brought into effect due to opposition from the community[5].

16. The Wakf Act, 1995 reiterated the mandatory registration policy, including for "waqf by user". Section 4 of the 1995 Act (amended in 2013) mandates the State Government to appoint a Survey Commissioner of Auqaf to conduct a comprehensive survey of waqf properties. Section 5 provides for the Publication of the Waqf List upon receiving the survey report. Sections 6 and 7 provide for dispute resolution regarding whether a property is a waqf or not. Section 36 provides that all waqfs, including 'waqf by user', must be registered with the Waqf Board, and if no formal deed exists, the application can show the origin, nature, and object of the waqf. Sections 40 and 41 empowered the Board to collect information regarding any property and declare it as wakf property. Section 61, like the previous enactments, provides for penalties in case of non-registration. Section 87 (introduced in 1995) explicitly barred any legal proceeding for unregistered waqfs, although it was repealed in the 2013 amendment.[6]

[3] For a detailed analysis – See Counter Affidavit – Pg 22 – 34.
[4] See Counter Affidavit – Pg 35.
[5] See Counter Affidavit – Pg 36.
[6] For a detailed analysis - See Counter Affidavit – Pg 37-54.

17. It is thus clear that those waqfs which have not registered themselves [including 'waqfs by user'] since 1923, 1954, or at least prior to 01.01.1996 [date on which Act of 1995 came in force] nor have they been found to be in existence during the survey by the Survey Commissioner and an independent exercise mandated by law from the State Waqf Board (as explained above) and have no legal existence and any belated claim at this stage is not maintainable. This legislative policy in the proviso, therefore, has a rationale and is not arbitrary.

18. The Joint Parliamentary Committee (JPC) on the Waqf (Amendment) Bill, 2024, thoroughly examined the contentious issue of "Waqf by user." The original bill did not contain a proviso to Section 3(1)(r), which was subsequently added after the JPC's deliberations and accepted by both Houses of Parliament. The amendment further specifies that any waqf created after April 8, 2025, must have a valid waqf deed, as per the newly added Section 36(1A). This shift from oral to documented waqf creation is intended to modernise and formalize waqf management due to increased prevalence and accessibility of documentation in modern times, addressing the need to avoid disputes by ensuring proper records.[7]

19. It is submitted that if the effect of the section saving only registered 'Waqf by user' is interfered with either directly or indirectly by any interim order, it will not only defeat the object and provision itself, it will also result in the following anomalies which the order of any Court cannot lead to :

(i) It will amount to the creation of a legislative regime by judicial order [and that too an interim order] wherein Parliament has, by law, consciously taken it away.

(ii) It would defeat the object, intent and purpose of the Act in general and the 2025 amendments in particular;

This would give a premium to unregistered 'Waqf by user' who have been defying the law of the land since more than 100 years, though non-registration has always been a penal act;

(iii) It would legitimize something, i.e. unregistered 'Waqf by user' which is precluded and penalised by law;

(iv) It would be impossible for this Court or for that matter any authority to prevent anyone fictitiously claiming 'Waqf by user' in 2025 though it has never been identified in the statutory process of Survey Commissioner, the

[7] For a detailed analysis - See Counter Affidavit – Pg 54 – 60.

process of the Waqf Boards of each State and has never chosen to apply for registration and has never been reflected in any record including revenue records;

(v) It would encourage the mischief which is reflected in the report of the Waqf Enquiry Committee in the year 1976, quoted hereinabove, which categorically notes that some waqfs are deliberately trying to avoid registration, concealing waqf, which affects the administration of waqfs.

(vi) Any interim order will not only cause public mischief but will also harm Muslims as well who are supporting the amendment.

20. It is not possible to believe in law or on facts that any existing 'Waqf by user' never applied for registration (though mandatory), could not be found out by the State Waqf Board and would escape the scrutiny of the survey conducted under the Wakf Act, 1923, Wakf Act, 1954, Wakf Act, 1995 and the amended Section 6[1][a] in 2013 and thereby could not be registered. Those claimants now claiming a property to be 'Waqf by user' are fictitious as they were never found in survey by Survey Commissioner, enquiry conducted by the Waqf Board nor got themselves registered despite penal provisions being in existence for non-registration since 100 years and several windows given thereafter for registration. If a government property is encroached upon, such encroachment, *per se*, is contrary to the rule of law, which is a part of the basic structure of the Constitution.

21. The recognition of 'waqf by user' is not a fundamental right in itself. It was given statutory recognition by the Waqf Act. It is a settled position in law that a right conferred by a statute can always be taken away by a statute, as the Legislature is expected to keep pace with changing societal conditions. This principle is recognized by this Hon'ble Court in a judgment reported in ***State of Kerala v. Peoples Union for Civil Liberties*, (2009) 8 SCC 46,** which held as under:

> **"52.** A right which primarily flows from a statute, cannot claim its constitutional pedigree to become a constitutional threshold, against which constitutionality of a statute can be tested. **It is trite that a right which may be conferred by a statute can also be taken away by another. It is also a trite law that the State is entitled to change its legislative policy having regard to the ground realities and changing societal condition. In fact, the legislature is expected to take steps for enacting a new statute or amending the same so as to keep pace with the changing societal condition as well as taking into consideration the development of law, both domestic and international**."

22. If the competent legislature, consisting of elected representatives, after an elaborate exercise, comes to the conclusion that it needs to change a legislative policy, it is fully competent to do so. Under the State laws dealing with Hindu Endowments and Hindu religious institutions, many customs, practices and *prathas* have been deleted/de-recognised over the years, by the competent Legislature. The examples exist deletion of hereditary *archakas*, hereditary trustees representing the person who established the denomination, etc. Such provisions are specifically upheld by this Hon'ble Court [by way of Constitution Bench judgments] approving the same as per Articles 25 and 26 read with Article 14 of the Constitution of India. [See **ANNEXURE A - *Chart on religious practices held to be secular and open to regulation by the State***]

23. In case of ***Pannalal Bansilal Pitti v. State of A.P.*, (1996) 2 SCC 498**, the question arose before this Hon'ble Court regarding the validity of the provisions of the Andhra Pradesh Charitable and Hindu Religious Act, 1987 regarding abolition of the right of hereditary trustees in a temple and appointment of the Executive Officer and non-hereditary trustee by way of a statute and whether the same is violative of Articles 25 and 26. The State Legislature had enacted the Andhra Pradesh Charitable and Hindu Religious Act, 1987 and inserted Sections 15 and 16 having the effect of abolishing hereditary trustees and providing for a mandate that the Government would directly appoint Board for Trustees to manage each religious institution or endowment. While upholding the said statutory provisions, this Hon'ble Court held as under:

> **21.** It is true that Section 16 of the Act, which has been reproduced earlier, abolishes the hereditary right in trusteeship but not the right to trusteeship itself. It is obvious that Section 18 itself recognises the right to management of a religious or charitable institution or endowment or specific endowment by one of the members belonging to the family of the founder as trustee; but, of course, as a member of the board of non-hereditary trustees. Though hereditary right is a part of the right to administer the Hindu religious or charitable institution or endowment under the predecessor Act of 1966, it is seen that Justice Challa Kondaiah Commission, which is a storehouse for the legislature to find the existence of evils or mischief in the administration and governance of charitable and Hindu religious institutions or endowments and which the legislature has taken cognizance of while making the law at hand, had pointed out the acute need to provide remedy. Words are the skin of the language. **The language opens up the bay of the maker's mind. The legislature gives its own meaning and**

> **interpretation of the law. It does so employing appropriate phraseology to attain the object of legislative policy which it seeks to achieve.**
>
> **22.** Section 16 with a non obstante clause abolishes the hereditary right in trusteeship of charitable and Hindu religious institutions or endowments. **It is settled law that the legislature within its competence may amend the law. The language in Section 16 seeks to alter the pre-existing operation of the law. The alteration in language may be the result of many factors. It is settled legislative device to employ non obstante clause to suitably alter the pre-existing law consistent with the legislative policy under the new Act to provide the remedy for the mischief the legislature felt most acute.** Section 16, therefore, applying non obstante clause, altered the operation of any compromise, agreement entered into or a scheme framed or a judgment, decree or order passed by any court, tribunal or other authority or any deed or other document prior to the Act. The pre-existing hereditary right in trusteeship in the office of the hereditary trustee, mutawalli, dharmakarta or muntazim or by whatever name it is called was abolished prospectively from the date of the commencement of the Act. Article 15(1) of the Constitution prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

24. The recognition of a particular category of waqf and its prospective deletion from the statute is essentially a matter of ***legislative policy***. It was noticed that 'Waqf by user', by its very nature, would have a potential of trampling upon the rights of third parties as it is not a formal and clearly defined dedication by an individual of any designated property for being used as waqf. The community gets the right to use it as a waqf ***merely*** by long usage. In case some land is Government property, it belongs to the entire country, and nobody can claim any enforceable right to use the property which is encroached upon, maybe for a long period.

25. Further, if a private property is being used for a long duration without any objection being raised by the owner of the property, such 'waqf by user' are protected, if they are registered prior to 2025 in compliance with mandatory statutory regime existing since more than 100 years and is not a subject matter of legal dispute.

26. The Petitioner's contend that withdrawal of recognition of 'Waqf by user' that has been in place since time immemorial is hit by the principle of non-retrogression as propounded in ***Navtej Singh Johar & Ors v. Union of India,*** **2018 (10) SCC 1.** It is submitted that the principle of non-retrogression in ***Navtej Singh Johar (supra)*** was referred to in the context of progressive realization of rights under Article 21 and socio-economic rights, which means that in a progressive and ever-improving society, there is no place for retreat. Importantly, it applied the principle to

fundamental personal freedoms and dignity rights, not to property classification or secular legislative schemes.

27. The Petitioner's attempt to import the principle of non-retrogression as a controlling bar is thus not applicable in the facts of the present case, as it cannot constrain the Parliament to introduce legislative reform. There is no "principle of non-retrogression" in Indian law that prevents Parliament from clarifying that only duly constituted, registered waqfs are recognized by the statute. By way of the Amendment Act, 2025, existing registered Waqf by user are not extinguished as there was a rationale policy in place mandating registration of *auqaf*.

For being protected as 'waqf by user' under the proviso to Section 3(1)(r), no trust, deed or any documentary proof has been insisted upon in the amendment or even prior thereto. The only mandatory requirement for being protected under the proviso is that such 'waqf by user' should be registered as on 08.04.2025. Therefore, the amendment does not impose an onerous new burden; it simply channels all claims into the registration system, which has already been in place for over 100 years.

D. THE RIGHT TO ADMINISTER WAQF IS "ONLY IN ACCORDANCE WITH LAW"

Essential religious aspects remain untouched

28. The Waqf (Amendment) Act, 2025 focuses only on the secular and administrative aspects of waqf institutions, including property management, record-keeping, and governance, without interfering with essential religious practices or beliefs of the Islamic faith. Articles 25 and 26 permits the regulation of secular activities related to religion and allow legislation concerning the administration of religious property.

29. The Constitution of India maintains a clear distinction between core religious freedoms and secular activities associated with religion. These rights are not absolute and must be balanced with social welfare and public order. The State retains the authority to regulate secular activities, including financial management and property administration of religious endowments, to ensure transparency and prevent misuse.

30. Dr. Ambedkar clarified his view on the subject stating that the religious conceptions in India being extremely vast covering almost every aspect of life, from birth to death and if personal law is to be saved under the religious freedom clause, then social reform would come to a standstill. Dr. Ambedkar, therefore, advocated a limited definition of religion in such a manner which would "*not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious*" [**ANNEXURE B -** Speech by Dr. B.R. Ambedkar on 2nd December 1948.][8]

31. In the same line, charity, while a commendable act in many religions, is not considered an essential religious practice warranting absolute protection under Articles 25 and 26, as established by the Supreme Court in ***John Vallamattom v. Union of India*, (2003) 6 SCC 611**[9]. The judgment clarified that acts of charity, although encouraged, do not constitute an integral part of religious faith.

32. Waqf by its very nature is charity and any charity, either under the Islamic law or Hindu Law or Christian Law, has never been considered to be an essential religious practice. Charity is a part of every religion, but not an essential religious practice of any religion. A Muslim who does not create a Waqf would not be a less Muslim or cease to be a Muslim.

33. The Petitioner are effectively ***dressing up a purported right under Clause d of Article 26 as a right under Clause b of Article 26***. The said play is being orchestrated in order to seemingly escape the rigours of the words "***in accordance with law***" occurring in Article 26(d). It may be noted that the said exercise has been attempted before this Hon'ble Court previously and was specifically rejected in the *locus classicus* on the subject - ***Commr. Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412**. It was held as under :

> **"17.** The other thing that remains to be considered in regard to Article 26 is, what is the scope of clause (b) of the article which speaks of management "of its own affairs in matters of religion"? The language undoubtedly suggests that there could be other affairs of a religious denomination or a section thereof which are not matters of religion and to which the guarantee given by this clause would not apply. The question is, where is the line to be drawn between what are matters of religion and what are not?
>
> **18.** It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of Article 26 guarantee to a religious

[8] Accessed from : http://164.100.47.132/LssNew/constituent/vol7p18.html.
[9] Counter Affidavit - Para 165, Pg. 101

denomination the right to acquire and own property and to administer such property in accordance with law. **The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion.** The latter is a fundamental right which no legislature can take away, **whereas the former can be regulated by laws which the legislature can validly impose**. **It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the Article applies."**

34. The judicial pronouncements are consistent to the effect that ***essential religious practices*** are those practices which are either core religious practices [not incidental or connected practices] or spiritual in nature i.e. offering of namaz/puja, the manner of doing rituals, the reverence of days or months as per religious scriptures, a particular custom being accepted as an essential part of each denomination. [See **ANNEXURE C - *Chart on content of Essential religious practice - law***].

35. Creating a waqf is not mandatory in Islam like many other practices and, therefore, is not an essential religious practice in any case. Waqf, unlike Hindu religious institutions, can be for non-religious purposes also, like hospitals, schools, orphanages, madrasas, etc. There cannot be a blanket right to dedicate movable or immovable property as part of Article 25 and 26, and never has such an absolute right been recognised by the Hon'ble Courts as an essential religious practice. The dedication of any property for religious, charitable or pious purpose, in its entirety, cannot be an essential religious practice. Thus, a category of 'waqf by user' can always be de-recognised prospectively by the competent Legislature.

E. CHALLENGE TO SPECIAL PROVISION FOR GOVERNMENT PROPERTIES

36. The new provision added is as under :

"3C. Wrongful declaration of waqf.

(1) Any Government property identified or declared as waqf property, before or after the commencement of this Act, shall not be deemed to be a waqf property.

(*2*) If any question arises as to whether any such property is a Government property, the State Government may, by notification, designate an Officer above the rank of Collector (hereinafter referred to as the designated officer), who shall conduct an inquiry as per law, and determine whether such property is a Government property or not and submit his report to the State Government:

Provided that such property shall not be treated as waqf property till the designated officer submits his report.

(*3*) In case the designated officer determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government.

(*4*) The State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate correction in the records."

37. There may not be any dispute about the following two propositions-

(i) Only a person who is the lawful owner of the property can create a waqf;

(ii) That there cannot be a creation of waqf on Government Property, as the Government holds the property for and on behalf of all the citizens of India.

It has been consistently found over a period of time and documented at various levels that government properties and even private properties are declared as waqf properties. It is submitted that this is done under the old regime, wherein adequate safeguards were absent.

38. The Government holds property for and on behalf of its citizens and as a trustee. The Government is under an obligation to protect government properties. If there is any user of the government property without the permission of the Government, the Government can always provide for a statutory mechanism for identification of such encroachment. Section 3C is a statutory provision enabling the government to discharge its obligation to the country to identify the land which are being "used" for purposes other than government or public purposes.

39. The right of the government to protect public property needs no elaboration. However, in case of ***State of A.P. v. A.P. Wakf Board*, (2022) 20 SCC 383**, this Hon'ble Court has in para 142 observed as under:

> **142. Thus, the State Government, as a juristic entity, has a right to protect its property through the writ court, just as any individual could have invoked the jurisdiction of the High Court.** Therefore, the State Government is competent to invoke the writ jurisdiction against the action of the Wakf Board to declare the land measuring 1654 acres and 32 guntas as wakf property.

40. In the said matter, the issue was whether the State can maintain a writ against the Waqf Board when a government land is encroached upon, and the Waqf Board has registered the same as 'waqf by user'. Dealing with the same challenge and

rejecting it, this Hon'ble Court categorically observed in para 142, which is quoted hereinabove.

41. In case of ***Viceroy Hotels Limited and Others v. Telangana State Wakf Board and Others*** **2024 SCC OnLine TS 689**, a claim was made as the property owned by the said Hotel on a prime land in Hyderabad to be 'Waqf by user'. The hotel agitated its claim before the Hon'ble Telangana High Court against the Telangana State Waqf Board. Interestingly, the Board had itself determined the property to be not a waqf property in 1958 but they revisited the issue in 2007 and declared it to be waqf property.

The High Court quashed the claims of the Waqf Board and declared the Hotel to be a lawful owner of the property. It is submitted that thereafter, the SLP filed by Telangana State Waqf Board was dismissed by this Hon'ble Court in ***SLP(C)*** **7078 of 2025.**

42. It is submitted that there are several such examples which would show how the 'waqf by user' and the power "declaring any land as waqf *suo motu* by waqf board" has proved to be a safe haven of encroachment of government properties and private properties.

43. Thus, the State Government, as a juristic entity, has a right to protect its property through the writ court, just as any individual could have invoked the jurisdiction of the High Court. Therefore, the State Government is competent to invoke the writ jurisdiction against the action of the Waqf Board to declare land measuring 1654 acres as waqf property.

44. In ***R. Hanumaiah v. State of Karnataka*****, (2010) 5 SCC 203**, this Hon'ble Court observed as under:

> **Nature of proof required in suits for declaration of title against the Government**
>
> **19.** Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government, is not available to any person or individual. The second difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title.

> Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against the Government. This follows from Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. **Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.**

45. In such cases, a mechanism is provided for under Section 3C for adjudication of rights by a Designated Officer. The Designated Officer will conduct an exercise after hearing the affected parties, and accordingly, revenue records will be changed. Such a decision will be amenable to challenge before the Waqf Tribunal under Section 83 of the Act and thereafter before the High Court and the Supreme Court.

46. Only because the Designated Officer has been appointed as the authority to inquire into the nature of the property, it does not mean that natural justice has been violated. It is well settled that the appointment of an officer to adjudicate claims, including claims by the Government, is not tainted by bias. For example, all the tax laws where the State claims tax from a citizen are administered by officers appointed by the State – the suggestion that their conduct is tainted by bias is absurd[10].

47. It is pertinent to note that the Designated Officer is not making a final determination of rights because it is an established principle that mutation in the revenue record is only evidence of, but not conclusive of, ownership. If the Designated Officer determines the property to be a government property under Section 3C(2), it would result in the government being reflected as the owner in the revenue record.

48. The final determination with regard to the title would therefore be made by the Waqf Tribunal or, in appeal, by the Hon'ble High Court and the Hon'ble

[10] Counter Affidavit - Paras 149-154, Pg. 93-96

Supreme Court. It is submitted that the final rights of the parties would be subject to the Court's decision.

Such an exercise under Section 3C being only for the correction of revenue records, the affected parties (the Government as well as any person aggrieved) can take recourse to law and legal remedies (either for establishing title or for eviction).

49. Thus, by protecting government land through procedural safeguards, the State fulfils its duty under Article 39(b) of the Constitution, which directs that ownership and control of material resources of the community should be distributed to best serve the common good.

F. INCLUSION OF 2 NON-MUSLIMS OUT OF 11 IN WAQF BAORD AND 4 NON-MUSLIMS OUT OF 22 IN CENTRAL COUNCIL

50. The Waqf (Amendment) Act, 2025, establishes a structured framework for waqf administration through a three-tier system comprising the Central Waqf Council, State Waqf Boards, and individual waqfs. The Central Waqf Council, primarily advisory in nature, assists the Central and State Governments and the Boards in the proper administration of auqaf without intervening in the religious functions of individual waqfs. The State Waqf Boards, functioning at the second level, focus on the secular administration of waqf properties, ensuring compliance with statutory requirements related to management, accounting, and transparency. The final layer consists of individual waqfs, which operate independently concerning religious functions while adhering to administrative regulations as set by the Boards.

Central Waqf Council

51. Section 9 provides for the establishment and composition of the Central Waqf Council. Its essential purpose is to **advise** the Central Government, State Government, and Boards on matters concerning the working of Boards and the due administration of Auqaf. The following aspects may be noted in this regard-

(i) Firstly, this is primarily an advisory role and cannot be treated as religious interreference *per se*.

(ii) Secondly, advising on due administration of waqf would not interfere with religious affairs of the waqf, if any, as it merely amounts to regulating economic, financial or other secular activities.

(iii) Sub-section (4) of Section 9 provides for a power to issue directive by the Central Waqf Council. This power itself can be exercised for the following purposes and no others:

a. Financial performance;
b. Survey;
c. Maintenance of waqf deeds;
d. Revenue records;
e. Encroachment of waqf properties;
f. Annual reports and audit reports

These are all secular activities for which a directive can be issued by the Waqf Council – not to the individual waqf but to the concerned Board only.

52. Though the Central Waqf Council is not dealing with individual waqfs directly, Rule 6 of the Central Waqf Council Rules, 1998 provides for appointment of committees by the council from among its members for any particular work. The Council with majority of Muslim members may appoint a Committee of only Muslim members for any particular function if involvement of non-Muslim in such function is found not to be desirable.

There is, therefore, no interference in waqf or its activities by the Central Council. The directives to the Waqf Board also are only restricted to the secular aspects.

There is a remedy also provided against such direction by raising a dispute before a Board which would be presided over by a retired judge of the Supreme Court or Chief Justice of the High Court.

State Waqf Boards

53. At the outset, it is submitted that this Hon'ble Court has declared Waqf Board under the Waqf Act as "State" within the meaning of Article 12 of the Constitution of India. In the judgment of ***State of A.P. v. A.P. Wakf Board*, (2022) 20 SCC 383**, this Hon'ble Court, in para 139, has observed as under-

> **139. Since the Wakf Board is "State", it has to act fairly and reasonably.** This Court in a judgment reported as *Dwarkadas Marfatia & Sons* v. *Port of Bombay* [*Dwarkadas Marfatia & Sons* v. *Port of Bombay*, (1989) 3 SCC 293] held that the action of a statutory authority must be reasonable and taken only upon lawful and relevant grounds of public interest. ..."

Once a statutory body is a "State" within the meaning of Article 12, no arguments can be raised on the ground that all Members of the said statutory body must belong to one particular religion.

54. With regard to the inclusion of 2 non-Muslim in Waqf boards, it may be noted that the enactment is a "law" regulating the economic, financial and secular activities of waqf and provided for administration of waqf properties in accordance with law. The functions of the Board fall within the confines of the same and does not overstep any constitutional demarcations. [See **ANNEXURE D - *Chart showing all functions entrusted to the Waqf Board under the Act***].

55. The amendments carried out in Section 9 and 14, are as under:

> "**9. Establishment and constitution of Central Waqf Council. —**
> (1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.
>
> (1A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).]
>
> ~~(2) The Council shall consist of—~~
> ~~(a) the Union Minister in-charge of 1[waqf]—ex officio Chairperson;~~
> ~~(b) the following members to be appointed by the Central Government from amongst Muslims, namely:—~~
> ~~(i) three persons to represent Muslim organisations having all India character and national importance;~~
> ~~(ii) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;]~~
> ~~(iii) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;~~
> ~~(iv) Chairpersons of three Boards by rotation;~~
> ~~(v) two persons who have been Judges of the Supreme Court or a High Court;~~
> ~~(vi) one Advocate of national eminence;~~

~~(vii) one person to represent the mutawallis of the [waqf] having a gross annual income of rupees five lakhs and above;~~
~~(viii) three persons who are eminent scholars in Muslim Law:~~
~~Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.~~

(2) The Council shall consist of—
(a) the Union Minister in charge of waqf—Chairperson, ex officio;
(b) three Members of Parliament of whom two shall be from the House of the people and one from the Council of States;
(c) the following members to be appointed by the Central Government from amongst Muslims, namely: —
(i) three persons to represent Muslim organisations having all India character and national importance;
(ii) Chairpersons of three Boards by rotation;
(iii) one person to represent the mutawallis of the waqf having a gross annual income of five lakh rupees and above;
(iv) three persons who are eminent scholars in Muslim law;
(d) two persons who have been Judges of the Supreme Court or a High Court;
(e) one Advocate of national eminence;
(f) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;
(g) Additional Secretary or Joint Secretary to the Government of India dealing with waqf matters in the Union Ministry or department—member, *ex officio*:

Provided that two of the members appointed under clause (c) shall be women:

Provided further that two members appointed under this sub-section, excluding *ex officio* members, shall be non-Muslim.

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be, prescribed by rules made by the Central Government.

(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may suo motu call for information on specific issues from the Board, if it is satisfied that there was prima facie evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as

considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.

14. Composition of Board.—~~(1) The Board for a State and the National Capital Territory of Delhi shall consist of—~~

~~(a)a Chairperson;~~

~~(b) one and not more than two members, as the State Government may think fit, to be elected~~

~~from each of the electoral colleges consisting of—~~

~~(i) Muslim Members of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;~~

~~(ii) Muslim Members of the State Legislature;~~

~~(iii) Muslim members of the Bar Council of the concerned State or Union territory:~~

~~Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and~~

~~(iv) mutawallis of the auqaf having an annual income of rupees one lakh and above.~~

~~Explanation I.—For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.~~

~~Explanation II.—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;~~

~~(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;~~

~~(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in Shia and Sunni Islamic Theology;~~

~~(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;]~~

~~(1A) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:~~

~~Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):~~

~~Provided further that at least two Members appointed on the Board shall be women:~~

~~Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.~~

~~(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:~~

~~Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:~~

~~Provided further that where there are no Muslim Members in any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1) the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.~~

~~(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.~~

~~(4) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under sub-section (3)~~.

(1) The Board for a State and the National Capital Territory of Delhi shall consist of, not more than eleven members, to be nominated by the State Government,—

(*a*) a Chairperson;

(*b*) (*i*) one Member of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;

(*ii*) one Member of the State Legislature;

(*c*) the following members belonging to Muslim community, namely:—

(*i*) one mutawalli of the waqf having an annual income of one lakh rupees and above;

(*ii*) one eminent scholar of Islamic theology;

(*iii*) two or more elected members from the Municipalities or Panchayats:

Provided that in case there is no Muslim member available from any of the categories in sub-clauses (*i*) to (*iii*), additional members from category in sub-clause (*iii*) may be nominated;

(*d*) two persons who have professional experience in business management, social work, finance or revenue, agriculture and development activities;
(e) Joint Secretary to the State Government dealing with the waqf matters, ex officio;
(*f*) one Member of the Bar Council of the concerned State or Union territory:

Provided that two members of the Board appointed under clause (*c*) shall be women:

Provided further that two of total members of the Board appointed under this sub-section, excluding *ex officio* members, shall be non-Muslim:

Provided also that the Board shall have at least one member each from Shia, Sunni and other backward classes among Muslim Communities:

Provided also that one member each from Bohra and Aghakhani communities shall be nominated in the Board in case they have functional auqaf in the State or Union territory:

Provided also that the elected members of Board holding office on the commencement of the Waqf (Amendment) Act, 2025 shall continue to hold office as such until the expiry of their term of office.

(2) No Minister of the Central Government or, as the case may be, a State Government, shall be nominated as a member of the Board.

(3) In case of a Union territory, the Board shall consist of not less than five and not more than seven members to be nominated by the Central Government under sub-section (1).
~~(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia [auqaf] and Sunni [auqaf] to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.~~

(6) In determining the number of members belonging to Shia, Sunni, Bohra, Aghakhani or other backward classes among Muslim communities, the State Government or, as the case may be, the Central Government in case of a Union territory shall have regard to the number and value of Shia, Sunni, Bohra, Aghakhani and other backward classes among Muslim auqaf to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.
~~(8) Whenever the Board is constituted or reconstituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.~~

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette."

56. The Council consists of a total of 22 Members [as per the Amendment Act of 2025] out of which a maximum of four can be non-Muslims. The non- Muslim Members are clearly, therefore, in minority. The State Boards consists of a total of 11 Members [as per the Amendment Act of 2025] out of which a maximum of three can be non-Muslims. The non- Muslim Members are clearly, therefore, in minority.

57. It is further submitted that the relevant Ministry has unequivocally stated the following before the JPC with regard to the interpretation of the proviso concerning non-Muslim members in the Council and the Boards :

"9.6.6 Further explaining about the inclusion of non-Muslim Members in the Council and responding to the concerns regarding the possibility wherein the Muslim members may be in minority in the Council, the Ministry of Minority Affairs stated as under:

".....the changes introduced in the constitution of the Central Waqf Council (CWC) are designed to create two categories: one category exclusively for Muslims (10 members)..... and another category (12 members). Out of this (second) category, two members will be Non-Muslim. Remaining all will be Muslims."

[This is the response of the Nodal Ministry to the provision in the Bill as placed before the JPC.]

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Observations/Recommendations of the Committee:

9.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that considering the statutory nature of the Central Waqf Council, inclusion of two non-Muslim members will make it more broad based and promote inclusivity and diversity in waqf property management. The Bill has further emphasized upon the participation of Muslim women in the Council. Hence, the Committee accept all the amendments proposed under the Clause. However, it has been brought to the knowledge of the Committee that the presence of non-Muslim ex-officio Members may result in fulfilling the requirement of the proposed amendment whereas this may go against the intent of the proposed amendments. Hence, the following amendment is proposed in second proviso of Clause 9:
"Provided further that two members appointed under this sub-section excluding exOfficio members, shall be non-Muslims."

XXX

Observations/Recommendations of the Committee:

11.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that the composition of State Waqf Boards has been expanded to include two non-Muslim members and ensure broader representation from Shia, Sunni and backward Muslim communities which will promote inclusivity and diversity in waqf property management. The Committee feel that nonMuslims can be beneficiaries, parties to disputes, or otherwise interested in waqf matters, which justifies their inclusion in the administration of waqf. Hence, the Committee accept the amendments proposed under the Clause. However, it has been brought to the knowledge of the Committee that the presence of non-Muslim ex-officio Members may result in fulfilling the requirement of the proposed amendment whereas this may go against the intent of the proposed amendments. Hence, the following amendments are proposed in Clause 11:

(1) the proposed sub-Section (1)(e) of Section 14 be substituted as given:
"Joint Secretary of the State Government dealing with waqf matters-member, ex officio;"
(2) the second provisio to sub-section (1) of Section 14 be amended as given:

"Provided further that two members of the Board appointed under this sub-section excluding ex officio members, shall be non-Muslims:"

58. It is submitted that changes in the composition of the Central Waqf Council (which is only an advisory body) and the Waqf Board (which only supervises secular activities) do no impair the Muslim community's rights under Article 26. The following aspects may be noted in this regard :

a. In case of Central Waqf Council [consisting of total 22 members], maximum of four members can be non-Muslims. If the *ex-officio* chairman i.e. Minister concerned and the Joint Secretary of the Government who is also *ex-officio* are Muslims, then only two members can be non-Muslims.

b. In case of Waqf Board [consisting of total 11 members], maximum of three members can be non-Muslims. If the *ex-officio* Joint Secretary is a Muslim, then only two members can be non-Muslim.

c. Thus, it is clear that non-Muslim members are in a microscopic minority and they are included to give inclusivity and with a view to ensure their participation. Since the secular aspects of waqf administrations may require

dealing with issues concerning non-Muslims who are either beneficiaries, aggrieved parties or affected parties.

d. Muslim members will form an overwhelming majority of the Board;

e. The Boards functions are wide ranging and often involves issues which may require dealing with members of other faiths.

59. It is submitted that, as stated above, Article 26 does not confer an absolute right to administer a property in accordance with the tenets of religion. It is submitted that in fact this Hon'ble Court has drawn a distinction between practices which are "integral" to religion and practices which, though associated with religion, are essentially of a secular nature, and the latter may be validly regulated by law.

60. It is submitted that before delving into the issue of the composition of Boards, it is necessary to make the initial clarification. It is submitted that the concept of religious endowment and perpetual charity is a time-honoured practice across all religions. It is submitted that across all these traditions, the underlying principle is consistent - once property is dedicated for religious or charitable use, it is removed from personal ownership and vested in a legal or sacred trust, to be administered under specific principles of stewardship. It is submitted that waqf, as a concept, encompasses both endowments and other forms of charities. It is submitted that, thus, a suitably tailored regime is the need of the hour. It is respectfully submitted that the State's regulation of such endowments, including under the Waqf Act, the Hindu Religious and Charitable Endowments Acts, and public trust laws, is not a violation of religious freedoms or any principles of arbitrariness. No community can claim as of right the benefits of a statutory protection to its dedications while insisting that even the secular regulatory functions be limited to members of that community.

61. It is submitted that the concept has evolved with time and cannot be merely considered to be limited to the religious institutions and places of worship. Further, in view of this wider understanding of waqf, the parallel with other religious institutions or endowments enactment would be inappropriate. The waqf regime, which is wider and ever evolving, requires a suitably tailored approach rather than lock-stock and barrel lifting of the religious endowment approach.

62. It is submitted that further, as stated above, the Petitioner's parallels with Hindu Endowment Acts existing in a few States are unfounded and militate against the broad nature of "Waqf Board" and limited Religious and Endowment enactments in a few States. The following points may be noted in this regard :

a. The concept of a waqf is wider and ever evolving – involving religious institutions and other general charitable functions like education, healthcare, orphanage, food to needy etc. Therefore, waqf requires a suitably tailored approach rather than lock-stock and barrel lifting of the 'religious endowment' approach.

b. It may further be noted that the State enactments dealing with Hindu endowments and religious institutions, the provisions under the said enactments exercise a far more pervasive, intrusive and inherently religious functions concerning temples, maths and provides for its administration – even touching upon the religious aspects of such temples, maths, etc. [See **ANNEXURE E -** ***Chart on Provisions of the Hindu Endowment Acts***]

c. It is submitted that further, not all States have Hindu Religious Endowments laws and in numerous States, the Hindu endowments and other general charities are wholly governed by local laws of Charities/Trusts which concern deal with all communities in general.

d. Further, comparing a wide panel or collegial bodies of State Boards and National Council [wherein the majority is still with Muslim members], cannot be compared to an individual post like that of the Charity Commissioner, who exercises equivalent powers over all Hindu religion's institutions/Ashrams/Mutts/Temples, etc.

e. Importantly, the creation, management, regulation and maintenance of waqf, which is the primary responsibility of the State Boards, often involves dealing with non-Muslim communities and affects their rights, particularly their right to property. In such a scenario, having an inclusive panel with merely two members [out of 11 in Waqf Boards] as non-Muslims and an overwhelming majority of members from the Muslim community, balances the constitutional equities on both sides. The same arguments hold good for the advisory body of the Waqf Council.

f. It is submitted that Central Waqf Council Rules, 1998 and rules governing waqf boards in each State [to be made by the respective State Governments] can make suitable provisions like Rule 6 of Central Waqf Council Rules, 1998

to deal with any contingency which may arise due to presence of non-Muslim members who are as such in microscopic minority.

g. Further, Hindu endowments or other endowments and enactments regulating the same concern ***only*** the respective community with little to no interaction of the said endowments with members of other communities.

As opposed to the same, the wide nature of waqf ensures that its creation, management, regulation and maintenance result in interactions with members of other communities apart from Muslims. In such a scenario, comparing Waqf Boards with Commissioners/Boards under State laws concerning Hindu endowments would not be an apt comparison. The nature of waqf is ***sui generis*** and requires a suitably tailored approach.

h. It is submitted that except the States where there are State specific general laws for supervision of religious endowments, there are many States in which there are no such specific laws for non-Muslims.

In the Bombay Public Trusts Act, 1950, applicable to the States of Maharashtra and Gujarat, which covers both religious and secular public trusts and establishes the Charity Commissioner's office with extensive supervisory authority. It is submitted that under this Act, all public trusts must be registered and are subject to direction, inquiry, inspection, audit, and oversight by the Charity Commissioner under Sections 36, 37, 38 and 39. Further, as per Section 41A, the Charity Commissioner is empowered to issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust.

Similar position arises in many other States where Hindu / non-Muslim religious institutions are governed by secular Public Charitable Trust Act. In such cases, the Charity Commissioner [by whichever name called and who may loosely be similar to State Waqf Boards] may or may not be a Hindu.

i. Even waqfs used to be under the administration, supervision and control of non-Muslim Charity Commissioners in many States. It is respectfully submitted that the Waqf Act, 1954 was not made applicable to the State of Maharashtra till the coming into force of the Waqf Act, 1995, i.e. on 01.01.1996. In other words, prior to 01.01.1996, Muslim Trusts and Waqfs [except those in the region which were governed by Wakf Act, 1954] were covered and

governed by the Bombay Trust Act, 1950 and were managed, administered and supervised by the Charity Commissioner of Maharashtra, who may or may not be a Muslim.

63. Thus, the Act distinguishes waqfs from other purely religious institutions, recognizing that waqfs can serve both religious and non-religious purposes, including healthcare, education, and social welfare. The changes reflect the practical need for inclusivity and diversity, considering that waqf properties may involve non-Muslim beneficiaries, parties to disputes, or other stakeholders. The inclusion of non-Muslims, limited to a minority within the Council and Boards, is intended to ensure balanced and transparent governance without compromising the Islamic character of the waqf administration.

64. The Amendment Act ensures that there is no interference of non-Muslim members in religious functions. The Act explicitly confines the roles of the Central Waqf Council and the State Waqf Boards to secular and administrative functions, leaving religious activities and decisions to the individual waqfs.

65. It is submitted that the constitutional Courts have held that even the Mutawalli's role is essentially "secular" in nature. The power exercised by the Board for the administration of waqf properties is not a "religious" function protected under Article 26. In fact, this would fall in the category of secular functions and are merely regulatory in nature. [See ***Hafiz Mohammad Zafar Ahmad v. U.P. Sunni Central Board of Waqf,* 1964 SCC OnLine All 319; *Syed Fazal Pookoya Thangal v. Union of India,* 1993 SCC OnLine Ker 87; *Syed Shah Muhammad Al Hussaini v. Union of India,* 1998 SCC OnLine Kar 623**[11]].

66. Further, a distinction shall have to be drawn between Mutawalli and Sajjadanashin in the context of waqfs for religious purposes. It is a settled law by a catena of judgments that:

i. Sajjadanashin is the spiritual head of religious waqf denomination;
ii. Mutawalli is the manager of religious waqf denomination.

[See **ANNEXURE F - *Chart on cases concerning difference in role of a Sajjadanashin and that of a Mutawalli***]

[11] Counter Affidavit – Pg 81-86

67. Even if in rare cases, when both Sajjadanashin and Mutawalli are one and the same person, the Waqf Act deals with only the economic, financial and secular activities of waqf and activities regarding the administration of properties as contemplated under Articles 25 and 26 of the Constitution of India. This clearly shows that unlike State statutes dealing with Hindu endowments and Hindu religious institutions, the Waqf Act does not deal with waqfs directly.

68. Each State has its own endowment and religious institution laws and the same depends on the legislative policy of each Legislature. Some State laws provide for inclusion of non-Hindus in a body which is conferred with the most drastic power of the removal of a spiritual head of a religious institution i.e. Mahant or Mathadhipathi – [See **ANNEXURE G -** ***Chart on provisions concerning removal of Mahants and Mathadhipathis***].

69. When the Waqf Act does not deal with any religious aspect of any religious waqf, inclusion of 2 minority non-Muslims cannot be held to be unconstitutional merely because some State Legislatures in their legislative policy have chosen not to include non-Hindus.

70. A conjoint reading of Section 3 (a) read with Section 72(1)(v)(f) would show that beneficiaries of waqf can be non-Muslims. This may have weighed with the Parliament in devising a legislative policy. Thus, the mere non-inclusion of non-Hindus in some statutes will not make the inclusion of non-Muslim in minority numbers in Council and Boards under the Waqf Act unconstitutional only on that ground. If minority 2 non-Muslims are inducted by the Legislature for ensuring inclusivity in proper administration, there is nothing unconstitutional since non-religious, but charitable Waqf activities would also affect non-Muslims like in case of colleges, hospitals, orphanages etc.

71. When the Court is dealing with inclusion or non-inclusion of persons belonging to a different religions *vis-a-vis* essential religious practices, the Hon'ble Court may bear in mind that there are a large number of instances where there is a direct interference with religious affairs of temples, maths, ashrams etc. which are upheld by this Hon'ble Court.

72. So far as the question of whether a non-Muslim [as a Board member] can enter any Muslim religious place (as a member of a Waqf Board is concerned), the answer is very simple. Section 18 of the Waqf Act empowers the Board to constitute

committees for the supervision of waqfs. The administrative functions which the board is supposed to exercise, which require entering into religious places of Muslims, the waqf can always constitute a committee of only Muslim members of the Waqf.

As a matter of fact, under Section 18(2) proviso, the committee members appointed by the waqf board need not even be members of the board. In any case, such situations may arise in rarest of rare cases and may not be a ground to stay the provision without an elaborate and extensive examination of all legal issues.

73. Section 32(1) proviso mandates that even while exercising functions of the Board dealing with secular functions of waqf, the Board must act in conformity with:

i. Directions of the waqif
ii. The purposes of the waqf;
iii. Any usage or custom of the waqf sanctioned by the school of Muslim law to which the waqf belongs

74. The provision mandating a majority of Muslims as members in the Board takes care of this statutory mandate, and minority non-Muslim members cannot act in a manner contrary to the statutory mandate.

Whenever, the Act contemplates any person who will deal with a particular religious waqfs directly, the act has mandated such appointed to be of a person belonging to Muslim religion.

Section 38 of the Act provides for the appointment of an Executive Officer by the Board. Since the Executive Officer directly deals with Muslim religious institutions (or even a charitable institution created as a waqf), the law mandates him to be Muslim.

ANNEXURE A

FUNCTIONS HELD TO BE "SECULAR" AND NOT "ESSENTIAL" RELIGIOUS PRACTICE UNDER ARTICLE 25 AND 26

POWERS HELD TO BE OPEN TO REGULATION BY THE STATE AND HENCE, SECULAR	JUDGMENT
• Setting standards of expenditure for Dittam [articles like dhoop, deep, naivedyam used for puja/ ceremonies] to be fixed by the Commissioner appointed by the State Government under Tamil Nadu Hindu Religious and Charitable Endowments Act (***Provision @ para 8.3, finding @ para 33***) • Power to frame scheme by the Commissioner appointed by the Government for administration of the Temple (***para 8.3, finding @ para 36***) • Commissioner has the power to make additions to or alterations in the budget prepared by the Temple. (***para 8.3, finding @ para 39***)	***Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412 – 7 judges**
Regulation of Hindu temples under the Bombay Trusts Act [purely secular and generic law governing all public Trusts] • The expenses to be incurred in connection with religious observances by the Charity Commissioner [who can even be of any religion] (***para 18***) • Fees leviable for regulation of public trust (***para 20***)	***Ratilal Panachand Gandhi v. State of Bombay*, (1954) 1 SCC 487 – 5 judges**
The sacrifice of cows, goats or camels held not to be an essential religious practice in Islam as claimed by Muslims, as: • such practice is merely optional; and • this may involve economic compulsions. **NOTE :** This squarely covers ***waqf*** i.e. charity which is purely optional and every Muslim may not be able to create a waqf due to economic reasons ***@ para 13***.	***Mohd. Hanif Quareshi & Others vs The State Of Bihar*, 1959 SCR 629 – 5 judges**

POWERS HELD TO BE OPEN TO REGULATION BY THE STATE AND HENCE, SECULAR	JUDGMENT
• The long practice of collecting offerings made to dargah was prohibited by an Act of Parliament. The validity of this Act was upheld. (***para 38***).	***Durgah Committee v. Syed Hussain Ali*, (1962) 1 SCR 383 – 5 judges**
• The contention that an ex-officio Member has to be a Hindu was rejected. The Collector, as ex-officio Member, need not be a Hindu. The Court held "*such a Member will naturally help in proper administration of temple properties.*" (***provision @ Para 39, finding @ para 68*)**. • Long standing practice and usage of Tilkayat [akin to mahant or mathadhipathi] of this particular temple being both secular administrator as well as a religious head was extinguished by an Act. Leaving Tilkayat with only one role of religious head by a statute - ***upheld @ para 52*** • The Court specifically held that the right to manage properties of temple was a purely secular matter and will not fall under "religious practices" under Article 25 or amounting to "affairs in the matter of religion" (***para 60***). • The Court held that the temple is a public temple and therefore, *vallabhacharya* cult claiming right to manage only through *Tilkayat* as a matter of religion, *rejected* (***para 63***). • Though *Tilkayat* is confined to be the religious head, the *Mukhiya*, Assistant *Mukhiya*, who essentially perform religious functions, and religious rites and services to the idol were under the administrative control of the State Government- appointed Board and not under the control of the religious head, i.e. *Tilkayat* (***para 72)***.	***Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, 1963 SCC OnLine SC 52 : (1964) 1 SCR 561 – 5 judges**

POWERS HELD TO BE OPEN TO REGULATION BY THE STATE AND HENCE, SECULAR	JUDGMENT
Jagannnath Temple, Puri – 1st *Judgment* Powers of Committee [Broader body] ***provision @ para 4, finding @ para 9 -*** • The State Government, under the Jagannath Temple Act, 1954 was empowered to constitute a Committee at its sole discretion. The functions of the Committee under the said Act were making arrangements for proper *seva puja*, daily and periodical "*neetis*" [periodical rituals of the temple] This includes persons performing religious rights, rituals and ceremonies. Powers of the Administrator - ***provision @ para 4, finding @ para 10*** • This Administrator will decide issues relating to rite, priviledges, duties and obligations of *sevaks* (who discharge purely religious functions) and persons doing *sevapuja* and *neetis* (whether *sevapuja* and *neetis* is ordinary regular ritual or performed on special occasions). • The Administrator will guide sevaks and others to do their duties on time. In absence of any *sevak* or his substitute to perform religious functions, the Administrator can get *sevapuja* and *niti* performed by any other person. • Administrator can take disciplinary action against sevaks etc.	***Raja Bira Kishore Deb v. State of Orissa*, 1964 SCC OnLine SC 106: (1964) 7 SCR 32 – 5 judges**

POWERS HELD TO BE OPEN TO REGULATION BY THE STATE AND HENCE, SECULAR	JUDGMENT
• In Andhra Pradesh Hindu Charitable and Religious Endowments Act, 1966 there was a provision of even the removal of mathadhipati by the Commissioner appointed by the State government. • The power of removal also included the power to suspend the Mathadhipati pending enquiry. • This power also included the power to appoint a new Mathadhipati. • This power is upheld by the Hon'ble Supreme Court. (***provision @ para 4, finding @ para 10***).	***Rajendra Ramdassjivaru v. State of A.P.*****, (1969) 1 SCC 844 – 3 judges**
• This concerns appointments of *archakas*. *Archakas* are persons who perform regular *sevapuja*, rituals following *agama shastras*, and can touch the deity at any time. • The appointment of *archakas* under the State Act was to be made by the State Government. • Not only was the appointment of *archakas* which has a direct bearing on the religious rituals and the deity approved by the State Government, but it was also held that such an appointment is "secular" in nature. • The age old practice of hereditary *archakas* which continued as usage was abolished by an Act of the legislature. This abolition of a practice developed by long user as a legislative measure [maybe 100s of years] was upheld and not held to be an Essential Religious Practice. (***provision @ para 9, argument @ Para 19 - finding @ para 20-21***).	***Seshammal v. State of T.N.*****, (1972) 2 SCC 11 – 5 judges**

POWERS HELD TO BE OPEN TO REGULATION BY THE STATE AND HENCE, SECULAR	JUDGMENT
Regulation of Jain temples by Charity Commissioner [who may not be Jain or Hindu) under the Rajasthan Public Trust Act. • Powers of the Government under the Act included establishment of board, appointment of officers, investment of public trust money, determination of what portion of trust property shall be allocated for a particular object (***para 24***). • Investment of trust properties to assure regular income does not breach essential religious practice of Jains. (***para 27***).	***State of Rajasthan & Ors. v. Shri Sajjanlal Panjawat and Ors.*****, (1974) 1 SCC 500 – 3 judges**
• As long standing usage, custom and tradition of hereditary trusteeship was abolished by the Andhra Pradesh Charitable and Hindu Religious Institutions and Act, 1987. (***provisions @ para 9***) When this act was challenged, the following provisions were upheld Upheld validity of: • Section 15 – Appointment of Board of Trustees (***Upheld @ 21-24)*** • Section 16 – Abolishment of the hereditary trustees (***Upheld @ 21-24)*** • Section 17 – procedure for making appointments for trustees and their term (***Upheld @ 21-24)*** • Section 29(5) – appointment and duties of Executive Officer (***Upheld @ 21-24)*** • Section 144 – Abolition of shares in Hundi and other rusums (***Upheld @ para 30)***	***Pannalal Bansilal Pitti v. State of A.P.*****, (1996) 2 SCC 498 – 2 judges**
• Section 50 – the Charity Commissioner appointed by the State Government was placed at a higher position than the mathadipathi. The accounts maintained by mathadipathi were to be produced before the Commissioner.	***Sri Sri Sri Lakshamana Yatendrulu & Ors. v. State Of***

POWERS HELD TO BE OPEN TO REGULATION BY THE STATE AND HENCE, SECULAR	JUDGMENT
• The Commissioner is entitled to even remove mathadipathi inter alia on the following grounds, which are purely religious grounds – like if he "*violate any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like*" (***provision @ para 12***) (***Upheld @ paras 20 -21***). • Sections 52, 53 and 54 – i. The State Government appointed Commissioner can fill temporary vacancies of *mathadipathi*. ii. The State Government appointment Commissioner has power to recognize the successor of *mathadipathi*. • Nature of office of Mahant discussed @ ***paragraphs 13 - 16***	***Andhra Pradesh & Anr*, (1996) 8 SCC 705 – 2 judges**
Sections 34: Abolition of hereditary rights in Mirasidars, Archakas and other office holders and servants **Section 35: Appointment of office holders and servants etc.** • By way of an enactment, long standing and usage of share of *archakas* in emoluments was removed by legislative enactment. This is approved by the Supreme Court. @ ***para 127-129***. • Appointment of *archaka* by the State Government is upheld by the Supreme Court as "secular act" - (***paras 118 – 120***). • The qualifications of *archakas* [who perform *sevapuja*, religious rituals while being in the *garbha griha* were prescribed under the Act – ***Upheld @ para 130-131***.	***A.S. Narayana Deekshitulu v. State of A.P.*, (1996) 9 SCC 548 – 2 judges**

POWERS HELD TO BE OPEN TO REGULATION BY THE STATE AND HENCE, SECULAR	JUDGMENT
• Long standing usage, custom and practice of *Baridars* taking shares in offerings was abolished by way of a legislative policy (***provision @ para 9, finding @ para 27-28***).	***Bhuri Nath & Ors. v. State of J&K & Ors.*** **(1997) 2 SCC 745 – 2 judges**
• Long standing usage, custom and practice of receiving offerings by *pujaris* was abolished by statutory enactment, which is upheld by the Supreme Court. The statutory regulation by which the *pujaris* [who perform *seva puja* and rituals of the deity] were upheld. (***provision @ para 4-8, finding @ para 33, 41, 42***).	***Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi & Ors. v. State of U.P.,*** **(1997) 4 SCC 606 – 3 judges**
Jagganath Temple – 2nd case • Rights of *sevaks* [*pujaris*] to get a share of the offerings [*Veta* and *Pindika*] directly connected with the *seva puja* of the temple is held not to be a "religious right". (***issue and provision @ para 1 and 22, finding @ para 29, 32, 35***). • The Supreme Court held abolition of usage, long custom and practice of appointment of *archakas* by a statutory enactment to be constitutionally valid (***para 46***).	***Shri Jagannath Temple Puri Management Committee & Anr. v. Chintamani Khuntia & Ors.,*** **(1997) 8 SCC 422 – 3 judges**
• Mandatory custom of only Malayala Brahmins to be appointed as "Santhikaran" or Poojari of Kongorpilly Neerikode Shiva Temple at Alangad village in Ernakulam, Kerala was not an essential religious practice and was held to be not violative of fundamental right and it was held that Non-Brahmins who have the requisite knowledge can also be a Poojari of that temple (***issue @ para 1, finding @ para 17***).	***N. Adithayan v. Travancore Devaswom Board & Ors.,*** **(2002) 8 SCC 106 – 2 judges**
• A Muslim challenged a provision which prohibited a person from being elected as a *sarpanch*, *up sarpanch*, or *panch* if he has more than 2 living children. This was	***Javed v. State of Haryana,*** **(2003) 8 SCC 369 – 2 judges**

POWERS HELD TO BE OPEN TO REGULATION BY THE STATE AND HENCE, SECULAR	JUDGMENT
challenged on the ground that *Sharia* permits 4 marriages which would result in more than 2 children (***provision @ para 2***). • Supreme Court held that mere permissibility of 4 marriages is not an Essential Religious Practice and therefore, having more than 2 children cannot be an Essential Religious Practice. (***para 44, 59***).	

ANNEXURE B

Volume VII

4-11-1948
to
8-1-1949

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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the policy of giving all citizens indiscriminately any such fundamental right. For instance, if Mr. Kamath's proposition was accepted, that every citizen should have the fundamental right to bear arms, it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms. It would be open to all sorts of people who are habitual criminals to claim the right to possess arms. You cannot say that under the proviso a man shall not be entitled to bear arms because he belongs to a particular class.

Shri H. V. Kamath : If Dr. Ambedkar understands the proviso fully and clearly, he will see that such will not be the effect of my amendment.

The Honourable Dr. B. R. Ambedkar : I cannot yield now. I have not got much time left. I am explaining the position that has been taken by the Drafting Committee. The point is that it is not possible to allow this indiscriminate right. On the other hand my submission is that so far as bearing of arms is concerned, what we ought to insist upon is not the right of an individual to bear arms but his duty to bear arms. (An Honourable Member: Hear, hear.) In fact, what we ought to secure is that when an emergency arises, when there is a war, when there is insurrection, when the stability and security of the State is endangered, the State shall be entitled to call upon every citizen to bear arms in defence of the State. That is the proposition that we ought to initiate and that position we have completely safeguarded by the proviso to article 17.

Shri H. V. Kamath : (rose to interrupt).

Mr. Vice-President : You do not interrupt, Mr. Kamath. You cannot say that I have not given you sufficient latitude.

The Honourable Dr. B. R. Ambedkar : Coming to the question of saving personal law, I think this matter was very completely and very sufficiently discussed and debated at the time when we discussed one of the Directive Principles of this Constitution which enjoins the State to seek or to strive to bring about a uniform civil code and I do not think it is necessary to make any further reference to it, but I should like to say this that, if such a saving clause was introduced into the Constitution, it would disable the legislatures in India from enacting any social measure whatsoever. The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion. In Europe there is Christianity, but Chistianity does not mean that the Christians all over the world or in any part of Europe where they live, shall have a uniform system of law of inheritance. No such thing exists. I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State. Having said that I should also like to point out that all that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive

[The Honourable Dr. B. R. Ambedkar]

of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India.

We must all remember—including Members of the Muslim community who have spoken on this subject, though one can appreciate their feelings very well—that sovereignty is always limited, no matter even if you assert that it is unlimited, because sovereignty in the exercise of that power must reconcile itself to the sentiments of different communities. No Government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad Government if it did so. But that is a matter which relates to the exercise of the power and not to the power itself.

Now, Sir, my friend, Mr. Jaipal Singh asked me certain questions about the Adibasis. I thought that that was a question which could have been very properly raised when we were discussing the Fifth and the Sixth Schedules, but as he has raised them and as he has asked me particularly to give him some explanation of the difficulties that he had found, I am dealing with the matter at this stage. The House will realize what is the position we have laid down in the Draft Constitution with regard to the Adibasis. We have two categories of areas,—scheduled areas and tribal areas. The tribal areas are areas which relate only to the province of Assam, while the scheduled areas are areas which are scattered in provinces other than Assam. They are really a different name for what we used in the Government of India Act as 'partially excluded areas'. There is nothing beyond that. Now the scheduled tribes live in both, that is, in the scheduled areas as well as in the tribal areas and the difference between the position of the scheduled tribes in scheduled areas and scheduled tribes in tribal areas is this: In the case of the scheduled tribes in the scheduled areas, they are governed by the provisions contained in paragraph V of the Fifth Schedule. According to that Schedule, the ordinary law passed by Parliament or by the local Legislature applies automatically unless the Governor declares that that law or part of that law shall not apply. In the case of the scheduled tribes in tribal areas, the position is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In the one case it applies unless excluded and in the other case, it does not apply unless extended. That is the position.

Now, coming to the question of the scheduled tribes and as to why I substituted the word "scheduled" for the word "aboriginal", the explanation is this. As I said, the word "scheduled tribe" has a fixed meaning, because it enumerates the tribes, as you will see in the two Schedules. Well, the word "Adibasi" is really a general term which has no specific *legal de jure* connotation, something like the Untouchables. It is a general term. Anybody may include anybody in the term 'untouchable'. It has no definite legal connotation. That is why in the Government of India Act of 1935, it was felt necessary to give the word 'untouchable' some legal connotation and the only way it was found feasible to do it was to enumerate the communities which in different parts and in different areas were regarded by the local people as satisfying the test of untouchability. The same question may arise with regard to Adibasis. Who are the Adibasis? And the question will be relevant, because by this Constitution, we are conferring certain privileges, certain rights on these Adibasis. In order that, if the matter was taken to a court of law, there should be a precise definition as to who are these Adibasis, it was decided to invent, so to say, another category or another term to be called 'Scheduled tribes' and to enumerate the Adibasis under that head. Now I think my friend, Mr. Jaipal Singh, if he

were to take the several communities which are now generally described as Adibasis and compare the communities which are listed under the head of scheduled tribes, he will find that there is hardly a case where a community which is generally recognised as Adibasis is not included in the Schedule. I think, here and there, a mistake might have occurred and a community which is not an Adibasi community may have been included. It may be that a community which is really an Adibasi community has not been included, but if there is a case where a community which has hitherto been treated as an Adibasi community is not included in the list of scheduled tribes, we have added, as may be seen in the draft Constitution, an amendment whereby it will be permissible for the local government by notification to add any particular community to the list of scheduled tribes which have not been so far included. I think that ought to satisfy my friend, Mr. Jaipal Singh.

He asked me another question and it was this. Supposing a member of a scheduled tribe living in a scheduled area or a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.

Sir, I hope I have met all the points that were raised by the various speakers when they spoke upon the amendments to this clause, and I believe that my explanation will give them satisfaction that all their points have been met. I hope that the article as amended will be accepted by the House.

Mr. Vice-President : I shall now put the amendments which have been moved, which number thirty, to the vote one by one. Amendment No. 412. The question is:

"That for article 13, the following be substituted:—

"12. Subject to public order or morality the citizens are guaranteed—

(a) freedom of speech and expression;

(b) freedom of the press;

(c) freedom to form association or unions;

(d) freedom to assemble peaceably and without arms;

(e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace."

The amendment was negatived.

ANNEXURE C

MEANING AND CONTENT OF ARTICLES 25 AND 26

HOLDING	JUDGMENT
• The questions merely relating to administration of properties are not ***matters of religion*** to which clause (b) of Article 26 applies. (paragraphs 17, 18 • Wide expanse of secular activities under Article 25 (2) (a) (paragraphs 20, 23) • Setting standards for "dittam" and scales of expenditure by the Commissioner (Provision @ para 8.3) • Power to frame scheme • Power to make additions to or alterations in the budget as they deem fit.	***Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412**
• Article 25 contemplates state regulation of ***practices associated with religion*** which maybe economic, commercial or political. (***para 15***) • There is a difference between clause (d) and clause (b) of Article 26. (***para 16***) • Fees leviable to be spent for meeting the charges incurred in the regulation of public trusts and for carrying into effect the provisions of the Act. • Right of entry in any religious premises by a Charity Commissioner under the Bombay Trust Act – who can be of any denomination.	***Ratilal Panachand Gandhi v. State of Bombay*, (1954) 1 SCC 487**
• Right of a denomination to exclude outsiders from a religious premise is a part of Article 26 (b). • However, if the legislature intervenes, either as a means of reform or otherwise, the right under Article 26 (b) is to yield to Article 25 (2) (b). (***para 32***)	***Sri Venkatramana Devaru and Ors. v. State of Mysore and Ors., 1958 SCR 895***

HOLDING	JUDGMENT
• Unless practices are found to constitute essential and integral part, the said practices cannot claim protection under Article 26. (***para 33***) • Offering made to the Durgah to be made to the Nazim or his agent and prohibit any other person from receiving them.	***Durgah Committee v. Syed Hussain Ali*, 1961 SCC OnLine SC 121 : (1962) 1 SCR 383**
• Right under Articles 25 and 26 is not absolute (***para 55***). • The test for essential practices may not always be form the lens of the community as the community may itself be polyvocal about it. (***para 57***) • Only essential and integral practices are protected and secular aspects associated with such practices are not. (***paras 58, 59***) • Matters concerning administration of property do not fall under clause (b), rather fall under clause (d) of Article 26. This is necessary as if clause (b) is invoked in matters concerning administration of property, the provision under ***Article 26 (d) would be rendered illusionary***. (***paras 61, 62***)	***Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, 1963 SCC OnLine SC 52 : (1964) 1 SCR 561**
Due to the position of an Archaka and his duties, the act of his appointment is essentially secular. The abolition of hereditary principle and Government making rules prescribing qualifications for appointment of Archakas, is also not essential religious practice.	***Seshammal v. State of T.N.*, (1972) 2 SCC 11**

HOLDING	JUDGMENT
Provision for abolishment of hereditary trusteeship under the Andhra Pradesh Charitable and Hindu Religious Institutions and Act, 1987. • Merely because institutions or properties associated with dedications by followers of one religious are sought to be regulated by the state, the said cannot be said to be arbitrary for being arbitrary for not treating or including dedications by followers of other religions. (***para 12***) • Administration of property is a secular part. Abolition of a hereditary right of trusteeship is a part of ***legislative policy*** which the legislature seeks to achieve (***para 21 – 24***). • Abolition of share of an Archaka or trustee or Mirasidar in the offering by the devotees which may even be a part of custom can be abolished as a matter of ***legislative wisdom and policy***. (***para 30***)	***Pannalal Bansilal Pitti v. State of A.P.,*** **(1996) 2 SCC 498**

ANNEXURE D

CHART OF RELEVANT PROVISIONS OF THE WAQF [AMENDMENT] ACT, 2025

1. The Board exercises the following powers which are purely regulating economic, financial and other secular activities of the *waqf* and govern the administration of *waqf* property. The below mentioned powers are existing powers, existing prior to the present Amendment of 2025 :

a. ***RECORD KEEPING FUNCTIONS***

Examine and publish list of auqaf	Section 5
Maintain records on origin, income, objects, and beneficiaries	Section 32(2)(a)
Register waqf; issue registration certificate	Section 36
Maintain register of auqaf with detailed particulars	Section 37
Direct registration or amendment of waqf records	Section 41

b. ***LITIGATION-RELATED FUNCTIONS***

Institute suits in Tribunal regarding waqf disputes	Section 6
Institute and defend suits	Section 32(2)(i)
Defend Board's actions in Tribunal	Section 83
Sanction or refuse compromise by mutawalli involving title issues	Section 93

c. FINANCIAL REGULATION FUNCTIONS

Pay 1% contribution to Central Waqf Council	Section 10
Ensure proper application of income; direct surplus use; administer waqf fund	Section 32(2)(b), (e), (k)
Scrutinize budgets; approve mutawalli budgets	Section 32(2)(f), 44
Audit accounts; act on irregularities	Section 47, 48
Pay dues on behalf of waqf; direct creation of reserve fund	Section 58, 59
Approve borrowing/lending by mutawallis	Section 76
Maintain Waqf Fund	Section 77
Prepare and submit Board's annual budget	Section 78
Maintain Board's books of account	Section 79
Get Board's accounts audited	Section 80

d. GENERAL REGULATORY FUNCTIONS

Furnish performance and financial data to Central Waqf Council	Section 9(4), (5)
Form committees for supervision	Section 18
Administrative control over CEO	Section 23(3)

General superintendence; give directions; recover lost properties	Section 32(1)-(2)
Approve inspections	Section 33
Appoint Executive Officers for specific waqfs	Section 38
Remove mutawalli for misconduct	Section 64, 32(2)(g)
Assume direct management in certain situations	Section 65
Supervise/supersede Committees of Management	Section 67
Frame schemes of administration	Section 69, 32(2)(d)
Conduct inquiry upon complaint	Section 70
Frame regulations for Board's operations	Section 110

e. PROPERTY MANAGEMENT FUNCTIONS

Sanction or refuse lease of waqf property	Section 51
Redirect income if object ceases to exist	Section 32(2)(e)(iii)
Sanction lease of immovable waqf property	Section 32(2)(j)
Collect info, inspect, determine market rent, manage property	Section 32(2)(l)-(o)

The text of the provisions is attached herewith in a table form.

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
RECORD KEEPING FUNCTIONS			
1.	**Section 5**	Publication of list of registered wakfs	(1) On receipt of a report under sub-section (1) of Section 4, the State Government shall forward a copy of the same to the Board. **(2)The Board shall examine the report forwarded to it under subsection (1) and forward it back to the Government within a period of six months for publication in the Official Gazette a list of Sunni auqaf or Shia auqaf or Aghakhani auqaf or Bohra auqaf in the State**, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.
2.	**Section 32**	To maintain records relating to the Waqf	(2)Without prejudice to the generality of the foregoing power, the functions of the Board shall be— (a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every waqf;
3.	**Section 36**	To register the waqf and to issue certificate of registration of waqf	**(1)Every waqf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.** (1-A) On and from the commencement of the Waqf (Amendment) Act, 2025, no waqf shall be created without execution of a waqf deed. (9) The Board, on registering a waqf, shall issue the certificate of registration to the waqf through the portal and database.

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
4.	**Section 37**	To maintain a register of waqfs	**(1)The Board shall maintain a register of auqaf which shall contain in respect of each waqf copies of the waqf deeds, when available and the following particulars in such manner as prescribed by the Central Government], namely**:— (a) the class of the waqf; (b) the name of the mutawalli; (c) the rule of succession to the office of mutawalli under the waqf deed or by custom or by usage; (d) particulars of all waqf properties and all title deeds and documents relating thereto; (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration; (f) such other particulars as may be prescribed by the Central Government (2)The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.
5.	**Section 41**	To direct mutawalli to apply for the registration of a waqf and to direct him to supply any information regarding a waqf	**The Board may direct a mutawalli to apply for the registration of a waqf, or to supply any information regarding a waqf or may itself cause the waqf to be registered or may at any time amend the register of auqaf.**

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
LITIGATION RELATED FUNCTIONS			
6.	**Section 6 + Secton 32(2)(i)**	Institution of a suit in case of dispute in the wakf property in the list	6 (1)If any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf or Aghakhani waqf or Bohra waqf, **the Board or the mutawalli of the waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question** Provided that no such suit shall be entertained by the Tribunal after the expiry of two years from the date of the publication of the list of auqaf. Provided further that an application may be entertained by the Tribunal after the period of two years specified in the first proviso, if the applicant satisfies the Tribunal that he has sufficient cause for not making the application within such period: 32(2)(i) to institute and defend suits and proceedings relating to auqaf
7.	**Section 93**	To sanction or refuse to sanction compromise by Mutawalli relating to title of waqf property	No suit or proceeding in any court by or against the mutawalli of a waqf relating to title to waqf property or the rights of the mutawalli shall be compromised without the sanction of the Board
FINANCIAL REGULATION FUNCTIONS			
8.	**Section 10**	to pay 1% contribution from the waqf fund to Central Waqf Council	(1)Every Board shall pay from its Waqf Fund annually to the Council such contribution as is equivalent to one per cent of the aggregate of the net annual

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
			income of the auqaf in respect of which contribution is payable under sub-section (1) of Section 72:
9.	**Section 32**	to ensure that the income and other property of auqaf are applied to the objects and for the purposes for which such auqaf were intended or created	(2)Without prejudice to the generality of the foregoing power, the functions of the Board shall be— (b) to ensure that the income and other property of auqaf are applied to the objects and for the purposes for which such auqaf were intended or created; (e) to direct— (i) the utilisation of the surplus income of a waqf consistent with the objects of a waqf; (ii) in what manner the income of a waqf, the objects of which are not evident from any written instrument, shall be utilized; (k) to administer the Waqf Fund;
10.	**Section 44 + Section 32 (2)(f)**	To consider the budget of the waqf submitted by its mutawalli	44 (1)Every mutawalli of a waqf shall, in every year prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure during that financial year. (2)Every such budget shall be submitted by the mutawalli at least thirty days before the beginning of the financial year to the Board and shall make adequate provision for the following:— (i) for carrying out the objects of the waqf; (ii) for the maintenance and preservation of the waqf property;

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
			(iii) for the discharge of all liabilities and subsisting commitments binding on the waqf under this Act or any other law for the time being in force. 32(2)(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of auqaf;
11.	**Section 47**	The accounts of auqaf submitted to the Board shall be audited in the manner provided in Section 47(1) and the Audit report is to be published by the Board	(1)The accounts of auqaf submitted to the Board under Section 46 shall be audited and examined in the following manner, namely:— (2-A) On receipt of the report under sub-section (2), the Board shall publish the audit report in such manner as may be prescribed by the Central Government.]
12.	**Section 48**	If the auditor finds any illegality, irregularity or impropriety in the expenditure, he has to report it to the Board under Section 48(2). The Board has administrative function to pass an appropriate order.	(1)The Board shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (2) of Section 47.

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
13.	**Section 58**	To pay statutory dues on behalf of waqf if Mutawalli refuses or fails to pay	(1)Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board may discharge dues from the Waqf Fund and may recover the amount so paid from the waqf property and may also recover damages not exceeding twelve and a half per cent of the amount so paid.
14.	**Section 59**	Directing waqfs to create a reserve fund from its income for making provision for statutory dues	(1)For the purpose of making provisions for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the waqf property and for the preservation of the waqf property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a waqf
15.	**Section 76**	To consider Mutawallis request to borrow or lend money	(1)No mutawalli, Executive Officer or other person in charge of the administration of a waqf shall lend any money belonging to the waqf or any waqf property or borrow any money for the purposes of the waqf except with the previous sanction of the Board: Provided that no such sanction is necessary if there is an express provision in the deed of waqf for such borrowing or lending, as the case may be
16.	**Section 77**	To maintain wakf fund	(1)All moneys received or realised by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fund to be called the Waqf Fund.
17.	**Section 78**	To prepare the budget of the Board and get it sanctioned	(1)The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
			expenditure during that financial year and forward a copy of the same to the State Government.
18.	**Section 79**	To maintain books of accounts for itself	(1)The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be provided by regulations
19.	**Section 80**	To get the accounts of itself audited	The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.
GENERAL REGULATORY FUNCTIONS			
20.	**Section 9**	Furnishing of information by the Board to the Central Waqf Council	(4)The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may suo motu call for information on specific issues from the Board, if it is satisfied that there was prima facie evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government. (5)Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
			retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.
21.	**Section 18**	Constitution of Committee from within itself for the supervision of waqf	(1)The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of auqaf.
22.	**Section 23**	To exercise administrative control over the Chief Executive Officer	(3)The Chief Executive Officer shall be ex officio Secretary of the Board and shall be under the administrative control of the Board.
23.	**Section 32**	General superintendence over all waqfs for ensuring that they are "properly maintained", "controlled", "administered" and "the income thereof is duly applied to the objects and purpose"	(1)Subject to any rules that may be made under this Act, the general superintendence of all auqaf in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such auqaf were created or intended: Provided that in exercising its powers under this Act in respect of any waqf, the Board shall act in conformity with the directions of the waqf, the purposes of the waqf and any usage or custom of the waqf sanctioned by the school of Muslim law to which the waqf belongs.

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
			Explanation.—For the removal of doubts, it is hereby declared that in this sub-section, "waqf" includes a waqf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act (2)Without prejudice to the generality of the foregoing power, the functions of the Board shall be— (c) to give directions for the administration of auqaf; (h) to take measures for the recovery of lost properties of anywaqf;
24.	**Section 33**	To give prior approval to Chief Executive Officer to conduct inspection	(1)With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any waqf or waqf property, the Chief Executive Officer or any other person authorised by him in writing with the prior approval of the Board, may inspect all movable and immovable properties, which are waqf properties, and all records, correspondences, plans, accounts and other documents relating thereto.
25.	**Section 38**	To appoint Executive Officer in an individual waqf [with condition that such person should be a person professing Islam]	(1)Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interests of the waqf, appoint on whole-time basis or part-time basis or in an honorary capacity, subject to such conditions as may be provided by regulations, an Executive Officer with such supporting staff as it considers necessary for any waqf having a gross annual income of not less than five lakhs rupees: Provided that the person chosen for appointment should be a person professing Islam.

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
26.	**Section 64 + Section 32(2)(g)**	Removal of Mutawalli on the ground specified in Section 64 addicted to drinking liquor, etc.	64. Notwithstanding anything contained in any other law or the deed of waqf, the Board may remove a mutawalli from his office if such mutawalli— (a) has been convicted more than once of an offence punishable under Section 61; or (b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or (c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or (d) is an undischarged insolvent; or (e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or (f) is employed as a paid legal practitioner on behalf of, or against, the waqf; or (g) has failed, without reasonable excuse, to maintain regular accounts for one year or has failed to submit, within one year, the yearly statement of accounts, as required by Section 46; or] (h) is interested, directly or indirectly, in a subsisting lease in respect of any waqf property, or in any contract made with, or any work being done for, the waqf or is in arrears in respect of any sum due by him to such waqf; or

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
			(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the waqf or in respect of any money or other waqf property; or (j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder; (k) misappropriates or fradulently deals with the property of the waqf (l) is a member of any association which has been declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967).] 32(2) (g) to appoint and remove mutawallis in accordance with the provisions of this Act;
27.	**Section 65**	Assume management of certain waqfs if the contingencies mentioned in Section 65 is met	(1) Where no suitable person is available for appointment as a mutawalli of a waqf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the waqf, the Board may, by notification in the Official Gazette, assume direct management of the waqf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification. (2) The State Government, may, on its own motion or on the application of any person interested in the waqf, call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
			orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1). (3) Within six months after the close of every financial year, the Board shall send to the State Government a detailed report in regard to every waqf under its direct management, giving therein— (a) the details of the income of the waqf for the year immediately preceding the year under report; (b) the steps taken to improve the management and income of the waqf; (c) the period during which the waqf has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the waqf to the mutawalli or any committee of management during the year; and (d) such other matters as may be prescribed
28.	**Section 67**	Supervision and supersession of Committee of Management	(1)Whenever the supervision or management of a waqf is vested in any committee appointed by the waqf, then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the waqf, whichever is earlier: Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
			Provided further that if the Board is satisfied that any scheme for the management of a waqf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the waqf, it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the waqf or of the provisions of this Act and the rules made thereunder.
29.	**Section 69 + Section 32(d)**	To frame a scheme for the administration of waqfs. A scheme can be framed for the administration of waqfs	69 (1)Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others in the prescribed manner.] 32(2)(d) to settle schemes of management for a waqf: Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;
30.	**Section 70**	To conduct an inquiry regarding the administration of a waqf if an interested person makes an application	Any person interested in a waqf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the waqf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the waqf are being mismanaged, it shall take such action thereon as it thinks fit.
31.	**Section 110**	Section 110 stipulates the kind of regulations to be made by the	(1) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
		Board which are administrative and secular in nature	(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:— (a) the time and places of the meetings of the Board under subsection (1) of Section 17; (b) the procedure and conduct of business at the meetings of the Board; (c) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees; (d) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees; (e) the terms and conditions of service of the officers and other employees of the Board under sub-section (2) of Section 24; (f) [* * *] (g) [* * *] (h) the form in which, and the time within which, the budgets of auqaf may be prepared and submitted by the Mutawalli and approved by the Board under sub-section (1) of Section 44; (i) the books of accounts and other books to be maintained by the Board under Section 79; (j) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same; (k) persons by whom any order or decision of the Board may be authenticated; and (l) any other matter which has to be, or may be, provided by regulations. (3) All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
PROPERTY MANAGEMENT FUNCTIONS			
32.	**Section 51**	To grant or refuse permission for alienation of *waqf* property	(1)Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board: Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013.
33.	**Section 32**	General provisions concerning secular property management	32(2) (e) to direct— xxx (iii) in any case where any object of waqf has ceased to exist or has become incapable of achievement, that so much of the income of the waqf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community: Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard. (j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder: Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction: Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.

SR.	SECTION	PROVISION	TEXT OF RELEVANT PROVISION
			(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the waqf property as the Board may, from time to time, require; (m) to inspect, or cause inspection of, waqf properties, accounts, records or deeds and documents relating thereto; (n) to investigate and determine the nature and extent of waqf and waqf property, and to cause, whenever necessary, a survey of such waqf property; (na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building; (o) generally do all such acts as may be necessary for the control, maintenance and administration of auqaf.

ANNEXURE E

PERVASIVE CONTROL PROVISIONS IN HINDU ENDOWMENT ACTS

1. It is important to note that the Endowment Acts across some states have far more intricate, pervasive and deeper religious acts to regulate and supervise through the Commissioners as opposed to the State Boards under the Waqf Act. The same can be established by a bare perusal of a few provisions which are as under-

2. In this regard, the following provisions from **Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987** maybe noted:

a. Section 16 – abolishes all rights of a person for the office of the hereditary trustee or mutawalli or dharmakarta or muntazim even if the same was held through generations relying on settled customary practices.
b. Section 25– provides that before incurring any expenditure in the form of dittam, the trustee of a religious institution or endowment is to provide the Commissioner a proposal for prior clearance. The Commissioner has the power to consider objections and suggestions and thereafter clear the proposal or make such changes as he deems fit.
c. Section 34 – abolishes all hereditary rights of Peddajeeyangar, Chinna Jeeyangar, Mirasidars, Archakas, Pujari and other office holders even if the same was held through generations relying on settled customary practices.
d. Section 35 – the appointment of office holders and religious servants is made by the Government.
e. Section 36 – the qualification for being appointed as Archaka is laid down by the legislature which provides that the Commissioner has the power to hold an 'Archaka Examination' on the basis of which selection is to be made.
f. Section 38 – the Commissioner, Deputy Commissioner or the Assistant Commissioner have the power to punish the aforesaid religious officer holders in certain cases.
g. Section 39 – the Commissioner also has the power to transfer the religious office holders and the servants.
h. Section 49 – provides that before incurring any expenditure in the form of dittam, the Mathadhipathi of every Math is to provide the Commissioner a proposal for prior clearance. The Commissioner has the power to scrutinize such

proposal and can take suggestion from any person having interest and thereafter clear the proposal or make such changes as he deems fit.

i. Section 51 – the Dharmika Parishad constituted under Section 152 consisting of numerous members who may be non-Hindu has the power to *suo motu* or upon application initiate proceedings for removal of a Mathadhipathi. One of the grounds for removal is also violation of any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math.

j. Sections 52 and 53 – the Dharmika Parishad has the power to fill temporary and permanent vacancies of Mathadhipathis.

k. Section 65A- the Commissioner has under his jurisdiction a specific fund for the payment of salary and other emoluments of Archakas, office holders and servants who are appointed by the government as per sanctioned cadre strength and the fund is created by annual contributions from religious institutions.

l. Sections 69 and 70 - provides for creation of Endowments Administration Fund and Common Good Fund which are again vested with the Commissioner.

m. Section 152- provides for the constitution of the Andhra Pradesh Dharmika Parishad which includes non-Hindu members.

3. The following provisions from **Tamil Nadu Hindu Religious And Charitable Endowments Act, 1959** maybe highlighted:

a. Section 36 – the trustee of a religious institution before appropriating the surplus funds of the institution will have to take prior permission of the Commissioner. Before according sanction, the Commissioner has the power to invite objections and suggestions from any person having interest.

b. Section 55- the appointment of office holders and servants, including Archakas and Pujaris is filled up by the trustee which can be challenged before the Commissioner.

c. Section 56- the trustee has the power to punish the aforesaid officer holders and servants attached to a religious institution in certain cases. The order of the trustee can be challenged before the Joint Commissioner or the Deputy Commissioner.

d. Section 57- the trustee has the power to fix fees for the performance of any service, ritual or ceremony and determine the fees to be paid to the archakas or other office-holders or servants of such religious institution, subject to conditions specified by the Commissioner.

e. Section 58- provides that before fixing the dhittam or scale of expenditure, the trustee of a religious institution is to provide to the Commissioner a proposal for prior clearance. The Commissioner has the power to scrutinize such proposal and can take suggestion from any person having interest and thereafter clear the proposal or make such changes as he deems fit having regard to the established usage of the institution. The Commissioner may on his own motion direct the trustee to alter the dhittam or scale of expenditure.

f. Section 61- provides that before fixing the dhittam or scale of expenditure, the trustee of every math or endowment attached to a math has to provide to the Commissioner a proposal for prior clearance. The Commissioner has the power to scrutinize such proposal and can take suggestion from any person having interest and thereafter clear the proposal or make such changes as he deems fit having regard to the established usage of the institution.

g. Section 96 and 97 - provides for creation of Endowments Administration Fund and Common Good Fund which are vested with the Commissioner.

4. The following provisions from the **Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997** maybe highlighted:

a. Section 9 – the appointment of Archakas and temple servants is made with the approval of the Commissioner. The State Government can prescribe a common pattern for appointment of Archakas and temple servants for each category of temples.

b. Sections 10 and 10-A - the qualification for being appointed as Archaka is laid down by the legislature which provides that he has to pass atleast a certificate course prawara in the Agama in the tradition of the temple, from any recognised Sanskruta Patashala or any other institution as prescribed by the State Government.

c. Section 12- the State Government is empowered to regulate the emoluments, hours of work and other service conditions of the Archakas (which includes Agamika, Tanthri, Pradhan Archaka) and temple servants.

d. Section 13- the Commissioner has to maintain a register of temple servants.

e. Section 14- the State Government is also empowered to make rules for prescribing a pattern of temple servants for any class of temples.

f. Section 16- the Committee of Management have the power to impose penalty for proven misconduct of the Archaka, including an Agamika, Tanthri, Pradhan Archaka and temple servants in certain cases and an appeal against such an order would lie before the Commissioner.

g. Sections 17 - provides for creation of Common Pool Fund by the Rajya Dharmika Parishad, which includes grants received by the State Government.

h. Section 18 – Commissioner is entitled to transfer certain specified amount to the Common Pool Fund on the orders of the State Government.

i. Section 69- the Act expressly provides that no discrimination shall be made in the distribution of prasada or theertha in any temple or other religious place on grounds of caste, sex, place of birth, or any of them.

j. Section 69-A - abolishes all share in hundi and other income of the temple to any trustee, Dharmadarshi, Dharmakartha, Muthavalli or any office holder or servant including an archak or mirasidar or mujavar in the hundi or in kanike or in other income of the institution even if the same was held through generations relying on settled customary practices. None of the afore-referred would have a share except the seva commission and thatte kaasu.

5. The following provisions from the **Orissa Hindu Religious Endowments Act, 1969** maybe highlighted:

a. Section 34 - the trustee of a religious institution may after satisfying the purpose of the institution have to incur expenditure on arrangement for training Vidyarthies and securing health, safety and convenience of disciples and worshippers.

b. Section 42 - the appointment of office holders and religious servants is made by the trustee, which can be challenged in appeal before the Board.

c. Section 43 - provides that all the office holders and servants shall be controlled by the trustee who may punish them in certain cases. This order of the trustee can be challenged before the Board in appeal.

d. Section 45 - provides that the trustee of a religious institution would submit to the Administrator (who is appointed by the State Government) proposals for fixing the scale of expenditure, and the amounts or the proportion in which the income should be allotted to the various objects or ceremonies. The Administrator has the power to scrutinize such proposal and take suggestion from any person having interest and thereafter clear the proposal or make such changes as he deems fit having regard to the established usage of the institution. The Administrator may on his own motion direct the trustee to modify the scale of expenditure.

e. Section 48 - provides that the trustee of a math or specific endowment attached to a math would submit to the Board proposals for fixing the scale of expenditure, and the amounts or the proportion in which the income should be allotted to the various objects or ceremonies. The Board has the power to scrutinize such proposal and take suggestion from any person having interest and thereafter clear the proposal or make such changes as he deems fit having regard to the established usage of the institution.

f. Section 67 and 71 - provides for creation of Endowment Fund and Common Good Fund which are vested with the Board.

6. The following provisions from **Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987** maybe highlighted:

a. Section 16 – abolishes all rights of a person for the office of the hereditary trustee or mutawalli or dharmakarta or muntazim even if the same was held through generations relying on settled customary practices.

b. Section 25– provides that before incurring any expenditure in the form of dittam, the trustee of a religious institution or endowment is to provide the Commissioner a proposal for prior clearance. The Commissioner has the power to consider objections and suggestions and thereafter clear the proposal or make such changes as he deems fit.

c. Section 34 – abolishes all hereditary rights of Pedda Jeeyangar, Chinna Jeeyangar, Mirasidars, Archakas, Pujari and other office holders even if the same was held through generations relying on settled customary practices.

d. Section 35 – the appointment of office holders and religious servants is made by the Government.

e. Section 36 – the qualification for being appointed as Archaka is laid down by the legislature which provides that the Commissioner has the power to hold an 'Archaka Examination' on the basis of which selection is to be made.

f. Section 38 – the Commissioner, the Deputy Commissioner or the Assistant Commissioner have the power to punish the aforesaid religious officer holders in certain cases.

g. Section 39 – the Commissioner also has the power to transfer the religious office holders and the servants.

h. Section 49 – provides that before incurring any expenditure in the form of dittam, the Mathadhipathi of every Math is to provide the Commissioner a proposal for prior clearance. The Commissioner has the power to scrutinize such proposal and can take suggestion from any person having interest and thereafter clear the proposal or make such changes as he deems fit.

i. Section 51 – the Dharmika Parishad constituted under Section 152 consisting of numerous members who may be non-Hindu has the power to *suo motu* or upon application initiate proceedings for removal of a Mathadhipathi. One of the grounds for removal is also violation of any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math.

j. Sections 52 and 53 – the Dharmika Parishad has the power to fill temporary and permanent vacancies of Mathadhipathis.

k. Section 65A- the Commissioner has under his jurisdiction a specific fund for the payment of salary and other emoluments of Archakas, office holders and servants who are appointed by the government as per sanctioned cadre strength.

l. Sections 69 and 70 - provides for creation of Endowments Administration Fund and Common Good Fund which are again vested with the Commissioner.

m. Section 152- provides for the constitution of the Telangana Dharmika Parishad.

Andhra Pradesh Charitable And Hindu Religious Institutions And Endowments Act, 1987
16. Abolition of hereditary trustees – Notwithstanding any compromise or agreement entered into or scheme framed, or judgment, decree, or order passed by any court, tribunal or other authority or in a deed or other document prior to the commencement of this Act and in force on such commencement, the rights of a person for the office of the hereditary trustee or mutawalli or dharmakarta or muntazim or by whatever name it is called shall stand abolished on such commencement.
25. Fixation of dittam – (1) The trustee of a religious institution or endowment, other than a math or specific endowment attached thereto, shall within a period of ninety days from the date of commencement of this Act or the date of founding of the religious institution or endowment, other than a math or specific endowment attached thereto, and after consultation with the Sthanacharya or where there is no such Sthanacharya, the archaka or archakas concerned, submit proposals, for fixing the dittam in the institution or endowment and the amounts to be spent therefor to the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, having jurisdiction over such institution or endowment:

Provided that the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, may extend the time for the submission of such proposals:

Provided further that this sub-section shall not apply to any institution or endowment in respect of which proposals were submitted to the Commissioner under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966) before the commencement of this Act.

(2) The trustee shall, while submitting his proposals under sub-section (1), have due regard to the established usage, if any, the performance of the ceremonies and services and the observance of festivals, worships and the like, appropriate to the religious denomination to which the religious institution or endowment belongs and to the financial position thereof.

(3) The trustee shall, at the time of submission of proposals under sub-section (1) publish the proposals at the premises of the institution or endowment in such manner as may be prescribed, together with a notice stating that within a period of thirty days from the date of such publication any person having interest may submit his objections or suggestions to the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be.

(4) After expiry of the period specified in sub-section (3), the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall, after considering any objections and suggestions received, pass such order as he may think fit on such proposals having regard to the matters specified in sub-section (2). A copy of the order shall be communicated to the trustee and shall be published in the prescribed manner.

(5) The trustee shall scrutinise the particulars of dittam every three years and submit to the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, having jurisdiction, proposals for altering the dittam together with the reasons therefor.

(6) Save as aforesaid, the dittam for the time being, in force in an institution or endowment shall not be altered by the trustee.

(7) The procedure for alteration of the dittam shall be the same as laid down in sub-sections (2), (3) and (4).

34. Abolition of hereditary rights in Mirasidars, Archakas and other office holders and servant-

(1) (a) Notwithstanding anything in any compromise or agreement entered into or scheme framed or sanad or grant made or judgement, decree or order passed by any Court, Tribunal or other authorities prior to the commencement of this Act and in force on such commencement, all rights, whether hereditary, contractual or otherwise of a person holding any office of the Peddajeeyangar, Chinna Jeeyangar, a Mirasidar or an Archaka or Pujari or any other office or service or post by whatever name it is called in any religious institution or endowment shall on the commencement of this Act stand abolished;

(b) Any usage or practice relating to the succession to any office or service or post mentioned in clause (a) shall be void;

(c) All rights and emoluments of any nature in cash or kind or both accured to and appertaining to any office or service or post mentioned in clause (a) and subsisting on the date of commencement of the act shall on such commencement stand extinguished.

(2) Every office holder and servant mentioned in clause (a) of sub-section (1) holding office as such on the date of commencement of this Act shall, notwithstanding the abolition of the hereditary rights, continue to hold such office or post on payment of only such emoluments and subject to such conditions of service referred to in sub-sections (3) and (4) of section 35.

(3) Not withstanding anything contained in sub-section (1) and (2) of this section, the qualified members of those Archaka families which were continuing in archakatvam service under the provisions of the repealed the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 and recognized as such by the competent authority shall continue to have the right to archakatvam without having any right to emolument such families used to receive earlier under Act 17 of 1966. However they shall receive emoluments in accordance with the scheme under section 144.

(4) Notwithstanding anything contained in sub-sections (1) and (2) above, the Sannidhi Yadavas working in Tirumala Tirupati Devastanams shall continue to have Hereditary Rights as they were enjoying prior to commencement of this Act.

35. Appointment of office holders and servants, etc. –

(1) Every vacancy in the approved cadre strength whether permanent or temporary, amongst the office holders or servants of a charitable or religious institution or endowment shall be filled by the Trustee with the prior permission of the competent authority:

Provided that in the case of a charitable or religious institution or endowment whose annual income exceeds rupees ten lakhs the Executive Officer shall appoint the office holders and servants thereof with the prior permission of the competent authority:

Provided further that in the case of appointment of religious office holders such appointment shall be made keeping in view the Agamas of the respective institutions and preference shall be given to those who are well versed with the Agama, custom and usage of the respective institution.

(2) No person shall be considered for appointment to any vacancy under sub-section (1) on the ground merely, that he is entitled for such appointment according to-

(i) any scheme framed, agreement entered or judgement, decree or order passed by any court, tribunal or other authority prior to the commencement of this Act;

(ii) any custom or usage; or

(iii) the principle that he is next in the line of succession to the last holder of office.

(3) Every office holder or servant including Pedda Jeeyanagar, China Jeeyanagar and Mirasidar, Archaka and Pujari whether hereditary or not holding office as such on the date of commencement of this Act, shall continue as such office holder or servant and notwithstanding any scheme, judgement, decree or order of a Court, Tribunal or other authority or any agreement or custom or usage relating to the payment of any perquisites, emoluments or remuneration, either in cash or kind or both, before the commencement of this Act, be paid only such emoluments as may be prescribed:

Provided that it shall be lawful for the Government to direct such office holders and servants as they may consider necessary to acquire such qualifications and to undergo training in such manner, for such period and on such terms as may be prescribed.

(4) Fixation of cadre strength, the qualifications, method of recruitment, pay and allowances, discipline and conduct and other conditions of service for the office holders and servants of the religious charitable institutions and endowments shall be such as may be prescribed.

36. Qualifications for Archaka - A person shall be qualified for being appointed as or for being an Archaka of a religious institution or endowment-

(a) if he has passed the Archaka Examination recognised by the Commissioner;
(b) if he is not disabled or suffering from any virulent and contagious disease;
(c) if he is able to recite vedic mantras and slokas relating to rituals with clarity and without any fault;
(d) if he possesses good conduct and character;
(e) if he is free from Sapthavyasanams:

Explanation:- For purposes of this section, the expression "Sapthavyasanams" means gambling, addiction to intoxicating liquors and drugs, womanising, hunting, stealing, abusing others and jealousy.

38. Power of Commissioner, Deputy Commissioner or Assistant Commissioner to punish office-holders etc., in certain cases –

(1) Where it is noticed by the Commissioner, the Deputy Commissioner or the Assistant Commissioner having jurisdiction that any office-holder or servant attached to an institution or endowment has not been dealt with suitably by the trustee or the Executive Officer as the case may be under section 37 for any of the lapses specified in sub-section (1) thereof, the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may direct the trustee or the Executive Officer to take action under section 37, failing which the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may after following the prescribed procedure, impose by an order in writing any of the penalities specified in sub- section (1) of that section on such office-holder or servant.

(2) Any office holder or servant aggrieved by an order passed under sub-section (1) may within sixty days from the date of receipt of the order by him, prefer an appeal if such order is passed by-

(a) the Commissioner, to the Government;
(b) the Deputy Commissioner, to the Commissioner; and
(c) the Assistant Commissioner to the Deputy Commissioner; and any order passed in such appeal shall be final.

39. Transfer of office holders and servants –

(1) The Commissioner shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment, from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf.

(2) The Deputy Commissioner or the Assistant Commissioner as the case may be having jurisdiction over the area shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf.

49. Fixation of dittam –

(1) The mathadhipathi of every math or specific endowment attached thereto shall submit to the Commissioner within a period of ninety days from the date of commencement of this Act, or the date of founding of such math or specific endowment, proposals for fixing the dittam in the math or specific endowment and the amounts to be spent therefor:

Provided that the Commissioner may extend the time for the submission of such proposals:

Provided further that this sub-section shall not apply to any math or specific endowment in respect of which proposals were submitted to the Commissioner under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act, 17 of 1966), before the commencement of this Act.

(2) The mathadhipathi shall, while submitting his proposals under sub-section (1), have due regard to the established usage, if any of the math or specific endowment, the performance of the ceremonies and services, the observance of festivals, worships and the like, appropriate to the religious denomination to which the math or specific endowment belongs and to the financial position thereof.

(3) The mathadhipathi shall at the time of submission of proposals under sub-section (1) publish such proposals on the premises of the math or specific endowment and in such other manner as the Commissioner may direct together with a notice stating that within thirty days from the date of such publication any person having interest may submit his objections or suggestions, to the Commissioner.

(4) After expiry of the period specified in sub-section (1), the Commissioner shall scrutinise such proposals and the suggestions made by persons having interest and if on such scrutiny he thinks that the dittam as proposed by the mathadhipathi should be modified having regard to the matters specified in sub-section (2), the Commissioner may call for the remarks of the mathadhipathi who shall send his remarks within such time as may be specified by the Commissioner.

(5) If after considering the remarks of the mathadhipathi received under sub-section (4), the Commissioner is of the opinion that any modification is required in the dittam he shall refer the matter to the court for its decision and the decision of the Court shall subject to section 91, be final.

(6) The dittam for the time being in force in a math or specific endowment shall not be altered by the mathadhapathi:

Provided that the Commissioner may at any time for reasons to be recorded in writing suggest to the mathadhipati to alter the dittam and the procedure for such alteration shall be the same as laid down in sub-sections (2), (3), (4) and (5):

Provided further that where the mathadhipati does not comply with any suggestion aforesaid, the Commissioner shall refer the matter to the Court for its decision and the decision of the court shall subject to section 91 be final.

51. Removal of Mathadhipathi –

(1) The Dharmika Parishad may suo motu or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he-

(a) is of unsound mind;
(b) is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee;
(c) has ceased to profess the Hindu religion or the tenets of the math;
(d) has been sentenced for any offence involving moral turptitude, such sentence not having been reversed;
(e) is guilty of breach of trust, or mis-appropriation in respect of any of the properties of the math;
(f) commits persistent and wilful default in the exercise of his powers or performance of his functions under this Act;

(g) violates any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;
(h) leads an immoral life; or
(i) fails or ignores to implement the principles set out in clause (17) of section 2.

(2) The Dharmika Parishad shall frame a charge on any of the grounds specified in sub-section (1) against the mathadhipathi or trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Dharmika Parishad may, by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee, his explanation and the finding on such charge together with the reasons therefor:

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Dharmika Parishad against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government.

(3) Pending the passing of an order under sub-section (2), the Dharmika Parishad may suspend the mathadhipathi or the trustee.

(4) Any mathadhipathi or trustee aggrieved by an order passed by the Dharmika Parishad under sub-section (2) may within ninety days from the date of the order appeal to the High Court against such order.

52. Filling of temporary vacancies in the office of the mathadhipathi –
(1) Where a temporary vacancy occurs in the office of the mathadhipathi and there is a dispute in regard to the right of succession to such Office, or where the mathadhipathi is a minor and has no guardian fit and willing to act as guardian, or where the mathadhipathi is under suspension under sub-section (3) of section 51 the Dharmika Parishad shall, if it is satisfied after making an inquiry in this behalf that an arrangement for the administration of the math and its endowment or of the specific endowment, as the case may be, is necessary, make such arrangement as it thinks fit until the disability of the mathadhipathi ceases or another mathadhipathi succeeds to the office, as the case may be.

(2) In making any such arrangement, the Dharmika Parishad shall have due regard to the claims, if any, of the disciples of the math.

(3) Nothing in this section shall be deemed to affect anything in the Andhra Pradesh (Andhra Area) Court of Wards Act, 1902 (Act I of 1902) and the Andhra Pradesh (Telangana Area) Court of Wards Act, 1350 F (Act XII of 1350 F).

53. Filling of permanent vacancies in the office of mathadhipathi –

(1) Where a permanent vacancy occurs in the office of the Mathadhipathi, by reason of death or resignation or on account of his removal under section 51 or otherwise the person next entitled to succeed, according to the rule of succession laid down by the founder, or where no such rule is laid down, according to the usage or custom of the math, or where no such usage or custom exists according to the law of succession, for the time being in force, shall with the permission of the Dharmika Parishad succeed to the office of the Mathadhipathi.

(2) A person for succession to the office of the mathadhipathi under sub-section (1) shall possess the following qualifications, namely:-

(a) basic knowledge of the Hindu Religion and Philosophy;
(b) knowledge of the relevant scriptures and sampradaya to which the math belongs;
(c) capacity to impact the knowledge and preach the tenets of the math to the disciples;
(d) religious temperment with implicit faith in discipline and practice; and
(e) unquestionable moral character.

65-A. Archakas, other office holders and servants' salary and other emoluments fund –

A fund shall be created and vested with the Commissioner for the purpose of payment of salaries and other emoluments to all such Archakas, office holders and servants of charitable and Hindu Religious Institutional an Endowments published under section 6 of the Act who have been appointed by competent authorities as per the sanctioned cadre strength following the prescribed procedure. Every such institution shall pay contribution annually to such fund at the rate prescribed form their annual income as defined under sub-section (5) of section 65. The procedure for collection of contribution to and disbursement from the fund shall be such as may be prescribed.

69. Establishment of Endowments Administration Fund –

(1) There shall be established a fund to be called the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Administration Fund. The Endowments Administration Fund shall vest in the Commissioner.

(2) (a) The following amounts shall be credited to the Endowments Administration Fund, namely:-

(i) the balance in the fund constituted under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act,1966 (Act 17 of 1966).

(ii) the sums due to the Government under section 64 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966).

(iii) the contributions and audit fee payable under sub-section (1) of section 65 when realised;

(iv) the amounts recovered under section 30;

(b) It shall be lawful for the Commissioner to accept to the credit of the said fund, grants or loans from the Government or any grant by any institution or person.

(3) The Commissioner shall out of the said Fund repay to the Government-

(i) the sums paid out of the Consolidated Fund of the State in the first instance towards the salaries, allowances, pension and other remuneration of persons appointed by the Government for rendering services under any of the provisions of this Act;

(ii) any other expenditure incurred by the Government in the course of rendering services to and in connection with administration of, the charitable or religious institution or endowment under the provisions of this Act;

(iii) the loans received from the Government;

(iv) the cost of publication of journals, manuals, descriptive accounts and other literature relating to Hindu religion or charitable or religious institutions or endowments;

(v) the expenses of committees or sub-committees thereof constituted for any purpose of this Act by the Government or by any officer or authority subordinate to the Government and specifically authorised by them in this behalf.

70. Common Good Fund –

(1) (a) The Commissioner shall create out of the payments made by the charitable and religious institutions and endowments and by any institution or person.

(i) in respect of Hindu charitable institutions and religious institutions and endowments, a fund to be called the Andhra Pradesh Hindu Charitable and Religious Institutions and Endowments Common Good Fund; and

(ii) in respect of other charitable institutions and endowments, a fund to be called the Andhra Pradesh Charitable Institutions and Endowments Common Good Fund.

(b) The Common Good Fund created under item (i) of clause (a) shall be utilised for the following purposes, namely:-

(i) Dhoopa Deepa Naivedhyam which encompasses renovation, preservation, maintenance, donation and offerings to Hindu Religious Institutions or Endowments, including purpose shall not be less than twenty five per centum of the receipts to the said fund during the preceding year;] payment of remuneration to Archakas of Hindu Religious Institutions which are in needy circumstances, and promotion and propagation of purpose and objects connected therewith:

Provided that the amount to be utilized for the above purpose shall not be less than twenty five per centum if the receipts to the said fund during the preceding year;

(ii) establishment and maintenance of vedapathasalas and schools for the training in archakathwam, adhyapakathwam, Vedaparayanikatwam, silpam, vaidyam or like services:

(iii) construction of new temples and kalyanamandapams

Provided that the amount to be utilised for the purpose mentioned in item (ii) in any year shall not be less than twenty percentum of the receipts to the said fund during the preceding year.

(c) The Common Good Fund created under item (ii) of clause (a) shall be utilised for the renovation, preservation and maintenance of other charitable institutions or endowments and for the promotion and propagation of purposes and objects connected therewith.

(2) The Commissioner, may on direction from the Government, transfer to the Common Good Fund, any surplus or such portion thereof, as may be specified in the direction, remaining in the Endowments Administration Fund after repayment of the amounts specified in sub-section (3) of section 69.

(3) The Commissioner shall issue a notice demanding the payment of contribution payable towards Common Good Fund basing on the provisions made in the Budget estimate of each institution or endowment in the manner prescribed.

152. Constitution of Andhra Pradesh Dharmika Parishad-

(1) The Government shall, by notification in the Andhra Pradesh Gazette constitute the 'Andhra Pradesh Dharmika Parishad' for the State consisting of the following members, namely:-

(i) Minister for Endowments who shall be the Chairman;

(ii) The Principal Secretary/Secretary to Government, Revenue Department in charge of religious and Charitable Institutions and Endowments;

(iii) The Commissioner of Endowments who shall be member secretary;

(iv) The Executive Officer, Tirumala Tirupathi Devasthams;

(v) one representative each from the Chairman of Boards of Trustees from section 6 (a) (i) and (ii), section 6 (b) (i) and (ii), section 6 (c) (i) and (ii) and two Mathadhipathis published under section 6 (d) of the Act;

(vi) Retired Senior Officer of the Government who is a devout Hindu and has experience of and commitment to improve the Hindu Temple System, to be nominated by the Government;

(vii) A retired senior officer of the Endowments Department;

(viii) Retired Judge of the High Court who is a devout Hindu and has commitment to improve the Hindu Temple System;

(ix) A legal luminary/Advocate aged more than 62 years who is a devout Hindu and has experience and has commitment to improve the Hindu temple system.

(x) two prominent philanthropists who have a track record of establishment, maintenance and supporting various endowments, Charitable and Hindu religious institutions to be nominated by the Government;

(xi) two Agama pandits to be nominated by the Government;

(xii) one chartered accountant and who is a Devout Hindu and has a commitment to improve the Hindu temple system, to be nominated by the Government.

(2) The Parishad may for the purposes of consultation, invite any person having experience and specialised knowledge in any subject under its consideration to attend its meetings and every such person shall be entitled to such allowances as may be prescribed.

(3) The powers, functions and term of office etc., of the members of "Andhra Pradesh Dharmika Parishad shall be such, as may be prescribed.

(4) The Government may by order delegate its powers and functions to the Andhra Pradesh Dharmika Parishad.

The Tamil Nadu Hindu Religious And Charitable Endowments Act, 1959

36. Utilisation of surplus funds.—
With the previous sanction of the Commissioner, and subject to such conditions and restrictions as may be prescribed, the trustee of a religious institutions may appropriate for any of the purposes specified in sub-section (1) of section 66—

(i) any portion of the accumulated surplus of such institution, and

(ii) if, after making adequate provision for the purposes referred to in subsection (2) of section 86 and also for the arrangements and the training referred to in sub-section (1) of section 35, there is a surplus in the income of the institution for any year or any portion of such surplus:

Provided that the trustee shall, in appropriating the surplus under this section, give preference to the purposes specified in items (a) to (g) of subsection (1) of section 66:

Provided further that, before according the sanction under this section, the Commissioner shall publish the particulars relating to the proposal of the trustee in such manner as may be prescribed, invite objections and suggestions with respect thereto and consider all objections and suggestions received from persons having interest :

Provided also that, the sanction aforesaid shall be published in such manner as may be prescribed:

Provided also that, nothing in this section shall prevent the trustee of a math or of a specific endowment attached to a math from utilizing the surplus referred to in this section in such manner as he deems fit.

55. Appointment of office-holders and servants in religious institutions.—
(1) Vacancies, whether permanent or temporary among the office-holders or servants of a religious institution shall be filled up by the trustee in all cases.

Explanation.—The expression "office-holders or servants" shall include *archakas* and *pujaries*.

(2) No person shall be entitled to appointment to any vacancy referred to in sub-section (1) merely on the ground that he is next in the line of succession to the last holder of the office.

(4) Any person aggrieved by an order of the trustee under sub-section (1) may, within one month from the date of the receipt of the order by him, appeal against the order to the Joint Commissioner or the Deputy Commissioner, as the case may be.

56. Punishment of office-holders and servants in religious institutions.—
(1) All office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

(2) Any office-holder or servant punished by a trustee under sub-section (1) may, within one month from the date of the receipt of the order by him, appeal against the order to the Joint Commissioner or the Deputy Commissioner, as the case may be.

57. Power to fix fees for services, etc., and to determine their apportionment.—Notwithstanding anything contained in any scheme settled or deemed to have been settled under this Act or any decree or usage to the contrary, the trustee of a religious institution shall have power, subject to such conditions as the Commissioner may, by general or special order, direct, to fix fees for the performance of any service, ritual or ceremony in such religious institution and to determine what portion, if any, or such fees shall be paid to the archakas or other office-holders or servants of such religious institution.

58. Fixing of standard scales of expenditure.—
(1) The trustee of a religious institution shall submit to the Assistant Commissioner if the institution is not included in the list published under section 46 and to the Commissioner, if the institution is so included, within three months form the date of commencement of this Act, or the date of the inclusion of the institution in the list aforesaid or within such further time as may be allowed by the Assistant Commissioner or the Commissioner, as the case may be, proposals for fixing the dhittam or scale of expenditure in the institution, and the amounts which should be allotted to the various objects connected with such institution or the proportions in which the income or other property of the institution may be applied to such objects :

Provided that this sub-section shall not apply to any institution in respect of which proposals have been submitted to the Assistant Commissioner or the Commissioner, as the case may be, before the date of commencement of this Act.

(2) The trustee shall publish such proposals at the premises of the institution and in such other manner as may be required by the Assistant Commissioner or the Commissioner, as the case may be, together with a notice stating that, within one month from the date of such publication, any person having interest may submit objections or suggestions to the Assistant Commissioner or the Commissioner.

(3) After the expiry of the said period, the Assistant Commissioner or the Commissioner shall, after considering any objections and suggestions received, pass such order as he may think fit on such proposals, having regard to the established usage of the institution and its financial position and a copy of the order shall be communicated to the trustee. The order of the Assistant Commissioner or the Commissioner shall be published in the prescribed manner.

(4) Against an order passed by the Assistant Commissioner under subsection (3), the trustee or any person having interest may, within one month from the date of the receipt of the order by the trustee, appeal to the Joint or Deputy Commissioner and if the trustee or such person is aggrieved by the order of the Joint or Deputy Commissioner, he may within one month from the date of the receipt of such order appeal to the Commissioner.

(5) The trustee shall scrutinize the particulars of *dhittam* or scale of expenditure every three years and submit to the Assistant Commissioner or the Commissioner, as the case may be, proposals for altering the *dhittam* or scale of expenditure and the provisions of sub-sections (2),

(3) and (4) shall apply in relation to the alteration of such *dhittam* or scale of expenditure as they apply in relation to the fixing of *dhittam* or scale of expenditure:

Provided that the Assistant Commissioner or the Commissioner may, at any time on his own motion for reasons to be recorded in writing, direct the trustee to alter the *dhittam* or scale of expenditure and the procedure for such alteration shall be the same as laid down in this section.

61. Fixing of standard scales of expenditure.—

(1) The trustee of every math or specific endowment attached to a math may, from time to time, submit to the Commissioner proposals for fixing the *dhittam* or scale of expenditure in the institution, and the amounts which should be allotted to the various objects connected with the institution or the proportions in which the income or other property of the institution may be applied to such objects.

(2) The trustee shall publish such proposals at the premises of the math and in such other manner as the Commissioner may direct, together with a notice stating that, within one month from the date of such publication, any person having interest may submit suggestions to the Commissioner.

(3) If on a scrutiny of such proposals and any suggestions made by persons having interests, it appears to the Commissioner that the scale of expenditure or any item in the scale of expenditure is at variance with the established usage of the institution, or is not justified by its financial position, the Commissioner may call for the remarks of the trustee and if after considering the same, the Commissioner is of the opinion that any modification is required in the scale of expenditure or any item in the scale of expenditure, he shall submit the case to the Government who shall pass orders thereon, and such orders shall be final.

96. Religious and Charitable Endowments Administration Fund.—
(1) There shall be established a Fund to be called the Tamil Nadu Hindu Religious and Charitable Endowments Administration Fund. The Fund shall vest in the Commissioner.

(2) The assets which devolved on the Government under section 101 of the Tamil Nadu Hindu Religious and charitable Endowments act, 1951, the sums which may be transferred to the Commissioner by the Government, the sums due to the Government under the said Act, the contributions payable under sub-section (1) of section 92 and the further sums payable under sub-section (2) of section 92 shall, when realized, be credited to the said Fund. It shall be lawful for the Commissioner to accept to the credit of the said Fund grants or loans from the Government and grants from any private person. The Commissioner shall, out of the aid Fund, repay to the Government sums paid by the Government under sub-section (4) of section 92 and loans received from the Government.

97. Creation of Hindu Religious and Charitable Endowments Common Good Fund.—
(1) It shall be lawful for the Commissioner to create a Fund to be called the Hindu Religious and Charitable Endowments Common Good Fund hereinafter in this section referred to as the said Fund, out of the contributions voluntarily made by the religious institutions from their surplus funds or by any person for the renovation and preservation of needy temples and their building and paintings, for the promotion and propagation of tenets common to all or any class of religious institutions and for any of the purposes specified in sub-section (1) of section 66.

(1-A) The Commissioner may, on a direction from the Government, transfer to the said Fund, any surplus or such portion thereof, as may be specified in the direction, remaining in the Tamil Nadu Hindu Religious and Charitable Endowments Administration Fund after the repayment of the amounts specified in sub-section (2) of section 12 and sub-section (2) of section 96.

(2) The said Fund shall be vested in and such administered by Commissioner in such manner as may be prescribed.

The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997

9. Appointment of Archakas and temple servants.—
(1) The committee of management of a notified institution may with the approval of the Commissioner appoint one or more archakas and temple servants to each temple belonging to the institution:

Provided that in case of hereditary post, if there is no dispute among the members of the family, the next in line of succession shall be appointed; with the prior approval of the Commissioner: Provided further that in case where no legal heir of the hereditary post are available the Committee of Management may appoint any person as provided under sub-section (1).

(2) Where more than one Archaka is appointed the senior among them shall perform as the Pradhana Archaka. The Pradhana Archaka wherever appointed, and the archakas, shall perform such duties as the Committee of Management may specify.

(3) Without prejudice to the power of the State Government to prescribe a common pattern for each category of temples, the number of archakas and temple servants appointed to the temple shall be in keeping with the practice obtaining in the temple immediately before the commencement of this Act.

10. Qualifications for Archakas.—
(1) No person shall be appointed to be a Archaka unless he has passed atleast a certificate course prawara in the Agama in the tradition of the temple, from any recognised Sanskruta Patashala or any other institution as the State Government may by notification in the official gazette specify, or has performed as archaka in the tradition of the temple for at least three years.

(2) Archaka other than hereditary Archaks who are in service on the date of the commencement of the Karnataka Hindu religious institution and charitable endowments (Amendment) Act, 2011 may be continued as Archaka who shall acquire the prescribed qualification within the period of five years unless he has crossed forty-five years of age.

(3) An Agamika or tanthri wherever appointed to perform poojas in a temple on special occasions shall continue to perform such functions as the Committee of management may specify and shall be governed by such conditions of service as may be prescribed.

Provided that no person shall after the commencement of this Act be appointed to perform as an Agamika or Tanthri unless he has passed the Pravina course in the Agama, from any samskruta patashala or other institutions imparting education in the tradition.

10-A. Disqualification of Archaks.—A person shall be disqualified for being appointed as Archak or being continued as Archak if he,—

(a) is suffering from any virulent or contagious disease; or
(b) is unable to recite Vedic mantras or Shlokas relating to the rituals in temple concerned with clarity and without any fault, other than temples, where reciting of vedic Mantras or Shlokas is not compulsory or mandatory;
(c) is not free from 'Sapta Vyasanas'.

Explanation.—The expression 'Sapta Vyasanas' means gambling, consuming intoxicating liquor and drugs, smoking, immoral sexual conduct, involved in heinous crime, stealing and cheating.

12. Emoluments and Service Conditions of Archakas.—
(1) The State Government may by rules regulate the emoluments, hours of work and other conditions of service of the archakas. Such rules may provide for appointment and termination of employment, leave and working hours, rotation of work, retirement of non-hereditary Archaks and temple servants] terminal benefits, misconduct and disciplinary action.

(2) the emoluments, pay and allowances of Archaks and temple servants shall be fair and reasonable having due regard to the income, usage, custom and tradition prevailing in the respective notified institution. The State Government may classify the temples into two or more classes based on their income, as may be prescribed.

(3) In determining the emoluments payable to archakas in all category of temples, the State Government shall take into account;
(*i*) entitlement of the Archakas to appropriate the thattekasu and other offerings by the devotees at the time of pooja or other seva;
(*ii*) Any amount receivable by the archaka as a percentage of the fees fixed by the committee of management for the various sevas offered at the temples.
(*iii*) Avocation other than the temple service which the archakas may be free to undertake during the term of employment.
(*iv*) Timing if any specified by the committee of management or the State Government, to keep the temple open to public for performing poojas or other sevas, in a day.
(*v*) Accommodation and other benefits in kind offered by the committee of management for the residence and livelihood of the archakas.

(4) The emoluments so determined shall be not less than the minimum rate and not more than the maximum rate as may be prescribed in the rules in keeping with the class of the temple.

Explanation.—For the purpose of this section the word archaka shall include an Agamika, a Tanthri or a Pradhana Archaka wherever appointed.

13. Register of Temple servants.—
As soon as may be after the commencement of this Act, the Commissioner shall cause to be maintained in each temple a register of temple servants, which shall contain the name, parentage, date of birth, date of joining service, qualification and experience, address and such other particulars as may be prescribed in respect of such temple servants.

14. Pattern of Temple Servants to be determined by rules.—
The State Government may in consultation with the committee of management make rules prescribing a pattern of temple servants for any class of temples, so however that the existing strength in any temple, immediately before the commencement of this Act, is not altered except by way of superannuation or dismissal for misconduct.

16. Misconduct and Penalty.—
(1) The Committee of management shall be competent to initiate action and hold enquiry for misconduct, either suo-moto or on complaint received against an archaka, including an Agamika, Tanthri or Pradhana Archaka and against the temple servants and to impose appropriate penalty for proven misconduct. No order imposing any penalty under this section shall be made except after giving such person a reasonable opportunity of being heard against the charge.

(2) An appeal shall lie to the Commissioner against every order imposing penalty under this section. Such appeal shall be made within thirty days from the date of the order imposing the penalty.

17. Creation of Common Pool Fund.—It shall be lawful for the Rajya Dharmika Parishad to create a fund to be called the Common Pool Fund out of.—

(a) contributions made by the notified or declared institutions at the following rate—

(1) ten per cent of the net income in respect of institutions whose gross annual income exceeds Rupees Ten lakhs;

(2) five per cent of the net income in respect of institutions whose gross annual income exceed Rupees Five lakhs but does not exceed Rupees Ten lakhs.

(b) Grants received from the State Government.

18. Transfers to Common Pool Fund.—

The Commissioner shall on the orders of the State Government transfer the following amounts to the common pool fund, namely:—

(a) The un-utilised portion of grants made by the State Government for the repairs or renovations or construction of new places of worship.

(b) funds of defunct Hindu Relegious institutions;

(c) any other sums which the State Government may direct.

69. Removal of Discrimination in the distribution of Prasada or Theertha.—

(1) Notwithstanding anything contained in this Act or in any text, rule of interpretation of Hindu Law or any custom or usage forming part of the law or in any other law or in any decree of court, no discrimination shall be made in the distribution of prasada or theertha in any temple or other religious place on grounds only of caste, sex, place of birth, or any of them.

Explanation.—In this section,—

(a) 'Prasada' means any cooked rice or other eatable, any fruits, flower, leaf, vibuthi, kumkuma, tulsi, bilwari, turmeric, sandal paste or other like thing distributed as prasada by whatsoever name called;

(b) 'Theertha' means sacred water, jaggery water or milk and includes other like things distributed as theertha in a temple by whatsoever name called;

(2) Nothing contained in this Act shall, save as otherwise provided in sub-section (1) and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution.

69-A. Abolition of share in hundi and other income of the temple.—
Notwithstanding anything contained in any judgement, decree or order of any court, tribunal or any authority or in any scheme, custom, usage or agreement or in any manual prepared by any institution or in any deed, sannad, order of the Government to the contrary governing any religious or charitable institution or endowment, any share which is payable or being paid or given or allowed at the commencement of the Karnataka Hindu Religious and Charitable Endowment (Amendment) Act, 2011 to any trustee, Dharmadarshi, Dharmakartha, Muthavalli or any office holder or servant including an archak or mirasidar or mujavar in the hundi or in kanike or in other income of the institution shall not have share except the seva commission and thatte kaasu.

Orissa Hindu Religious Endowments Act, 1969

34. Authority of trustee to incur expenditure for securing the health, safety or convenience of pilgrims and worshippers.—
The trustee of a religious institution may, out of the funds in his charge, after satisfying adequately the purposes of the institution, incur expenditure on arrangements for training of Vidyarthies and for securing the health safety and convenience of disciples and worshippers visiting the institution.

42. Appointment of office-holders and servants in religious institutions.—
(*1*) Vacancies, whether permanent or temporary, amongst the office-holders or servants of a religious institution shall be filled up by the trustee in cases where the office or service is not hereditary.

(*2*) In cases where the office or service is hereditary the next in the line of succession shall be entitled to succeed.

(*3*) Where—

(a) there is dispute respecting the right of succession; or

(b) such vacancy cannot be filled up immediately;

(c) the person entitled to succeed is a minor without a legally appointed guardian fit and willing to act as such; or

(d) the hereditary office-holder or servant is suspended from his office under sub-section (1) of section 43,

the trustee may appoint a fit person to discharge the functions of the office or perform the service, until the disability of the office-holder or servant ceases or another person succeed to the office or service, a the, case may be.

Explanation—In making any appointment under this sub-section, the trustee shall have due regard to the claims of members of the family, if any, entitled to the succession.

(*4*) Any person affected by an order of the trustee made under sub-section (*3*) may, within one month from the date of the, receipt of the order by him prefer an appeal before the Board whose decision thereon shall be final:

Provided that no appeal shall be entertained unless the person affected by the order complies with it and makes over charge of his office, or unless such a condition is waived by the Board at its descretion.

43. Punishment of office-holders and servants of religious institutions.—

(*1*) All office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite from the institution shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may fine, suspend, remove or dismiss any of them for breach of trust, in capacity, disobedience of orders, neglect of duty, misconduct or for any other sufficient cause.

(*2*) Any office holder or servant punished by a trustee under subjection (*1*) may, within one month from the date of the communication of the order to him, prefer an appeal before the Board whose order thereon shall be final.

(*3*) If any such office-holder or servant against whom an order of fine, suspension, removal or dismissal has been made by the trustee or the Board, as the case may be, disobeys such order, he shall, unless he shows reasonable cause to the satisfaction of the Board, be liable to pay to the Endowment Fund within such date as may be specified in the order such penalty not exceeding two hundred rupees and in

case of default a daily fine not exceeding twenty rupees. The penalty, to be paid by such person shall in no case be paid from the fund of the institution concerned.

(*4*) If such penalty is not paid within the time fixed or within such further time as may be granted by the Board, the Collector of the district, in which any property of the person against whom an order is made under subjection (*3*) is situate, shall, on a requisition made to him by the Board, recover the amount as if it were an arrear of land revenue.

45. Fixing of standard scales of expenditure.—
(*1*) The trustee of a religious institution may, from time to time, submit to the Administrator proposals fixing the scale of expenditure in the institution, and the amounts which should be allotted to the various objects or ceremonies connected with such institution or the proportion in which the, income or other property of the institution may be applied to such object or ceremonies.

(*2*) The trustee shall publish such proposal at the premises of the institution and in such other manner as the Administrator may direct, together with a notice stating that, within one month from the date of such publication, any person having interest might submit his objections or suggestions to the Administrator.

(*3*) After the expiry of the said period the Administrator shall, after considering the objections or suggestions, if any, received by him, pass such order as he thinks fit on such proposals having regard to the established usage of the institution and its financial position and, communicate a Copy of the order to the trustee and to the trustee and to the persons, if any, filing objections or suggestions.

(*4*) The trustee, or any person having interest may, within one month from the date of receipt of the order by the trustee prefer an appeal before the Board whose decision thereon shall he final.

(*5*) The scale of expenditure for the time being in force-in an institution shall not be altered by the trustee except in accordance with the procedure laid down in this section:
Provided that the Administrator may, at any time on his own motion, for sufficient cause, direct the trustee to modify the scale of expenditure.

(*6*) The trustee or any person having interest may, within, one month from the date of the receipt by the trustee of any direction issued under the proviso to sub-section (*5*) prefer an appeal against such direction before the Board whose decision thereon shall be final.
48. Fixing of standard scales of expenditure.—(1) This trustee of every math or specific endowment attached to a math may, from time to time, submit to the Board proposals for fixing the scale of expenditure in the institution, and the amounts which should be allotted to the various objects or ceremonies connected with the institution or the proportions in which the income or other property of the institution may be applied to such objects or ceremonies. (2) The trustee shall publish such proposals at the premises of the math and in such other manner as the Board may direct, together with a notice inviting objections and suggestions from persons having interest to be submitted to the Board within one month from the date of such publication. (3) If, on a scrutiny of such proposals and the objections and suggestions, if any, made by persons having interest, the Board is of opinion that the scale of expenditure or any item in the scale of expenditure is at variance with the established usages of the institution or for sufficient reasons needs modification, it may call for an explanation from the trustee and after considering the same, may pass such order as it thinks fit on such proposals and communicate a copy of the order to the trustee and to the persons, if any, filing objections or suggestions. (4) The trustee or any person having interest may, within one month from the date of receipt by the trustee of any order made under sub-section (3), prefer an appeal before the Tribunal.
67. Endowment Fund.—(*1*) There shall be established a fund to be called the "Orissa Hindu Religious Endowments Administration Fund" which shall vest in and be administered by the Board. (*2*) The following sums shall be credited to the said fund namely:— (*a*) contributions levied under sub-section (3); (*b*) fees levied under section 78; (*c*) penalties realised under section 76; (*d*) any grant or contribution by the State Government, any Local authority or any individual whether corporate or not; (*e*) any sum borrowed by the Board from the State Government. (*f*) all amounts standing to the credit of the Endowment Fund constituted under the Orissa Hindu Religious Endowments Act, 1951

(Orissa Act 2 of 1952);

(*g*) any other sum which may be credited by or under any of the other provisions of this Act.

(*3*) Every religious institution having an annual income exceeding two thousand and five hundred rupees shall, from the income derived by it, pay to the Endowment Fund annually such contribution not exceeding seven per centum of its income as may be prescribed:

Provided that where there has been a fall in the income of any religious institution in respect of any year due to cyclone, flood, drought or other natural calamities the Board may, with the approval of the State Government, remit the payment of contribution by such institution in respect of that year.

(*4*) Every religions institution which is liable to pay contribution as aforesaid shall pay to the Endowment Fund annually for meeting the cost of auditing its accounts such further sum not exceeding one and half per centum of its income as the Administrator may determine.

(*5*) The annual payments referred in sub-sections (*3*) and (*4*) shah be made, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the religious institution concerned.

(*6*) The Endowment Fund shall be utilised for meeting the expenses incidental to the purposes of this Act including the cost of auditing the accounts of religious institutions and the cost of any staff maintained for conducting the said audit.

71. Common Good Fund.—(1) It shall be lawful for the Board to create a fund called the Orissa Hindu Religious Endowments Common Good Fund (hereinafter referred to as the Common Good Fund) out of the contributions voluntarily made by—

(*a*) any individual or association of persons;

(*b*) any religious institution;

(*c*) any local authority; or

(*d*) any other body or institution.

(2) A contribution to the Common Good Fund may be made without indicating any purpose for which the amount contributed is to be utilised:

Provided that specific purpose may be indicated in such purpose is consistent with the purposes mentioned in clauses (*a*), (*b*), and (*c*) of sub-section (4) and the amount contributed is not less than one thousand rupees.

(3) The Common Good Fund shall yest in and shall be administered by the Board.
(4) Subject to the rules made in that behalf and to such instructions may be issued by the State Government from time, the Common Good Fund shall be utilised for—
(*a*) making grants and advancing loans to such religious institutions as may be in need of financial assistance;
(*b*) the repair and renovation of ancient temples and shrines and the establishment of new ones;
(*c*) the establishment of educational institutions for imparting instructions on religion; and
(*d*) charitable purposes:

Provided that any amount contributed for any specific purpose shall be utilised only for the purpose.

The Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987

34. Abolition of hereditary rights in Mirasidars, Archakas and other office holders and servants-
(1) (a) Notwithstanding anything in any compromise or agreement entered into or scheme framed or sanad or grant made or judgement, decree or order passed by any Court, Tribunal or other authorities prior to the commencement of this Act and in force on such commencement, all rights, whether hereditary, contractual or otherwise of a person holding any office of the Pedda Jeeyangar, Chinna Jeeyangar, a Mirasidar or an Archaka or Pujari or any other office or service or post by whatever name it is called in any religious institution or endowment shall on the commencement of this Act stand abolished;

(b) Any usage or practice relating to the succession to any office or service or post mentioned in clause (a) shall be void;

(c) All rights and emoluments of any nature in cash or kind or both accured to and appertaining to any office or service or post mentioned in clause (a) and subsisting on the date of commencement of the act shall on such commencement stand extinguished.

(2) Every office holder and servant mentioned in clause (a) of sub-section (1) holding office as such on the date of commencement of this Act shall, notwithstanding the abolition of the hereditary rights, continue to hold such office or post on payment of only such emoluments and subject to such conditions of service referred to in sub-sections (3) and (4) of section 35.

(3) Notwithstanding anything contained in sub-section (1) and (2) of this section, the qualified members of those Archaka families which were continuing in archakatvam service under the provisions of the repealed the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 and recognized as such by the competent authority shall continue to have the right to archakatvam without having any right to emolument such families used to receive earlier under Act 17 of 1966. However they shall receive emoluments in accordance with the scheme under section 144.

35. Appointment of office holders and servants, etc. –

(1) Every vacancy in the approved cadre strength whether permanent or temporary, amongst the office holders or servants of a charitable or religious institution or endowment shall be filled by the Trustee with the prior permission of the competent authority:

Provided that in the case of a charitable or religious institution or endowment whose annual income exceeds rupees ten lakhs the Executive Officer shall appoint the office holders and servants thereof with the prior permission of the competent authority:

Provided further that in the case of appointment of religious office holders such appointment shall be made keeping in view the Agamas of the respective institutions and preference shall be given to those who are well versed with the Agama, custom and usage of the respective institution.

(2) No person shall be considered for appointment to any vacancy under sub-section (1) on the ground merely, that he is entitled for such appointment according to-

(i) any scheme framed, agreement entered or judgement, decree or order passed by any court, tribunal or other authority prior to the commencement of this Act;

(ii) any custom or usage; or

(iii) the principle that he is next in the line of succession to the last holder of office.

(3) Every office holder or servant including Pedda Jeeyanagar, China Jeeyanagar and Mirasidar, Archaka and Pujari whether hereditary or not holding office as such on the date of commencement of this Act, shall continue as such office holder or servant and notwithstanding any scheme, judgement, decree or order of a Court, Tribunal or other authority or any agreement or custom or usage relating to the

payment of any perquisites, emoluments or remuneration, either in cash or kind or both, before the commencement of this Act, be paid only such emoluments as may be prescribed:

Provided that it shall be lawful for the Government to direct such office holders and servants as they may consider necessary to acquire such qualifications and to undergo training in such manner, for such period and on such terms as may be prescribed.

(4) Fixation of cadre strength, the qualifications, method of recruitment, pay and allowances, discipline and conduct and other conditions of service for the office holders and servants of the religious charitable institutions and endowments shall be such as may be prescribed.

36. Qualifications for Archaka - A person shall be qualified for being appointed as or for being an Archaka of a religious institution or endowment-

(a) if he has passed the Archaka Examination recognised by the Commissioner;
(b) if he is not disabled or suffering from any virulent and contagious disease;
(c) if he is able to recite vedic mantras and slokas relating to rituals with clarity and without any fault;
(d) if he possesses good conduct and character;
(e) if he is free from Sapthavyasanams:

Explanation:- For purposes of this section, the expression "Sapthavyasanams" means gambling, addiction to intoxicating liquors and drugs, womanising, hunting, stealing, abusing others and jealousy.

38. Power of Commissioner, Deputy Commissioner or Assistant Commissioner to punish office-holders etc., in certain cases –
(1) Where it is noticed by the Commissioner, the Deputy Commissioner or the Assistant Commissioner having jurisdiction that any office-holder or servant attached to an institution or endowment has not been dealt with suitably by the trustee or the Executive Officer as the case may be under section 37 for any of the lapses specified in sub-section (1) thereof, the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may direct the trustee or the Executive Officer to take action under section 37, failing which the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may after following the prescribed procedure, impose by an order in writing any of the penalities specified in sub- section (1) of that section on such office-holder or servant.

(2) Any office holder or servant aggrieved by an order passed under sub-section (1) may within sixty days from the date of receipt of the order by him, prefer an appeal if such order is passed by—

(a) the Commissioner, to the Government;

(b) the Deputy Commissioner, to the Commissioner; and

(c) the Assistant Commissioner to the Deputy Commissioner;

and any order passed in such appeal shall be final.

39. Transfer of office holders and servants –

(1) The Commissioner shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment, from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf.

(2) The Deputy Commissioner or the Assistant Commissioner as the case may be having jurisdiction over the area shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf.

49. Fixation of dittam –

(1) The mathadhipathi of every math or specific endowment attached thereto shall submit to the Commissioner within a period of ninety days from the date of commencement of this Act, or the date of founding of such math or specific endowment, proposals for fixing the dittam in the math or specific endowment and the amounts to be spent therefor:

Provided that the Commissioner may extend the time for the submission of such proposals:

Provided further that this sub-section shall not apply to any math or specific endowment in respect of which proposals were submitted to the Commissioner under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act, 17 of 1966), before the commencement of this Act.

(2) The mathadhipathi shall, while submitting his proposals under sub-section (1), have due regard to the established usage, if any of the math or specific endowment, the performance of the ceremonies and services, the observance of festivals, worships and the like, appropriate to the religious denomination to which the math or specific endowment belongs and to the financial position thereof.

(3) The mathadhipathi shall at the time of submission of proposals under sub-section (1) publish such proposals on the premises of the math or specific endowment and in such other manner as the Commissioner may direct together with a notice stating that within thirty days from the date of such publication any person having interest may submit his objections or suggestions, to the Commissioner.

(4) After expiry of the period specified in sub-section (1), the Commissioner shall scrutinise such proposals and the suggestions made by persons having interest and if on such scrutiny he thinks that the dittam as proposed by the mathadhipathi should be modified having regard to the matters specified in sub-section (2), the Commissioner may call for the remarks of the mathadhipathi who shall send his remarks within such time as may be specified by the Commissioner.

(5) If after considering the remarks of the mathadhipathi received under sub-section (4), the Commissioner is of the opinion that any modification is required in the dittam he shall refer the matter to the court for its decision and the decision of the Court shall subject to section 91, be final.

(6) The dittam for the time being in force in a math or specific endowment shall not be altered by the mathadhapathi:

Provided that the Commissioner may at any time for reasons to be recorded in writing suggest to the mathadhipati to alter the dittam and the procedure for such alteration shall be the same as laid down in sub-sections (2), (3), (4) and (5):

Provided further that where the mathadhipati does not comply with any suggestion aforesaid, the Commissioner shall refer the matter to the Court for its decision and the decision of the court shall subject to section 91 be final.

51. Removal of Mathadhipathi –

(1) The Dharmika Parishad may suo motu or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he-

(a) is of unsound mind;

(b) is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee;

(c) has ceased to profess the Hindu religion or the tenets of the math;

(d) has been sentenced for any offence involving moral turptitude, such sentence not having been reversed;

(e) is guilty of breach of trust, or mis-appropriation in respect of any of the properties of the math;

(f) commits persistent and wilful default in the exercise of his powers or performance of his functions under this Act;

(g) violates any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;

(h) leads an immoral life; or

(i) fails or ignores to implement the principles set out in clause (17) of section 2.

(2) The Dharmika Parishad shall frame a charge on any of the grounds specified in sub-section (1) against the mathadhipathi or trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Dharmika Parishad may, by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee, his explanation and the finding on such charge together with the reasons therefor:

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Dharmika Parishad against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government.

(3) Pending the passing of an order under sub-section (2), the Dharmika Parishad may suspend the mathadhipathi or the trustee.

(4) Any mathadhipathi or trustee aggrieved by an order passed by the Dharmika Parishad under sub-section (2) may within ninety days from the date of the order appeal to the High Court against such order.

52. Filling of temporary vacancies in the office of the mathadhipathi –

(1) Where a temporary vacancy occurs in the office of the mathadhipathi and there is a dispute in regard to the right of succession to such Office, or where the mathadhipathi is a minor and has no guardian fit and willing to act as guardian, or where the mathadhipathi is under suspension under sub-section (3) of section 51 the Dharmika Parishad shall, if it is satisfied after making an inquiry in this behalf that an arrangement for the administration of the math and its endowment or of the specific endowment, as the case may be, is necessary, make such arrangement as it thinks fit until the disability of the mathadhipathi ceases or another mathadhipathi succeeds to the office, as the case may be.

(2) In making any such arrangement, the Dharmika Parishad shall have due regard to the claims, if any, of the disciples of the math.

(3) Nothing in this section shall be deemed to affect anything in the Andhra Pradesh (Andhra Area) Court of Wards Act, 1902 and the Telangana Court of Wards Act, 1350 F.

53. Filling of permanent vacancies in the office of mathadhipathi –

(1) Where a permanent vacancy occurs in the office of the Mathadhipathi, by reason of death or resignation or on account of his removal under section 51 or otherwise the person next entitled to succeed, according to the rule of succession laid down by the founder, or where no such rule is laid down, according to the usage or custom of the math, or where no such usage or custom exists according to the law of succession, for the time being in force, shall with the permission of the Dharmika Parishad succeed to the office of the Mathadhipathi.

(2) A person for succession to the office of the mathadhipathi under sub-section (1) shall possess the following qualifications, namely:-

(a) basic knowledge of the Hindu Religion and Philosophy;
(b) knowledge of the relevant scriptures and sampradaya to which the math belongs;
(c) capacity to impact the knowledge and preach the tenets of the math to the disciples;
(d) religious temperment with implicit faith in discipline and practice; and
(e) unquestionable moral character.

65-A. Archakas, other office holders and servants' salary and other emoluments fund –

(1) A fund shall be created and vested with the Commissioner for the purpose of payment of salaries and other emoluments to all such Archakas, office holders and servants of charitable and Hindu Religious Institutional an Endowments published under section 6 of the Act who have been appointed by competent authorities as per the sanctioned cadre strength following the prescribed procedure.

(2) Every such institution shall pay contribution annually to such fund at the rate prescribed form their annual income as defined under sub-section (5) of section 65.

(3) Government may on a request submitted in this regard by the Commissioner, or otherwise, provide such grant-in-aid to the fund as may be determined by the Government to be necessary to supplement the contribution of such institutions.

(4) The procedure for collection of contribution to and disbursement from the fund shall be such as may be prescribed.

69. Establishment of Endowments Administration Fund –

(1) There shall be established a fund to be called the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Administration Fund. The Endowments Administration Fund shall vest in the Commissioner.

(2) (a) The following amounts shall be credited to the Endowments Administration Fund, namely:-

(i) the balance in the fund constituted under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act,1966.

(ii) the sums due to the Government under section 64 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966.

(iii) the contributions and audit fee payable under sub-section (1) of section 65 when realised;

(iv) the amounts recovered under section 30;

(b) It shall be lawful for the Commissioner to accept to the credit of the said fund, grants or loans from the Government or any grant by any institution or person.

(3) The Commissioner shall out of the said Fund repay to the Government, —

(i) the sums paid out of the Consolidated Fund of the State in the first instance towards the salaries, allowances, pension and other remuneration of persons appointed by the Government for rendering services under any of the provisions of this Act;

(ii) any other expenditure incurred by the Government in the course of rendering services to and in connection with administration of, the charitable or religious institution or endowment under the provisions of this Act;

(iii) the loans received from the Government;

(iv) the cost of publication of journals, manuals, descriptive accounts and other literature relating to Hindu religion or charitable or religious institutions or endowments;

(v) the expenses of committees or sub-committees thereof constituted for any purpose of this Act by the Government or by any officer or authority subordinate to the Government and specifically authorised by them in this behalf.

70. Common Good Fund –

(1) (a) The Commissioner shall create out of the payments made by the charitable and religious institutions and endowments and by any institution or person.

(i) in respect of Hindu charitable institutions and religious institutions and endowments, a fund to be called the Telangana Hindu Charitable and Religious Institutions and Endowments Common Good Fund; and

(ii) in respect of other charitable institutions and endowments, a fund to be called the Telangana Charitable Institutions and Endowments Common Good Fund.

(b) The Common Good Fund created under item (i) of clause (a) shall be utilised for the following purposes, namely:-

(i) Dhoopa Deepa Naivedhyam which encompasses renovation, preservation, maintenance, donation and offerings to Hindu Religious Institutions or Endowments, including payment of remuneration to Archakas of Hindu Religious Institutions which are in needy circumstances, and promotion and propagation of purpose and objects connected therewith:

Provided that the amount to be utilized for the above purpose shall not be less than twenty five per centum of the receipts to the said fund during the preceding year;

(ii) establishment and maintenance of vedapathasalas and schools for the training in archakathwam, adhyapakathwam, veda-parayanikatwam, silpam, vaidyam or like services:

(iii) construction of new temples and Kalyana mandapams.

Provided that the amount to be utilised for the purpose mentioned in item (ii) in any year shall not be less than twenty per centum of the receipts to the said fund during the preceding year.

(c) The Common Good Fund created under item (ii) of clause (a) shall be utilised for the renovation, preservation and maintenance of other charitable institutions or endowments and for the promotion and propagation of purposes and objects connected therewith.

(2) The Commissioner, may on direction from the Government, transfer to the Common Good Fund, any surplus or such portion thereof, as may be specified in the direction, remaining in the Endowments Administration Fund after repayment of the amounts specified in sub-section (3) of section 69.

(3) The Commissioner shall issue a notice demanding the payment of contribution payable towards Common Good Fund basing on the provisions made in the Budget estimate of each institution or endowment in the manner prescribed.

(4) Government may on a request submitted in this regard by the Commissioner, or otherwise, provide such grant-in-aid to the Common Good Fund created under sub- clause (i) of clause (a) of sub-section (1) as may be necessary, from time to time, to achieve the objectives of the fund.

152. Constitution of Telengana Dharmika Parishad-

152. (1) The Government shall, by notification in the Telangana Gazette constitute the Telangana Dharmika Parishad for the State consisting of the following members, namely,

(i) Chairman, who shall be a devout Hindu and has experience and commitment to improve the Hindu temple system to be nominated by the Government;

(ii) The Principal Secretary/ Secretary to Government, Revenue Department in charge of religious and Charitable Institutions and Endowments;

(iii) The Commissioner of Endowments who shall be member secretary;

(v) one representative each from the Chairman of Boards of Trustees from section 6 (a) (i) and (ii), section 6 (b) (i) and (ii), section 6 (c) (i) and (ii) and two Mathadhipathis published under section 6 (d) of the Act;

(vi) Retired Senior Officer of the Government who is a devout Hindu and has experience of and commitment to improve the Hindu Temple System, to be nominated by the Government;
(vii) A retired senior officer of the Endowments Department;
(viii) Retired Judge of the High Court who is a devout Hindu and has commitment to improve the Hindu Temple System;
(ix) A legal luminary/Advocate aged more than 62 years who is a devout Hindu and has experience and has commitment to improve the Hindu temple system.
(x) two prominent philanthropists who have a track record of establishment, maintenance and supporting various endowments, Charitable and Hindu religious institutions to be nominated by the Government;
(xi) two Agama pandits to be nominated by the Government;
(xii) one chartered accountant and who is a Devout Hindu and has a commitment to improve the Hindu temple system, to be nominated by the Government.
(xiii) two archakas, one from South Telangana and another from North Telangana, from the temples specified in section 6 (a) (ii) of the Act.

(2) The Parishad may for the purpose of consultation, invite any person having experience and specialized knowledge in any subject under its consideration to attend its meetings and every such person shall be entitled to such allowances as may be prescribed.

(3) The Powers, functions and term of office etc., of the members of Telangana Dharmika Parishad shall be such, as may be prescribed.

(4) The Government may by order delegate its powers and functions to the Telangana Dharmika Parishad.

ANNEXURE F

SAJJADANASHIN IS THE SPIRITUAL HEAD OF A RELIGIOUS INSTITUTION, WHILE THE MUTAWALLI IS A MANAGER OF ITS TEMPORAL AFFAIRS

1. The definition of **"Mutawalli"** under the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 is as under:

> "3. Definition. – In this Act, unless the context otherwise requires, -
> ...
> (i) "mutawalli" means any person appointed, under any deed or instrument by which a [waqf] has been created, or by a competent authority, to be the mutawalli of a waqf and **includes any person who is a mutawalli of a waqf by virtue of any custom** or who is a naib-mutawalli, khandim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli ***to perform the duties of a mutawalli*** and save as otherwise provided in this Act, any person, committee or corporation for the time being, managing or administering any waqf or waqf property:
>
> Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office-bearer of such committee or corporation:
> Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:
> Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government."

2. Thus, mutawalli is defined clearly and a sajjadanashin could be statutorily treated as a mutawalli only in cases wherein a *mutawalli* appoints him to ***conduct the functions of the mutawalli***. This clearly establishes that the Waqf Act, 1995, distinguishes between the functions of a mutawalli viz. the functions of a *sajjadanashin*.

3. A perusal of Section 3(i) would make it clear that Mutawalli and Sajjadanashin have two different roles. It is a settled law by a catena of judgments that Sajjadanashin is the spiritual head of religious waqf denomination, while Mutawalli is the manager of religious waqf denomination. The following cases maybe referred in this regard :

S. No.	CASE TITLE	RELEVANT PARAGRAPHS
1.	***Faqruddin v. Tajuddin,***	**29.** ***Sajjadanashin is a spiritual office. Mutawalli is a manager of secular properties.*** *Both of them are connected with a dargah or a wakf. Matmi, however, is a process of mutation carried out in the revenue register in terms of the Matmi Rules.*

S. No.	CASE TITLE	RELEVANT PARAGRAPHS
	(2008) 8 SCC 12	***36.*** ***<u>It is beyond any doubt or dispute that a mutawalli is the temporal head. He is the manager of the property. Office of sajjadanashin, however, is a spiritual office.</u>*** *It has to be held by a wise person. He must be fit for holding the office.* ***45.*** *Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense. The provisions of Rule 13 of the Matmi* ***Rules laying down a rule of primogeniture will have no application in relation to the offices of sajjadanashin and mutawalli, <u>which are offices of different nature.</u>*** *They are stricto sensu not hereditary in nature. It is well settled that an entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title.*
2.	***Syed Saulet Hussain v. Syed Ilmuddin*** **1987 Supp SCC 285**	**2.** ***<u>There are two important offices in the shrine: (i) Sajjadanashin — the spiritual head and (ii) Mutwalli — the secular head.</u>*** The hereditary descendants of the saint often laid claim to these two offices. The dispute as to the latter was taken even up to the Privy Council. In *Asrar Ahmed* v. *Durgah Committee* [AIR 1947 PC 1] , the Privy Council said that the office of Mutwalli was not hereditary. We are not concerned with the office of Mutwalli. We are concerned with two questions relating to the spiritual head of the shrine. Who is entitled to succeed to the office of Sajjadanashin? And what is the right of Durgah Committee in the matter?
3.	***Durgah Committee v. Syed Hussain Ali,*** **AIR 1961 SC 1402**	**17.** During Shahjehan's time (1627-1658) some significant changes took place in the management of the Durgah. ***The office of the Sajjadanashin was separated from that of the Mutawalli under the name of Darogah, the Mutawalli was put in charge of the management and administration of the secular affairs of the Durgah.*** It would also appear that some of the Darogahs were Hindus. In his turn Shahjehan endowed several villages in favour of the Durgah. This endowment, unlike that of Akbar, was for the general purposes of the Durgah. According to the Committee, Shahjehan's endowment was in supersession of the earlier grants though it is difficult to decide as to whether it was in supersession of Akbar's grant or of an earlier grant made by Shahjehan himself. ***However that may be, it is quite clear that at the very time when Shahjehan made his endowment he separated the office of the Sajjadanashin from that of the Mutawalli and left it to the sole charge of the Mutawalli appointed by the Ruler to manage the properties endowed to the Durgah.***

S. No.	CASE TITLE	RELEVANT PARAGRAPHS
		The later history of the institution shows that the separate office of the Mutawalli who was in sole management of the administration of the properties of the Durgah continued ever since, and that throughout its history the Mutawallis have been appointed by the State and were as such answerable to the State and not to the sect represented by the respondents. This state of affairs continued during the reign of Aurangzeb (1659-1707). **18.** After Aurangzeb died there was a change in the political fortunes of Ajmer because Rathor Rajputs seized Ajmer in 1719 and ruled over it for two years thereafter. This change of political sovereignty does not appear to have affected the administration of the Durgah which continued as before. In 1721 the Moghul rule was re-established over Ajmer but that again made no change to the administration of the Durgah and the management of its properties. The Moghul rule in turn was disturbed in 1743 by the Rajput Rathors who were in power for nearly 13 years. The Rathor rule came to an end when the Scindias occupied Ajmer in 1756 and continued in possession of the city until 1787. In that year the Rathors came back again and remained in possession till 1791 when Scindias overpowered them and continued to occupy it until 1818; In about 1818, after the Pindari War, Ajmer passed into the hands of the East India Company and so its connection with the British Government commenced. Whilst political sovereignty over Ajmer was thus changing hands from time to time the state of affairs in relation to the Durgah remained as it was during the time of Shahjehan. ***The Sajjadanashin looked after the performance of the religious observances of the rites and the Mutawalli looked after the administration and management of the properties of the Durgah. In this connection it is relevant and significant to note that the Mutawalli has always been an officer appointed by the Government in power.*** That in brief is the broad picture which emerges in the light of the material placed by the parties before the court in the present proceedings. **23.** In this connection it may be relevant to refer to the decision of the Privy Council in the case of *Asrar Ahmed* [AIR (34) 1947 PC 1] . The appeal before the Privy Council in that case arose from a suit filed by Syed Asrar Ahmed against the Durgah Committee in which he claimed a declaration that the office of the Mutawalli of the Durgah Khwaja Saheb, Ajmer, was hereditary in his family and that the Durgah Committee was not competent to question his status as a hereditary Mutawalli in succession to the last holder of that office. The District Judge who tried the said suit passed a decree in favour of Asrar Ahmed but on appeal the

S. No.	CASE TITLE	RELEVANT PARAGRAPHS
		Judicial Commissioner set aside the decree and dismissed Asrar Ahmed's suit. On appeal by Asrar Ahmed to the Privy Council the decision of the Judicial Commissioner was confirmed. In dealing with this dispute the Privy Council has considered the genesis and growth of the shrine along with the stormy history of the State of Ajmer to which we have already referred. ***In the course of his judgment Lord Simonds observed that it was not disputed that in the reign of Emperor Shahjehan the post of Mutawalli was separated from that of Sajjadanashin and had become a Government appointment, whereas the Sajjadanashin remained and continued to be the hereditary descendant of the saint.*** Then he referred to the firman of Shahjehan issued in 1629 by which the Emperor ordered that the Mutawalli appointed by the State was to sit on the left of the Sajjadanashin at the Mahfils. Similarly the firman issued by Aurangzeb in 1667 directed the order of sitting at the Mahfils by laying down that Daroga Balgorkhana i.e. Mutawalli of the Durgah or anyone who is appointed by the State do sit on the left of the Sajjadanashin. It is significant to note that Daroga Balgorkhana was a Hindu in Akbar's time. Having thus held that the office of the Mutawalli was an office created by the State and the holder of the office was a State servant the Privy Council examined the evidence on which Asrar Ahmed relied in support of his plea that by custom the office was hereditary and held that the said evidence did not justify the claim. This decision supports the conclusion that the Durgah Endowment and its administration have always been in charge of the Mutawalli appointed by the State and that on occasions the post of the Mutawalli was held by a Hindu as well.
4.	***Piran v. Abdool Karim*** **(1891) ILR 19 Cal. 204**	***"….The Sajjadanashin has certain spiritual functions to perform. He is not only a Mutawalli but also a spiritual preceptor. He is the curator of the Durgah where his ancestor is buried and in him he is supposed to continue the spiritual line (silsila).*** As is well known these Durgahs are the tombs of celebrated dervishes, who in their lifetime were regarded as saints. Some of these men had established khankahs where they lived and their disciples congregated. These dervishes professed esoteric doctrines and followed distinct systems of initiation. They were either Sufis or the disciples of Zian Roushan Bayezid who flourished about the time of Akbar and who had founded an independent esoteric brotherhood in which the chief occupied a peculiarly distinct position. The preceptor is called the pir, the disciple a murid. On the death of the pir his successor assumes the privilege of initiating the disciples into the mysteries of dervishism or Sufism….."

S. No.	CASE TITLE	RELEVANT PARAGRAPHS
5.	***Syed Hussain Ali v. Dargah Committee Ajmer*** ***AIR 1959 Raj 177*** **[*Rajasthan High Court*]**	65. Sec. 11(h) of the Act empowers the Committee to determine the functions and powers, if any, which the Sajjadanashin may exercise in relation to the Dargah. ***A Sajjadanashin has well-known powers in respect of the Dargah so for as the spiritual side is concerned, and the power given to the secular committee to define the religious or spiritual functions of the Sajjadanashin is again hit by Art. 25 of the Constitution*.** 66. The Act empowers the Committee by sec. 13 to make interim arrangements for the performance of the functions of the Sajjadanashin as it may think fit. ***The office of the Sajjadanashin is a spiritual office, and the appointment of a Sajjadanashin is regulated by custom pertaining to the institution, vide Piran v. Abdool Karim (10).***
6.	***Vidya Varuthi Thirtha v. Balusami Ayyar and Ors.*** ***AIR 1922 PC 123*** **[*Privy Council*]**	The conception of a trust apart from a gift was introduced in India with the establishment of Moslem rule. And it is for this reason that in many documents of later times in parts of the country where Mahommedan influence has been pre-dominant, such as Upper India and the Carnatic, the expression wakf is used to express dedication. But the Mahommedan law relating to trusts differs fundamentally from the English law. It owes its origin to a rule laid down by the Prophet of Islam; and means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings." When once it is declared that a particular property is wakf, or any such expression is used as implies wakf, or the tenor of the document shows, as in the case of *Jewan Doss Sahu v. Shah Kubeeruddin* that a dedication to pious or charitable purposes is meant, the right of the wakf is extinguished and the ownership is transferred to the Almighty. The donor may name any meritorious object as the recipient of the benefit. ***The manager of the wakf is the mutawalli, the governor, superintendent, or curator. In Jewan Doss Sahu's Case the Judicial Committee call him "procurator." That case related to a khankah, a Mahommedan institution analogous in many respects to a math where Hindu religious instruction is dispensed. The head of these khankhas, which exist in large numbers in India, is called a sajjadanishin. He is the teacher of religious doctrines and rules of life, and the manager of the institution and the administrator of its charities, and has in most cases a larger interest in the usufruct than an ordinary mutawalli. But neither the sajjadanishin nor the mutawalli has any right in***

S. No.	CASE TITLE	RELEVANT PARAGRAPHS
		<u>the property belonging to the wakf; the property is not vested in him and he is not a "trustee" in the technical sense.</u> It was in view of this fundamental difference between the juridical conceptions on which the English law relating to trusts is based and those which form the foundations of the Hindu and the Mahommedan systems that the Indian Legislature in enacting the Indian Trusts Act (II. of 1882) deliberately exempted from its scope the rules of law applicable to wakf and Hindu religious endowments. Sect. 1 of that Act, after declaring when it was to come into force and the areas over which it should extend "in the first instance," lays down, "but nothing herein contained affects the rules of Mahommedan law as to wakf, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments. . . . . " Sect. 3 of the Act gives a definition of the word "trust" in terms familiar to English lawyers. It says:"A 'trust' is an obligation annexed to the ownership of property, and arising out of 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; 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'; the subject-matter of the trust is called 'trust-property' or 'trust-money'; the 'beneficial interest' or 'interest' of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the 'instrument of trust.'
7.	***Ikramul Haq Shah v. Board of Rajasthan Muslim Waqfs,*** **1972 SCC OnLine Raj 77**	**9.** Mr. Agarwal strenuously urged that the fact that the appellant has been admitted by the Waqfs Secretary as a Sajjadanashin and in view of the finding of the learned single Judge the institution in question should be taken to be a Khankah. We appreciate the anxiety of Mr. Agarwal for the institution in question being treated as a Khankah because there is a great difference between the powers and status of a Sajjadanashin of Khankah and those of other Muslim religious institutions. The Sajjadanashin of a Khankah obviously enjoys the unique position being a spiritual preceptor and a Mutawalli. In a word, he is a spiritual superior in whom reside all powers of the institution as its head but the same could not be said for Sajjadanashins of other institutions. Reference in this connection may be made to *Zooleka Bibi* v. *Syed Zynul Abedin* (6) where Tyabji, J. after reviewing the authorities in *Piran* v. *Abdool Karim* (1) has observed as follows:—

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	[*Rajasthan High Court*]	"I refer to this case also to show the difference between a Mutawalli and a Sajjadanshin. The former is a secular officer, while the latter is a spiritual teacher……. The difference between a Sujjadanashin and Mutawalli is distinctly pointed out in these cases. A man may be Sajjadanashin without being a Mutawalli and a Mutawalli without being a Sajjaadanashin. These are two different offices although they may be combined some times in one individual." ***It will thus appear that all Sajjadanashins are not necessarily the Mutawallis of the properties of the institution as the offices in such institutions are distinct and different. Therefore merely because the appellant has been held to be the Sajjadanashin by the learned Single Judge cannot be taken to be sufficient to hold the appellant to be a Sajjadanashin of a Khankah in whom the offices both of Sajjadanashin and Mutawallis are rolled into one.*** In order to hold the appellant a Sajjadanashin enjoying unique position as that of a Khankah investigation into facts as to the nature and real character of the institution is absolutely necessary so as to determie whether the institution in question fulfils all the requirements of a Khankah. This can be only done after investigation into facts by examining evidence if any. Such complicated questions of fact buried in the origin, development and character of an institution and its offices, in our opinion, cannot be satisfactorily decided in the exercise of the extraordinary jurisdiction of this Court. The learned Single Judge was conscious of this fact but he has approached the matter on the assumption that the offices of Sajjadanashin and Mutawalli being combined in one since the foundation of the institution there could be no occasion for a vacancy in the office of Mutawalli. ***As already pointed out the office of Sajjadanashin and that of Mutawalli are of different nature-one being religious while the other being the secular. The office of the Mutawalli is not heritable in absence of instruments of the Waqf with a direction to the contrary.*** Even if it is assumed that the appellant is the Sajjadanashin of a Dargah - that fact alone cannot necessarily lead to the conclusion that he is the Sajjadanashin of a Khankah. It was contended that at any rate Fazle Haq Shah had executed a document in the year 1949 nominating the appellant as the Mutawalli. It was further contended that the custom and usage also support the appellant's contention. The learned counsel for the respondents has denied the existence of such a document and so also the fact of nomination under the document of 1949 as well as the rule of inheritance in regard to devolution of the office of Mutawalli. It is a settled proposition of law that the Mutawalli could appoint his successor while on his death bed, in absence of a direction in the instrument of Waqf to the contrary. The nomination by him while he is in health is not warranted under the Muslim Law. Admittedly Fazle Haq

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		Shah died in the year 1964 and he could not be taken to be on the death bed when the instrument of nomination of a Mutawalli is alleged to have been made by him in favour of the appellant without any proof as to condition of his health. The rules of primogeniture and succession by inheritance have been seriously contested and these facts also involve investigation into the complicated questions of fact which, in our opinion, cannot be made in the proceeding under Art. 226 of the Constitution. The rule of primogeniture has also been denied by the respondents on the ground that Zahiruddin Shah was not the son of Hazrat Miskeen Shah. This also involves a controversy relating to the facts. Again, the appellant has alleged that the institution in question is a 'Waqf-al-aulad' whereas the respondents have asserted that it is a Waqf Alal-Illah. All the controversies listed above which are relevant for determination of the points in issue, in our opinion, involve investigation into complicated facts and recording of evidence and such investigation could not be under-taken in writ proceedings. In this connection we may refer to *Mahant Moti Das* v. *S.P. Sahi* (7). In that case there was a controversy as to whether the trusts in that case were public or private. Their Lordships refused to investigate such question which required investigation of complicated facts and recording of evidence.
8.	***Bilqis Begum v. Punjab Wakf Board,*** **2004 SCC OnLine P&H 842** **[*Punjab & Haryana High Court*]**	**18.** In sequence to what has been narrated above, it may be equally partinent to refer to the provisions of Section 220 of *Mulla's Principles of Mohammedan Law* (Nineteenth Edition) which deals with the expression "sajjadanashin", the same read as thus:— "220. *Sajjadanshin; Khankhah.*—A Sajjadanashin is a head of a khankhah, a Mohammedan institution analogous in many respects to a math where Hindu religious instruction is given. He is the teacher of the religious doctrine and rules of life, and the manager of the institution and the administrator of its charities, and has, ordinarily speaking, a larger right in the surplus income than a mutwalli (r). But this does not mean that in every case the whole income from a Khankhah is at the disposal of the sajjadanashin. At certain shrines the members of the founder's family other than the sajjadanashin are entitled to share in the surplus offerings which remain after payment of expenses (s)." **19.** ***The word 'Sajjadanashin' (spiritual superior) is derived from sajjada, that is, the carpet used by Mohammedans for prayer, and nashin, that is sitting. The sajjadanashin takes precedence on the carpet during prayers. The office of sajjadanashin is a spiritual office, and he has certain spiritual functions to***

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		perform. A sajjadanashin, is parent (as is apparent) from the provisions of Section 220, enjoys the unique position of being a spiritual preceptor and a mutwalli. A sajjadanashin can be mutwalli as well but the converse may not be true as the office of Mutwalli is a secular office. All in all Sajjadanshin is the head of a Mohammedan institution which is analogous in many respects to a Math where Hindu religious instructions is given. He is the Editor of a religious doctrine and rules of life.
9.	***The Masjid-e-Mamoor Committee v. Hasan Moulana Dargah & Ors.,*** ***C.R.P. No. 219 of 2023 and C.M.P. No. 1797 of 2023*** **[*Madras High Court*]**	**Waqf Board is incompetent to create a new Waqf** 29. If I were to concede that the registration means the creation of a new Waqf, I feel it will pave way to an order contrary to the Waqf Act of 1954 as well as the Waqf Act of 1995. The Waqf Board is only a statutory body created by the virtue of a notification issued under the Waqf Act of 1954 or 1995, for the purpose of management of the institutions. ***The Waqf Board merely takes care of the temporal matters and does not have rights to dictate as to how the spiritual matters have to be carried on. This is not a stray observation, but is relevant because the Waqf Board has power to appoint Mutawalli, but for an institution like Dargah it cannot appoint Sajjadanashin because Sajjadanashin is a post of the spiritual head of the institution, who succeeds to the said post by virtue of the wishes of Mureeds or disciples of the Peer. However, if Sajjadanashin is in control of any property, he is treated as Mutawalli for the purpose of the Waqf Act.*** The manner of instructions that he gives to the disciples of the Peer cannot be a matter of interference by the Waqf Board. The Waqf Board neither has the power under the Waqf Act, 1954 or Waqf Act, 1995 to carve out properties from the existing Waqfs and create new Waqfs. This is because the Waqf Board is an artificial person and cannot be said to be a person professing Islam. Under Islamic law, it requires a living person to create a Waqf and an artificial person which is the creation of the legal fiction cannot create any such institution. Further, unless and until a person has ownership and control over a property, he/she cannot create a Waqf. It is a fundamental principle of islamic law that Waqf should be permanent in character. This presupposes that the person creating the Waqf or the Waqif is the owner. The Waqf Board, merely exercising superintendence over the Waqf property, cannot become the owner of the Waqf properties. As correctly pointed out by the Allahabad High Court in **Masihuddin -vs- Ballabh Das (1912) 35 All 68,** a property cannot be made as a Waqf if the Waqif does not own the same. Therefore, the registration of the tomb of the Baghdadi Peer by the Waqf Board cannot result in creation of a Waqf.

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		36. ***In this regard, it is pertinent to note the judgment of the Bombay High Court in Maule Shah -vs- Ghane Shah (1938) 40 Bom.LR 1071, wherein the Bombay High Court had an opportunity to deal with the secular nature of the office of Mutawalli and the spiritual functions performed by the Sajjadanashin. A reading of the judgment makes it clear that the office of Sajjadanashin contrary to the office of Mutawalli is a spiritual office with certain spiritual functions to perform.*** Though, as has been pointed out by this Court in the previous paragraphs, Hasan Moulana Baghdadi Dargah is not a Waqf, one cannot rule out the spiritual and religious activities performed thereon. Therefore, the absence of Mutawalli cannot imply that the institution must be devoid of a Sajjadanashin. The Waqf Board and a Committee appointed / recognized by it, like the civil revision petitioner being entrusted with only matters of administration and general superintendence over the Waqf, cannot interfere in the spiritual functions of the said institution.
10.	***Sain Maule Shah v. Ghane Shah*** **1938 SCC OnLine PC 24**	**Sir Shadi Lal**— The question raised by this appeal relates to the appointment of a sajjadanashin of a Moslem shrine situate at Ludhiana in the Province of the Punjab. The shrine is known as takia Shah Shuhada, and belongs to a sect of ascetics called Madari Fakirs. The sajjadanashin of the shrine was one Sain Jhandu Shah, who died on 25th October 1922. The matter in controversy between the parties is whether the appellant Maule Shah was validly appointed to succeed Sain Jhandu Shah in the office of the sajjadanashin of this institution. A takia is a place where a fakir or dervish (a person who abjures the world and becomes an humble servitor of God) resides before his pious life and teachings attract public notice, and before disciples gather round him, and a place is constructed for their lodgement: *Mohiuddin* v. *Sayiduddin* [20 Cal. 810 at p. 822.] . A takia is recognized by law as a religious institution, and a grant or endowment to it is a valid wakf or public trust for a religious purpose. ***The sajjadanashin (literally meaning a person who sits on the sajjada or prayer mat) is the spiritual preceptor of a religious institution. He has the privilege of imparting to his disciples spiritual knowledge. He has charge of the spiritual affairs of a religious institution, while the mutwalli has charge of its temporal affairs. In some cases the office of sajjadanashin and the office of the mutwalli are combined in one and the same person. The succession to the office of the sajjadanashin depends on the rules, if any, made by the founder. But there are no such rules applicable to the shrine in question, and the succession is regulated by the usage which governs the institution.*** Now, there is ample evidence, and, indeed, the parties are agreed, that election by the bhek or religious fraternity is the rule followed for appointing the sajjadanashin of the

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		takia in question. Whether, in addition to election, there should be a nomination, or confirmation by the head of a superior shrine, is a matter upon which the parties are not unanimous.
11.	***Syed Gulam Sarwar Biabani and others etc. v. Afzalunnisa Begum and Others*** **AIR 2004 AP 485**	27. Going by these judgments, we have no doubt in our mind that the office of Mutawalliship and Sajjadanashini can be held by a woman. **She can perform the functions which are secular in character as a Mutawalli on her own, whereas for Sajjadanashini where purely religious and spiritual functions were to be performed, can be performed by her through a deputy or by a proxy.** Therefore, this issue can be settled as against the appellants.
12.	***Syed Salman Shah Alias Baba Miyan v. State of Maharashtra,*** **2003 SCC OnLine Bom 867** **[*Bombay High Court*]**	**11.** Before referring to the rival contentions, it will be appropriate to refer to some of the relevant provisions of the Act. As the case in hand revolves around the right of the plaintiff to challenge the action of the Board in issuing the letters and further injunction, if the plaintiff established his rights as Sajjadanashin of the said Dargah. It is not disputed that Dargah is an ancient wakf duly registered and recognised as such. It is also not disputed the provisions of the Wakf Act, 1954 and the Act, 1995 are applicable. The Act nowhere defines the term Sajjadanashin but the Act has defined Mutawalli. S. 3, sub-cl. (*i*) defines term "Mutawalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the Mutawalli of a wakf and includes any person who is a Mutawalli of a wakf by virtue of any custom or who is a Naib-Mutawalli, Khadim, Mujawar, Sajjadanishin, Amin or other person appointed by a Mutawalli to perform the duties of a Mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf or wakf property. ***Term Sajjadanashin has been explained in principles of Mohammedan law by Sir Dinshaw Mulla, means the spiritual superior. The Sajjadanashin is head of Khankhah, a Mohammedan institution analogous in many respects to a math where Hindu religious instruction is given. He is the teacher of the religious doctrine and rules of life. The word Sajjadanashin is derived from Sajjada that is carpet used by Mohammedans for offering prayer and nashin means sitting. The Sajjadanashin takes precedence on the carpet during prayers. A Sajjadanashin is a spiritual office and he has certain spiritual functions to perform. It is held by several judicial decisions right from the judgment of the Privy Council in Vidya Varuthi Thirtha Swamigal v. Baluswami Ayyar that a Sajjadanashin is the teacher of religious doctrine and rules of life and***

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		the Manager of the institution and the administrator of its charities and has in most cases a larger interest in him than the ordinary Mutawalli but neither the Sajjadanashin nor the Mutawalli has any right belonging to wakf property, it does not vest in him. With this principle coupled with the definition under S. 3(1), I have to find out whether the plaintiff succeeded in establishing the claim as Sajjadanashin of the said Dargah and whether he can retain the possession of the rooms…..xxxx……"
13.	***Hussainbi v. Sayad Khairuddin Kutubuddin Kaji,*** **1940 SCC OnLine Bom 59** **[*Bombay High Court*]**	These remarks are made not in reference to the position of a *mujawar* but to those religious or priestly offices which require certain special qualifications. The usage would, therefore, depend on the particular kind of duties and not on any abstract notion of a religious duty. ***A mujawar is described in Wilson's Glossary as "a servant or sweeper of a Mahomedan temple or shrine." His position is different from that of a mutawallior a Sajjadanashin. The former is a manager or a trustee of a Wakf and the latter holds the position of a spiritual preceptor.*** So also an *imam* who holds the prayers at a congregation, and a *mulla* who officiates at religious services, like marriages, funerals, etc., are religious officials unlike a *mujawar* whose main duty is to take care of a shrine. Mr. Justice Lokur has relied, to some extent, on the decision of the Privy Council in *Shahar Banoo* v. *Aga Mahomed Jaffer Bindaneem*. [(1906) L.R. 34 I.A. 46.] ***I am not sure that case helps very much because there their Lordships were dealing with the office of mutawalli, which is essentially a secular office, and mutawallisand mujawars would not necessarily be on the same footing.*** At the same time, there is certainly nothing in the Privy Council case which lends any support to the appellants' argument. Mr. Desai has relied on two Madras cases, *Hussain Beebee* v. *Hussain Sherif*. [(1868) 4 Mad. H.C. 23.] and *Mujawar Ibrambibi* v. *Mujawar Hussin Sheriff*. [(1880) 3 Mad. 95.] The former case dealt with *mujawars*, but the *mujavars* there were priests, and different, therefore, from those with whom we are concerned. *Mujawar Ibrambibi* v. *Mujavar Hussain Sheriff* [(1880) 3 Mad. 95.] followed that case. There the facts were no doubt similar to those of the present case in respect of the duties to be performed by the *mujawar*, but the Court partly relied on evidence as to usage, and the decision might not have been the same if the evidence as to usage had been the same as in our case. Moreover, this case is dissented from, or at any rate explained away, in *Munnavaru Begam Sahibu* v. *Mir Mahapalli Sahib*. [(1918) 41 Mad. 1033.] There we have the opinion of an eminent Mahomedan Judge which, I think, Mr. Justice Lokur was fully entitled to follow.

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14.	***Kaniz Zohra v. Saiyid Muztaba Husain,*** **1923 SCC OnLine Pat 278** **[*Patna High Court*]**	The endowment is an old one. It is proved to have been in existence at the beginning of the last century and its origin is probably of much earlier date. There was at one time a *khanqah* or monastery attached to it and it is found by both the trial Court and the first appellate Court that there has all along been attached to the institution a *sajjadanashini* and that this office still exists. ***It is further found that the management or mutwalliship of the trust property goes with the office of sajjadanashin. The qualifications of the two offices are different. The sajjadanashini is a priestly office involving the performance of spiritual and religious duties which, it is admitted, cannot according to Muhammadan law be performed by a woman. The functions of a mutwalli are purely secular involving the management of the trust property and a woman is not disqualified by reason of her sex from performing the duties of a mutwalli as such.*** The devolution of the office of *mutwalli* depends in the first instance upon the provisions of the *wakfnamah*, or trust deed, but in the present case the *wakfnamah* has not been produced in evidence and probably no longer exists. In its absence the order of succession must be determined according to the usage proved to have prevailed with regard to the endowment in question. It is found that the usual course for appointing the *mutwalli* was that after the death of an incumbent a relation of the late *mutwalli* was chosen by the other relations and the well-wisher of the *wakf* after consultation with respectable neighbours and gentlemen of the neighbourhood and also, if necessary, by the advice of the *mjjadanashins* or *mutwallis* of other *wakf* properties, and that in any particular case either the whole of this procedure or a part of it only might have been carried out; that these were the usual guiding principles in choosing the successor. It would appear, therefore, that the devolution was not strictly according to the rules of heredity but was by election out of a limited class of the office and could only be held by one qualified to act as *sajjadanashin* The plaintiff claimed to have been elected by the relations after consultation in the manner described above. On referring to Mr. Macnaghten's note already quoted it will be found that he makes no difference between spiritual and religious duties, the antithesis being between spiritual and temporal duties, the latter being capable of performance by a woman and the former not. The authority of other text writers also seems opposed to the view that a woman can perform the duties of a *sajjadanashin*. Mr. Syed Ameer Ali, a text writer of repute, states the matter thus:

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		"The office of *mutwalli* is an office of personal trust, and a person who cannot discharge the duties of the trust personally, nor be responsible for their due discharge, cannot appoint a deputy. But where the *mutwalli* has to perform religious duties or spiritual functions in connection with the *wakf*, which, as regards men, can only be performed by a man, a woman cannot be appointed to the office. For example, if the *mutwalli* is also the superior of a religious establishment, and, as such, has to officiate on occasions of religious festivals, a woman is precluded by her sex from holding the *towliat*." In support of this opinion he relies amongst other authorities upon the case already referred to of *Mujavar Ibrambibi* v. *Mujavar Hussain Sheriff* [(1878-81) I.L.R. 3 Mad. 95.] (*Muhammadan Law*, 4th ed., Vol. I, page 443). Sir Roland Wilson in his treatise on *Anglo-Muhammadan Law*, 5th ed., page 357, paragraph 331, states the law thus: "A female may be the *mutwalli* of an endowment and so may a non-Muhammadan; but if the endowment be for the purpose of divine worship, neither females nor non-Muhammadans are competent to hold the office of *sajjadanashin*, or spiritual superior." Mr. P.R. Ganapathi Iyer in his book on *Hindu and Muhammadan Endowments*, 2nd. ed., page 435, after pointing out that the office of *sajjadanashin* and *mutwalli* are separate and distinct, says: "The *sajjadanashin* has charge of the spiritual affairs of the endowment. But the *mutwalli* has charge of its temporal affairs. One consequence of this is that a waman may be a *mutwalli* but cannot be a *sajjadanathin*. According to the Muhammadan Law, the duties of *mutwalli* who has not to perform religious duties or spiritual functions may be discharged by proxy. But the office of *sajjadanashin* requires peculiar personal qualifications and the duties attached to that office cannot be discharged by proxy. A woman, therefore, cannot be appointed to such office……It may happen that in some cases the office of *Mutwalli* and *Sajjada* are combined in the same person. Then also a woman cannot be appointed."

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15.	***(Syed Shah) Muhammad Kazim v. (Syed) Abi Saghir,*** **1931 SCC OnLine Pat 97** **[*Patna High Court*]**	**64.** There is another matter in which the decree of the learned District Judge requires some modification. This is in respect of the order about the taking of the accounts from the defendant. As sajjadanashin by election the powers of the defendant were more than that of a muttawali or trustee. ***The decisions which I have referred to above show that a sajjadanashin is not a muttawali and his powers of expenditure are wide, and as long as he keeps up the institutions in a fairly decent condition, he is not accountable to anybody.*** No doubt those decisions do not apply to the present case where the surplus after meeting the necessary expenses is to be distributed among the maintenance-holders; but nevertheless directing him to render accounts for the previous years without so he limit will be a very complicated affair especially when there are indications on the record to show that at the time of the previous suit the account papers of the defendants were stolen and there is reason to believe that the plaintiffs in that case were to some extent privy to it. This being the state of affairs it will not be in the interests of justice if the defendant be now called upon to render accounts without soma limit being imposed upon it. On the other hand I do not want in any way to jeopardize the interests of the maintenance-holders who have been depending upon the allowances for the last one hundred and fifty years or more. The decree of the learned District Judge should in my opinion be modified in such a way as would confine the rendering of accounts only to ensuring that a reasonable amount has been distributed among the maintenance holders. If it is found that about half of the income of the estate has been distributed among the maintenance-holders no account of the remainder shall be taken from the defendant. This is the proportion roughly speaking which was being distributed among them. If on the other hand much less than that has been distributed, the District Judge will proceed to take accounts from the defendant for a period of three years prior to the institution of the suit and for the period of the pendency of the suit. The descendants of Shah Gholam Moula, commonly called shareholders, have been receiving the surplus of the income. I agree with the learned District Judge that these maintenance-holders should not be deprived of what they have been getting for the last 150 years. A provision to this effect fixing a proportion between the two classes of expenditure should be embodied in the scheme. I am not unmindful of the fact that a time may come when the amount to be received by a particular individual is so small and insignificant that it will be of no use to the recipient to receive it and it will be contrary to the intention of the granter to pay it; in other words, it will be too small to be called a maintenance. In that case the recipient may himself refuse to take it or the Court on a proper application made modify the scheme and apply the doctrine of

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		cypres to such an amount. It is also necessary that the broad principles of the scheme should be embodied in the decree.
16.	***Iqbal Hasan v. Sunni Central Board,*** **1971 SCC OnLine All 332** **[*Allahabad High Court*]**	**16.** ***According to Mahomedan Law the office of a mutwalli is a secular office while that of a khadim or a sajjadanashin is a religious office.*** In the instant case the appellants claimed to be khadims mutwallis as is clear from the relief claimed in the plaintiff. In other words the plaintiffs did not claim to be mutwallis simpliciter.
17.	***Association of A.P. Sajjada Nasheens v. Union of India,*** **2009 SCC OnLine AP 686** **[*Andhra Pradesh High Court*]**	*Mutawalli*: **40.** ***According to Mohammedan Law, Mutawalli is manager and administrator of the wakf property but not the owner of the wakf property as the ownership of the wakf property vests in Allah, the Almighty. The position of Mutawalli is very significant in the sense that he is not merely a servant or manager of the wakf to carry out the directions of the Wakif (i.e. one who creates wakf) but has also to exercise his own discretion and take decisions diligently for the protection of the wakf property and proper utilisation of its income according to the directions of the Wakif. Where a Sajjadanashin is also a Mutawalli, he has, in addition, certain spiritual functions to perform in such a case he is not only a Mutawalli, but also a spiritual preceptor and curator of the durgah where usually his ancestor would be buried, and in him is supposed to continue the spiritual line (silsilla).*** As is believed, durgahs are the graves of celebrated dervishes, who in their lifetime were regarded as saints. Some of these men had established khankahs where they imparted religious instruction and training to their disciples. The definition of Mutawalli under sub-section (1) of Section 3 of the Act includes other persons such as Naib-mutawalli, Khadim, Mujawar, Sajjadanashin Amin or Committee appointed by the Wakf Board. All these persons are brought within the sweep of the definition of "Mutawalli" to hold all such persons responsible and accountable in matters of wakf property and matters incidental thereto.

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18.	***Syed Shah Abdul Latif Mohideen Kadiri Sujjatha Shibahadulla Sahib v. M. Mohammad Lebbai (died),*** **1956 SCC OnLine Mad 96** **[*Madras High Court*]**	**14.** The Right Honourable Syed Ameer Ali in his Mahommedan Law, Vol. I, pages 443, 444 states: "Such superiors in India are called *Sajjada Nashins. (Sajjada* is the carpet on which prayers are offered; and *Nashin* is the person seated thereon). ***The Sajjadanashin is not only a Mutawalli but also a spiritual preceptor.*** He is the curator of the *Dargah* where his ancestor lies buried, and in him is supposed to continue the spiritual line (*Silsila*). These *Dargahs* are the tombs of celebrated dervishes, who, in their lifetime, were regarded as saints. Some of these men had established *Khankahs* where they lived, and their disciples congregated. Many of them never rose to the importance of a *Khanhah*, and when they died their mausolem became shrines or *Dargahs*. These dervishes professed esoteric doctrines and distinct systems of initiation. They were either *Sufis* or the disciples of Mien Roushan Bayezid, who flourished about the time of Akbar and who had founded an "independent esoteric brotherhood, in which the chief occupied a peculiarly distinctive position. They called themselves *Fakirs* on the hypothesis that they had abjured the world, and were humble servitors of God; but their followers were honoured with the title of *Shah* or king. Herklot gives a detailed account of the different brotherhoods and the rules of initiation in force among them. The preceptor is called the *Pir*—the disciple, the *Murid*. On the death of the *Pir* his successor assumes the privilege of initiating the disciples into the mysteries of *Dervishism* or *Sufistn*. The relationship which exists between a *Pir* and his *Murids*, as I understand the theory and practice of *Dervishism*, as a spiritual and personal one. "Accordingly, the appointment of a child of tender years as *Sajjada-Nashin* would seem to be opposed to the constitution of the office. There is one instance, however, in which a boy of nine or ten years of age was appointed a *Sajjada-Nashin* by the last holder of the office, the work of initiation, etc., during his minority, being entrusted to a disciple or *Khalifa* (vice gerent). In this case the office was hereditary in the family, and apparently there was no other member qualified to perform the spiritual duties. 'The appointment of a *Sajjada-Nashin* of a *Dargah* must, to a large extent, however, be regulated by the practice followed in the particular *Dargah* or neigh bouring *Dargahs*'. Herklet describes the custom in vogue in the *Darghas* existing in Southern India And, so far as I am aware, this is "consistent, with the practice pre-vailing in other parts of India, viz., that upon the death of the last incumbent, generally on the day of what is called the *Sium* or *Teja* ceremony (performed on the third day after his decease), the

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		Fakirs and *Murids* of the *Dargah*, assisted by the heads of neighbouring *Dorgahs*, instal a competent person on the *Gaddi*; generally the person chosen is the son of the deceased, or somebody nominated by him, for his nomination is supposed to carry the guarantee that the nominee knows the precepts which he is to communicate to the disciples. In some instances the nomination takes the shape of a formal installation by the electoral body, so to speak, during the lifetime of the incumbent. But in every case the person installed is supposed to be competent to initiate the *Murids* into the mysteries of the *Tarikat* (*The Holy Path*)." A brief reference may be made to the other standard text-books on Muhammadan Law. In R.K. Wilson's Anglo-Muhammadan Law, (5th Edition) at page 357 it is stated: "A Female may be the *Mutawalli* of an endowment, and so may a non-Muhammadan; but if the endowment be for the purpose of divine worship, neither females nor non-Muhammadans are competent to hold the office of Sajjadanashin, or spiritual superior". Mulla in his Principles of Mahomedan Law (13th Edition) at page 204, after giving a similar description as that of Ameer Ali proceeds to state: "***The status of a Sajjadanashin is higher than that of a mutawalli. He is the head of the institution and has a right to exercise super, vision over the mutawall's management. But the Sajjadanashin may also be a mutawalli and in that case, with reference to the wakf property he is in no better position than a mutawalli.*** He has no power to borrow money for the purpose of carrying out the objects of the trust but he may like a mutawalli borrow money and incur debt, with the "sanction of the Court, for the preservation of the wakf property. The Court may remove a *Sajjadanashin* for misconduct and when framing a scheme may separate the offices of *Sajjadanashin* and mutawalli". Tyabji in his Muhammadan Law (3rd Edition) at page 535 has the following instructive note on the pretensions of persons who seek to describe themselves as *Sajjadanashins* and about their removal: "*Sahib-E Sajjada, Gaddinishin*, are variants. See Ss. 11 B. 458(7A) n., *Sec. of St.* v. *Mohiuddin Ahmed*, *Piran* v. *Abdool Karim*, *Zoolekha B.* v. *Syed Zunul kbedin*, *Munavaru B.S.* v. *Mir Mahapalli*, *Syed Sha Md. Kazim* v. *Syed Abi Saghir*. Removal of Sajjadanishin ib. 347. *Sajjada Shah* v. *Shaw Habit*, S. 491, III. 3.

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		(So called *Sajjadanashin*, without any disciples (680); ceremonies to secure homage of ignorant Muslims of neighbourhood (679); judgment of Abdur Rahim, J. very instructive; as report not easily available, full statement given: grant in 1776 of two villages to holy man, Hazrat Khaja Rahmatulla for feeding poor; eight other villages transferred for nominal price, to be dedicated for poor and mosque; tomb of grantee (founder) gained considerable sanctity, so as to overshadow mosque. 'There could be little doubt that pious founder himself would have been much surprised at the way his original objects were getting transformed; no doubt main intention by endowment to maintain mosque built by founder, in efficient condition, as house of prayer, so that religion of Islam might spread. Extent to which original objects which Khaja Sahib had in view, obscured in sixties appeared from "prominence acquired by performance of *urs and fatihas* at tomb as feature of institution'. 'That, it is needless to point out, could not have been within the contemplation of the founder himself. When we come to more recent times, we find that the so-called *sajjadanishin* for the time being began to treat the *wakf* properties as if they were his private properties. Only some of the religious ceremonies were kept up, which no doubt served to secure the homage of the ignorant Mussalmans of the neighbourhood for the holder of the office and his family……The mismanagement and misappropriation became more and more flagrant……coming to a head'……Consequently appellant's removal directed by High Court 'from the headship of the institution to which office the designation of *sajjadanishin* or rather *sajjada* was erroneously attached.' The High Court sent down issues whether functions of *sajjadanishin* in any way of a spiritual nature and distinct from those of ordinary *mutawalli* and found that functions of the so-called *sajjadanishin's* office were not of spiritual or religious nature in any sense and that they had no disciples and no doctrines of Sufism or anything else to teach. All that they had to do was to conduct the annual *urs* and to offer *fatihas* at tombs and none of these could be said to be functions incapable of being performed by other Mahammadans. (Cf. *Mahomed Oosman* v. *Essack*, Rahim, J. concludes: Wholly superfluous to retain the office of the so-called *sajjadanishin* in addition to that of of a trustee or *Mutawalli*. The term *sajjadanishin* is an absolute misnomer in connection with this institution, though this is not the only instance in which I have found the word wholly misapplied in this presidency: see for instance Dost *Muhammad Khan* v. *Nazir Ali Saheb* . The attempt made by the defendant who has been guilty of every conceivable act of mismanagement "in connection with the trust, to bolster up his position on the

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		strength of the designation of *sajjadanishin* is utterly wanting in *bona fides*. His evidence in support of his pretensions is transparently false". Babu Ram Verma in his Mahomedan Law (Second Edition) at pages 469 to 471 states: "The head of a *Khangah* is known as *Sajjadanashin* (literally meaning, a person who sits on the *Sajjada* or prayer-mat): *Maule Shah* v. *Ghane Shah Najibuddin* v. *Amir Hasan*. The first *Sajjadanashin* is generally the founder and after his death the spiritual line is continued by the succession of *Sajjadanashins* by virtue of the directions of the founder or by a valid custom and in some places by election: *Syed Shah* v. *Syed Abi, Ghulam Rasul* v. *Qutabuddin, Ghulam Md.* v. *Abdul Eashid, Ali Shah* v. *Fateh Md., Ismailmiya* v. *Wahedani Ali Md.* v. *Ali Akbar* and *Maule Shah* v. *Ghane Shah* . Where practice shows a rule of nomination by the incumbent of his successor, succession by the law of promogeniture is not presumed solely from the fact that the previous *sajjadanashins* were usually the eldest sons: *Muhammad* v. *Muhammad Hamid* . A person does not become a *Sajjadanashin* by earning a livelihood from offerings at a tomb by *Pir Muridii Zinnat Bibi*v. *Emma*. A Court should, in appointing a *Sajjadanashin*, take account of the spiritual tradition and appoint, if possible a descendant of the founder: *Najibuddin* v. *Amir Hasan*. The *Sajjadanashin* and the Aha-dims (Servitors) of a *Dargah* may be entitled to share in the "offerings made at the tomb. The right to offerings cannot be so transferred by a *Sajjadanashin* as to bind his successors. The right is attached to his office and can last only as long as he holds the office: *Altaf Hussain* v. *Ali Rasul*. Fyzee in his outlines of Mahomedan Law, 2nd Edn. at page 276 States: "***The religious head of a khangah is called a Sajjadanashin (literally, one who sits at the head of a prayer-carpet). He is essentially a spiritual preceptor; he may—and generally is—the mutawalli of wakf property, thus, the secular office of a mutawalli must be distinguished from the spiritual status of a Sajjadanashin.*** The special feature of the office of a *Sajjadanashin* is that the original founder has the right to nominate his successor, who, in turn, enjoys the same right. Thus a chain of preceptors (called a *silsila* comes into being, and the followers, known as *murids* pay homage not only to the founder but also to the whole line, including the present link, called *pir* or *murshid*. Theoretically the most illustrious disciple is to be installed as heir

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		apparent, but, according to, custom, in the majority of cases the office becomes hereditary. In one case the *Sajjadanashin* was found to be so worthless that he was removed from the *mutawalliship*, but was allowed to retain the spiritual office (Sajjadanashin) which was considered to be hereditary" [see *Syed Shah Muhammad Kasim* v. *Syed Abi Saghir*; *Ghulatn Mohammad* v. *Abdul Bashid*; and *Mahomed Oosman* v. *Essak Salemahomed*," Saksena in his Muslim Law as Administered in India and Pakistan (Third Edition) defines the rights and powers of a *Sajjadanashin* at page 545 as follow: "A person may hold both the offices of a *mutawalli* and a *Sajjadanashin*, but the Court in framing the scheme under S. 92 of the C.P.C. may separate the two offices. He should give all facilities to the devotees to perform their spiritual rites at the shrine at all reasonable hours. A new *sajjadanashin* cannot be appointed by the Court, nor can he be ordered to furnish accounts. An injunction cannot be issued restraining him from alienating the property. He has full power of disposition over the income of the *waqf* property, unless he spends money in wicked living or on objects alien to his office. But it does not mean that the whole usufruct of a khanqah is at his disposal. The costs of religious ceremonies, etc., must be defrayed first. At some shrines, the members of the founder's family also, other than the *Sajjadanashin*, can share the surplus offerings which remain after payment of expenses. It is the duty of a *Sajjadanashin* to maintain accounts to show that he was rightly and properly spending money of the *waqf* property upon expenses in connection with the object of the *waqf*. It is the duty of the *Sajjadanashin* to apply the income of the *waqf* properties for the purposes of endowment. He has ordinarily full powers of disposition over any surplus income. In the exercise of that power he may, and no doubt it is very desirable that he should, provide for the needs of indigent members of the family. It may even be said that he is under a moral obligation to do so. But legally the disposition of the money is in his hands, subject to the terms of grants under which the property is held and to any proved custom of the institution. Mohammad Noor, J., of the Patna High Court has held that provision for a *Sajjadanashin* is rot a provision for the man but for the institution. A khanqah cannot exist and continue without a *Sajjadanashin*. In other systems, the personal expenditure of the head of such an institution has been curtailed to almost nothing by enjoining celibacy, as for instance, "in the case of Christian monasteries or Hindu *mutts* or *sangats*. But Islam prohibits celibacy, and a saint with family is the rule rather than an exception. In these circumstances, devotees and adherents of khanqahs have always made provisions for maintenance of the *Sajjadanashin* and his family, so that he may devote all his

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		time to imparting religious and spiritual instructions to his disciples and be free from secular cares. A *Sajjadanashin* is an integral part of the institution and the central figure so to speak therein. Its existence depends on his personality. In him is supposed to continue the spiritual line. Therefore, provision for his maintenance and that of his descendants is a provision for him as the head of the institution. It is a trust and not a personal grant. [*Khanvja Muhammad* v. *Hamid* ; *Vidya Varuthi* v. *Balaswami*; *Muhammad Hamid* v. *Nine Muhammad* ; *Zooleka Bibi* v. *Abdein*; *Eldrus* v. *Eldrus*]". Then, in regard to the removal of a *Sajjadanashin* Saksena points out that there are conflicting views that a *sajjadanashin* can be removed for misconduct, though there is a contrary opinion as well that such misconduct has to be Judged with such modifications as may be required as in the case of heads of other Muslim or Hindu institutions. It is for instance a grave misconduct when the *sajjadanashin* spends money on gramo phone records while making default in payment of the road cess dues: *Najiuddin* v. *Amir Hassan*. He would be also guilty of breach of duties, if he neglects to repair *waqf* property notwithstanding funds in his hands: (*Ibid*). **16.** Bearing this analysis in mind, if we examine the facts of this case, we find that the first defendant cannot be described as a *sajjadanashin* of this Pottalpudur Mohideen Andavar Pallivasal, which is certainly not a Dargah. But at the same time on account of certain duties performed by him which may even be opposed to the strict tenets of Islam viz., like officiating at the Santhanakudam and taking the offerings placed inside it, this first defendant is something more than a Mutawalli and something less than a *sajjadanashin* and he can be legitimately described as the Swami (a fitting Tamil epithet, to the application of which to the first defendant the plaintiffs Lebbais are agreeable) and Mutawalli of the suit Pallivasal. This first defendant is claiming to be described as *sajjadanashin* for the first time in order to attract to himself the privileges of that office viz., absolute disposition of property, non-accountability etc., set out above. It is further made clear that this Swami-cum-Mutawalliship of this first defendant is hereditary within the limits already set out above and it is on that footing that we shall proceed to examine the scheme framed by the learned Subordinate Judge and modify it suitably.
19.	***Sardar Ali Shah v. Gehne Shah,***	**3.** This has been translated above as follows: "And for all these purposes and for the whole management we shall remain under the supervision of Sardar Ali Shah." The wording is not happy, but the meaning seems

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	1933 SCC OnLine Lah 50 : AIR 1933 Lah 444 **[*Lahore High Court*]**	to be clear enough. Sardar Ali Shah alone is given the power of supervision and it was obviously intended that Gahne Shah in the discharge of his duties as a Muttawali, should be subject to the "supervision" of appellant. The contention of the respondent that he stands on an equal footing with the appellant cannot therefore be accepted. The agreement however does not unfortunately define the precise scope of this power of supervision and the question is not free from difficulty. ***To decide this question we must ascertain what are the duties and the status of the Sajjadanashin and the Muttawali respectively. The agreement does not specify the duties of the Sajjadanashin and the Muttawali, and in the absence of such specification, we must look to the Mahomedan law for the purpose. The distinction between the status and duties of a Sajjadanashin and a Muttawali was considered by the Calcutta High Court in Piran v. Abdul Karim [(1892) 19 Cal 203.]*** . The view taken therein was followed by that Court again in *Secy, of State* v. *Mohideen* [(1900) 27 Cal 674.] and was cited with approval by their Lordships of the Privy Council in *Vidya Varuthi* v. *Balasawami Aiyar*[AIR 1922 PC 123 : 65 IC 161 : 48 IA 302 : 44 Mad 837 (PC).] . A Division Bench of this Court had also occasion to consider the distinction in a case to which the appellant and the respondent in this case were parties and which is reported as *Gahne Shah* v. *Maula Shah* [AIR 1930 Lah 728 : 125 IC 633.] . The gist of the leading authorities or the subject has been summarized as follows in the latter ruling : vide p. 635 of 125 I.C: "Suffice it to say that the Sajjada is the head of the institution, the superior of the endowment the teacher of religious doctrines and rules of life and the manager of the institution and the administrator of its charities. He is not only a Muttawali but also a spiritual preceptor and curator of the shrine where his ancestor is buried. The Muttwali has charge of the secular affairs of the endowment, a mere manager or superintendent appointed to administer the affairs of the endowment and only a procurator having no beneficial interest." **4.** ***It will be clear from the above that the status of a Sajjadanashin is higher than that of a Muttawali. He is the head of the institution and as such is not only the teacher of religious doctrines and rules of life, but also the manager of the institution and the administrator of its charities. The Muttawali, on the other hand, is merely in charge of the secular affairs of the institution. He is a manager or a superintendent, but has no beneficial interest in the endowment and is not connected with the preaching of religious doctrines. It will be thus observed that the Sajjadanashin has all the powers of a Muttawali, when there is no separate Muttawali. When a separate Muttawali is appointed, these powers will naturally be exercised by, the***

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		Muttawali. The Sajjadanashin is, however still the head of the institution;by virtue of his office and the agreement between the parties referred to above, in so far as it gives powers of supervision to the Sajjadanashin, seems to be in keeping with the relative position of the Sajjadanashin and the Muttawali under Mahomedan law. The agreement however makes it clear that the Sajjadanashin will not have the power to remove the Muttawali from office for misconduct or disobedience and in case of a difference of opinion, the matter must be referred to the referees named in the agreement and eventually to the bhek and the panchayat of the proprietary body, if necessary. It seems to me therefore that subject to this qualification, the management of properties by the respondent, as a Muttawali, must be considered to be subject to the "supervision" of the Sajjadanashin. This supervision must necessarily involve a certain amount of control, though of a limited character. For instance, for the exercise of this right of supervision, it may be necessary for the Sajjadanashin to inspect accounts, or acquaint himself with the details of the management and to see how it is working. He would therefore be, I think, within his rights, in requiring the respondent to submit accounts or to furnish necessary information; and to issue suitable directions, when necessary.
20.	***Gahne Shah v. Maula Shah,*** **1930 SCC OnLine Lah 163** **[*Lahore High Court*]**	**7.** It is unnecessary to consider the relative status, duties and responsibilities of a sajjadanashin and a mutwalli as these have been well defined and set out in authoritative works on the subject of Hindu and Muhammadan Religious Endowments and by judicial decisions, inter alia Hindu and Muhammadan Endowments by *Ganapathi Iyer Piran* v. *Abdul Karim* [[1892] 19 Cal. 203.] , *Vidyavaruthi Thirthaswamigal*v. *Baluswami Aiyar* [A.I.R. 1922 P.C. 123 : 44 Mad. 831 : 48 I.A. 302 (P.C.).] and *Khauaja Mahomed Hamid* v. *Mian Mahmud* [A.I.R. 1922 P.C. 384 : 4 Lah. 15 : 50 I.A. 92 (P.C.).] . Nor is it necessary to consider the point urged by Mr. Sawhney on behalf of the appellant as to the liability of the mutwalli whether elected or appointed to removal from his office by the sajjadanashin. ***Suffice it to say that the sajjala is the head of the institution, the superior of the endowment; the teacher of religious doctrines and rules of life and the manager of the institution and the administrator of its charities. He is not only a mutwalli but also a spiritual preceptor and curator of the shrine where his ancestor is buried. The mutwalli has charge of the secular affairs of the endowment, a mere manager or superintendent appointed to administer the affairs of the endowment and only a procurator having no beneficial interest***; vide paras. 163-A and 175 of Mulla's Mahomedan Law, 8th Edn. and pp. 497, 498 and 509 of Ganapathi Iyer's work, 2nd Edn., 1918.

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		8. On pp. 510 and 511 of the same work it is remarked that: "succession to the office of sajjada does not depend on the ordinary law of property and no right of inheritance can attach to his office. Succession depends on the rules, if any, made by the founder. Where the rules are not expressed in the deed of endowment they may be deduced from usage. The usage that must be looked to is that usage that governs the particular institution. The office involving personal qualifications, hereditary succession or succession by primogeniture is out of place. The succession therefore generally goes by appointment. The custom generally in the case of dargas is for the fakirs and murids of the deceased man assembled on the third day of death and assisted by the sajjadas of neighbouring dargas to elect a person and instalkhim, as the successor of the deceased. Where the succession is by appointment it has still to be proved who is entitled to appoint. The appointment may be either by the appropriator or his successor, or executor, or any person pointed out by the founder, or the ruling power. But ordinarily the general usage is for the last incumbent to nominate."
21.	***Sardar Ali Shah v. Fateh Mohammad Mutwali,*** **AIR 1935 Lah 657**	"1. Originally the offices of Sajjadah nashin and mutwalli were combined in one person. The last of these was Jhande Shah. On his death in 1922 the two offices were separated by the bhek or order. Sardar Ali Shah, who is the defendant in this case, was appointed the sajjadah nashin or spiritual head, and Gehne Shah was appointed mutwalli, that is, the person in charge of the secular affairs of the institution. Each was able successfully to establish his right against other claimants."
22.	***Mahabir Prasad Marwari vs Syed Shah Mahommed Yahia,*** **AIR 1936 Pat 390**	**<u>Unnumbered last para on internal page 91</u>** The right of a trustee to be indemnified out of the trust property for expenses incurred by him is a matter of the particular trust concerned and of the rules applicable to a trust of the class to which it belongs. In this case the trust is of the class known and waqf and of the variety founded for the perpetuation of a religious establishment based on the personality of some deceased saint. In this kind of waqf the duty of the mutwalli extends to the performance of religions observances and he is also the religious superior of the establishment. Such a mutwalli is called a *sajjada-nashin*. "*Sajjada* is the carpet on which prayers are offered and *nasthin* is the person seated thereon. The *Sajjadanashin* is not only a mutwalli but also a spiritual preceptor. He is the

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		curator of the *dargah* where his ancestor lies buried, and in him is supposed to continue the spiritual line (*silsila*). These *dargahs* are the tombs of celebrated dervishes, who, in their lifetime, were regarded as saints ".(See *Ameer Ali's Muhammadan law*, 4th edition, Volume I, page 443). There is no dispute that the trust is of this character. **Unnumbered last para on internal page 92:** We have snow to consider the position of a mutwalli in the matter of his power to bind the trust funds to pay debts incurred by him. The fact that in this case the *mutwalli* is a *sajjadanashin* is of little, if any, importance. Having regard to the nature and object of the trust to perpetuate the memory of a particular saint, the *sajjadanashin* can only be chosen from among the saint's descendants and he is under an obligation, in addition to his duties as mutwalli (i.e. managing the trust property and paying out of it any allowances reserved by the trust deed to specified persons or classes of persons) to carry out religious ceremonial. But in the matter of the trust funds he is in no better position than that of any other mutwalli. In this capacity he may borrow money and incur debts for the preservation of the trust property, but even then only with the sanction of the *Kazi* (whose modern representative is the District Judge) and the *Kazi* may authorize him to create an incumbrance upon the waqf property. If the income from the property should decline he must cut down the payments to beneficiaries. He may not pay dividends out of capital and in no case may be mortgage the capital to pay of loans without the consent of the *Kazi*. The learned authorities cited by Mr. Ameer Ali at pages 470 and 471 of the work referred to establish this limitation upon the power of the mutwalli, and the history and nature of this particular waqf is fully described in the judgment of this Court in *Syed Shah Md. Kazim* v. *Abi Saghir.* In the matter of the limitation upon his powers he is in a position other than that of a Mahant of a Hindu math who appears to have the power of pledging the credit of the math not merely to preserve it from loss or destruction but for the carrying on of the daily ordinary objects for which the math was founded. **Unnumbered last para on internal page 95:** ***It has been argued that there is no reason why the creditor of a Mahanth should be in a position better than that of the creditor of a sajjadanashin. But it should be realised that although in so far as the creditors of all kinds of trustees are concerned, they stand in the same position by virtue of the doctrine of subrogation,***

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		nevertheless the trustees of the two kinds of trusts into whose shoes the respective creditors are called have widely different powers with respect to the trust fund.

ANNEXURE G

POWER OF REMOVAL OF MATHADHIPATHI IN HINDU ENDOWMENT ACTS

Andhra Pradesh Charitable And Hindu Religious Institutions And Endowments Act, 1987

51. Removal of Mathadhipathi –

(1) The Dharmika Parishad may suo motu or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he-

(a) is of unsound mind;

(b) is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee;

(c) has ceased to profess the Hindu religion or the tenets of the math;

(d) has been sentenced for any offence involving moral turptitude, such sentence not having been reversed;

(e) is guilty of breach of trust, or mis-appropriation in respect of any of the properties of the math;

(f) commits persistent and wilful default in the exercise of his powers or performance of his functions under this Act;

(g) violates any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;

(h) leads an immoral life; or

(i) fails or ignores to implement the principles set out in clause (17) of section 2.

(2) The Dharmika Parishad shall frame a charge on any of the grounds specified in sub-section (1) against the mathadhipathi or trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Dharmika Parishad may, by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee, his explanation and the finding on such charge together with the reasons therefor:

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Dharmika Parishad against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government. **(**3) Pending the passing of an order under sub-section (2), the Dharmika Parishad may suspend the mathadhipathi or the trustee. (4) Any mathadhipathi or trustee aggrieved by an order passed by the Dharmika Parishad under sub-section (2) may within ninety days from the date of the order appeal to the High Court against such order.
152. Constitution of Andhra Pradesh Dharmika Parishad- (1) The Government shall, by notification in the Andhra Pradesh Gazette constitute the 'Andhra Pradesh Dharmika Parishad' for the State consisting of the following members, namely:- (i) Minister for Endowments who shall be the Chairman; (ii) The Principal Secretary/Secretary to Government, Revenue Department in charge of religious and Charitable Institutions and Endowments; (iii) The Commissioner of Endowments who shall be member secretary; (iv) The Executive Officer, Tirumala Tirupathi Devasthams; (v) one representative each from the Chairman of Boards of Trustees from section 6 (a) (i) and (ii), section 6 (b) (i) and (ii), section 6 (c) (i) and (ii) and two Mathadhipathis published under section 6 (d) of the Act; (vi) Retired Senior Officer of the Government who is a devout Hindu and has experience of and commitment to improve the Hindu Temple System, to be nominated by the Government; (vii) A retired senior officer of the Endowments Department; (viii) Retired Judge of the High Court who is a devout Hindu and has commitment to improve the Hindu Temple System; (ix) A legal luminary/Advocate aged more than 62 years who is a devout Hindu and has experience and has commitment to improve the Hindu temple system.

(x) two prominent philanthropists who have a track record of establishment, maintenance and supporting various endowments, Charitable and Hindu religious institutions to be nominated by the Government;
(xi) two Agama pandits to be nominated by the Government;
(xii) one chartered accountant and who is a Devout Hindu and has a commitment to improve the Hindu temple system, to be nominated by the Government.

(2) The Parishad may for the purposes of consultation, invite any person having experience and specialised knowledge in any subject under its consideration to attend its meetings and every such person shall be entitled to such allowances as may be prescribed.

(3) The powers, functions and term of office etc., of the members of "Andhra Pradesh Dharmika Parishad shall be such, as may be prescribed.

(4) The Government may by order delegate its powers and functions to the Andhra Pradesh Dharmika Parishad.

The Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987

51. Removal of Mathadhipathi –
(1) The Dharmika Parishad may suo motu or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he-
(a) is of unsound mind;
(b) is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee;
(c) has ceased to profess the Hindu religion or the tenets of the math;
(d) has been sentenced for any offence involving moral turptitude, such sentence not having been reversed;
(e) is guilty of breach of trust, or mis-appropriation in respect of any of the properties of the math;

(f) commits persistent and wilful default in the exercise of his powers or performance of his functions under this Act;
(g) violates any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;
(h) leads an immoral life; or
(i) fails or ignores to implement the principles set out in clause (17) of section 2.

(2) The Dharmika Parishad shall frame a charge on any of the grounds specified in sub-section (1) against the mathadhipathi or trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Dharmika Parishad may, by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee, his explanation and the finding on such charge together with the reasons therefor:

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Dharmika Parishad against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government.

(3) Pending the passing of an order under sub-section (2), the Dharmika Parishad may suspend the mathadhipathi or the trustee.

(4) Any mathadhipathi or trustee aggrieved by an order passed by the Dharmika Parishad under sub-section (2) may within ninety days from the date of the order appeal to the High Court against such order.

52. Filling of temporary vacancies in the office of the mathadhipathi –
(1) Where a temporary vacancy occurs in the office of the mathadhipathi and there is a dispute in regard to the right of succession to such Office, or where the mathadhipathi is a minor and has no guardian fit and willing to act as guardian, or where the mathadhipathi is under suspension under sub-section (3) of section 51 the Dharmika Parishad shall, if it is satisfied after making an inquiry in this behalf that an arrangement for the administration of the math and its endowment or of the specific endowment, as

the case may be, is necessary, make such arrangement as it thinks fit until the disability of the mathadhipathi ceases or another mathadhipathi succeeds to the office, as the case may be. (2) In making any such arrangement, the Dharmika Parishad shall have due regard to the claims, if any, of the disciples of the math. (3) Nothing in this section shall be deemed to affect anything in the Andhra Pradesh (Andhra Area) Court of Wards Act, 1902 and the Telangana Court of Wards Act, 1350 F.
53. Filling of permanent vacancies in the office of mathadhipathi – (1) Where a permanent vacancy occurs in the office of the Mathadhipathi, by reason of death or resignation or on account of his removal under section 51 or otherwise the person next entitled to succeed, according to the rule of succession laid down by the founder, or where no such rule is laid down, according to the usage or custom of the math, or where no such usage or custom exists according to the law of succession, for the time being in force, shall with the permission of the Dharmika Parishad succeed to the office of the Mathadhipathi. (2) A person for succession to the office of the mathadhipathi under sub-section (1) shall possess the following qualifications, namely:- (a) basic knowledge of the Hindu Religion and Philosophy; (b) knowledge of the relevant scriptures and sampradaya to which the math belongs; (c) capacity to impact the knowledge and preach the tenets of the math to the disciples; (d) religious temperment with implicit faith in discipline and practice; and (e) unquestionable moral character.
152. Constitution of Telengana Dharmika Parishad-

152. (1) The Government shall, by notification in the Telangana Gazette constitute the Telangana Dharmika Parishad for the State consisting of the following members, namely,

(i) Chairman, who shall be a devout Hindu and has experience and commitment to improve the Hindu temple system to be nominated by the Government;

(ii) The Principal Secretary/ Secretary to Government, Revenue Department in charge of religious and Charitable Institutions and Endowments;

(iii) The Commissioner of Endowments who shall be member secretary;

(v) one representative each from the Chairman of Boards of Trustees from section 6 (a) (i) and (ii), section 6 (b) (i) and (ii), section 6 (c) (i) and (ii) and two Mathadhipathis published under section 6 (d) of the Act;

(vi) Retired Senior Officer of the Government who is a devout Hindu and has experience of and commitment to improve the Hindu Temple System, to be nominated by the Government;

(vii) A retired senior officer of the Endowments Department;

(viii) Retired Judge of the High Court who is a devout Hindu and has commitment to improve the Hindu Temple System;

(ix) A legal luminary/Advocate aged more than 62 years who is a devout Hindu and has experience and has commitment to improve the Hindu temple system.

(x) two prominent philanthropists who have a track record of establishment, maintenance and supporting various endowments, Charitable and Hindu religious institutions to be nominated by the Government;

(xi) two Agama pandits to be nominated by the Government;

(xii) one chartered accountant and who is a Devout Hindu and has a commitment to improve the Hindu temple system, to be nominated by the Government.

(xiii) two archakas, one from South Telangana and another from North Telangana, from the temples specified in section 6 (a) (ii) of the Act.

(2) The Parishad may for the purpose of consultation, invite any person having experience and specialized knowledge in any subject under its consideration to attend its meetings and every such person shall be entitled to such allowances as may be prescribed.

(3) The Powers, functions and term of office etc., of the members of Telangana Dharmika Parishad shall be such, as may be prescribed.

(4) The Government may by order delegate its powers and functions to the Telangana Dharmika Parishad.