

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

(PUBLIC INTEREST LITIGATION)

WRIT PETITION (CIVIL) NO. _____ OF 2025

IN THE MATTER OF: -

MUHAMMAD JAMEEL MERCHANT ... PETITIONER

-VERSUS-

UNION OF INDIA & ORS. ... RESPONDENTS

WITH

I. A. NO. OF 2025 : APPLICATION FOR STAY.

PAPER BOOK

(PLEASE SEE INDEX INSIDE)

FILED BY:-

EJAZ MAQBOOL, ADVOCATE FOR THE PETITIONER

RECORD OF PROCEEDINGS

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2.	A copy of the order dated	
3.	A copy of the order dated	
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LISTING PROFORMA
IN THE SUPREME COURT OF INDIA

SECTION (PIL-W)

The case pertains to (Please tick/check the correct box):

- Central Act: **The Constitution of India, 1950**
The Wakf Act, 1995
The Waqf (Amendment) Act, 2025
- Articles: **14, 15, 25, 26, 29 & 300A of the Constitution of India**
- Central Rule: **NA**
- Rule No(s) : **NA**
- State Act : **NA**
- Section : **NA**
- State Rule : **NA**
- Rule No(s) : **NA**
- Impugned Interim order: **NA**
- Impugned Final Order/Decree : **NA**
- High Court : - **NA**
- Names of Judges: **NA**
- Tribunal/Authority: **NA**

-
1. Nature of matter:- **Civil Matter**
2. (a) Petitioner: **Muhammad Jameel Merchant**
- (b) e-mail ID:- **NA**
- (c) Phone No.:- **NA**
3. (a) Respondent No.1: **Union of India**
- (b) e-mail ID: – **NA**
- (c) Phone No.: – **NA**

4. (a) Main category classification: **08 - Letter Petition & PIL Matters**
(b) Sub classification: **0812- Others**
5. Not to be listed before: **NA**
6. (a) Similar disposed of matter with citation, if any, & case details: -
No Similar matter is disposed of.
(b) Similar pending matter with case details: - **Writ Petition (Civil) No. 271 of 2025 and other connected matters.**
7. **Criminal Matters:-**
 - (a) Whether accused/convict has surrendered: Yes No
 - (b) FIR No. **NA** Date: **NA**
 - (c) Police Station: **NA**
 - (d) Sentence Awarded: **NA**
 - (e) Period of sentence undergone including period of Detention/Custody Undergone: **NA**
8. **Land Acquisition Matters: – NA**
 - (a) Date of Section 4 notification: **NA**
 - (b) Date of Section 6 notification: **NA**
 - (c) Date of Section 17 notification: **NA**
9. **Tax Matters: State the tax effect: NA**
10. **Special Category** (first petitioner/appellant only): **NA**
 Senior citizen > 65 years SC/ST Woman/child Disabled
 Legal Aid case In custody
11. Vehicle Number (in case of Motor Accident Claim matters): **NA**



EJAZ MAQBOOL

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New Delhi

Dated : 08.04.2025

SYNOPSIS

The Petitioner is filing the present Writ Petition under Article 32 of the Constitution in the nature of a Public Interest Litigation praying that the Waqf (Amendment) Act, 2025 be struck down. The Petitioner has encapsulated below how the said Amendment Act is in teeth of constitutional principles.

The Act amends the definition of a waqf stating that a waqf can be made only by a person showing or demonstrating that he is practicing Islam for at least five years. The same is in teeth of the judgment delivered by this Hon'ble Court in *K.S. Puttaswamy (Privacy-9J.) v. Union of India* (2017) 10 SCC 1 that freedom of religion encompasses the right not to express one's religious choices. It was held as follows:

*“Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, **the faith one will espouse** and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. **The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world.**”* [Emphasis supplied]

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The Petitioner submits that requiring a person to demonstrate that he has practiced Islam for five years violates his right not to express his religious choices to the world. It also impinges the larger freedom of the individual to remain silent regarding deeply personal issues. The amending Act creates a situation where to determine the validity of a waqf, courts may have to heavily scrutinize and record evidence on personal aspects of the life of a settlor including whether he prayed, fasted, performed pilgrimages or not.

Section 4(ix)(b) which omits waqf by user from the definition of waqf in Section 3(r) of the 1995 Act. Similarly, Section 21(a) of the Amending Act adds Section 36(1A) which says that from the commencement of the Waqf (Amendment) Act, 2025, “*no waqf shall be created without execution of a waqf deed*”. The provision is discriminatory as in Hindu law, trusts may be created even without a deed. The Judicial Committee of the Privy Council has held in *Lala Hem Chand v. Lala Pearey Lal & Ors.* [a case involving Jain parties governed by Mitakshara law] on the authority of Mulla’s *Principles of Hindu Law*, that no deed is needed to create an endowment. This Hon’ble Court has held in *Dasratha Rami Reddy vs Subba Rao* (1951) SCR 112 that dedication and charity need not be by instrument or grant and can be established by conduct. One of the foremost authorities on Hindu law [Chief Justice BK Mukherjea, “*The Hindu Law of Religious*

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and Charitable Trusts,” Fifth Edition, Pgs. 105-106] has taken the same view. It is well settled that while judging the validity of one law, the countervailing factors created by another law may be taken into consideration. The Act has established a discriminatory legal regime where charitable endowments may be created without deeds by those governed by Hindu law, while those who wish to make a waqf cannot do so.

The Section 5 of the Amendment Act has added Section 3A(2) to the 1995 Act. This states that the “*creation of a waqf-alal-aulad shall not result in denial of **inheritance rights of heirs**, including women heirs, of the waqif or any other rights of persons with lawful claims*”. [Emphasis supplied.] The Petitioner submits that this is a contradiction in terms. In Muslim law, in the lifetime of the owner of the property, no person has any lawful claim or right of inheritance against the owner. A Muslim is the absolute owner of his property and this proposition applies to all properties as the distinction between self-acquired and family properties is largely absent from Muslim law. [Please Mulla, *Principles of Mahomedan Law*, 23rd Edition, Page 58] For example, a Muslim may sell his entire property in his lifetime and his children/spouse/parents and other prospective heirs will have no right to object.

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There is no concept of birthright in Muslim law and the rights of the heirs accrue only after the death of the owner. [Mulla, Pg.58] The Hon'ble High Court of Judicature at Allahabad noted in *Hasan Ali vs Nazo*, 1889 SCC OnLine All 29 that the Judicial Committee of the Privy Council in *Abdul Wahid vs Nuran Bibi* 1885 SCC OnLine PC 4, approved the proposition that in Muslim law the expectant right of an heir in the lifetime of the owner is a mere possibility and not a present or vested interest. Therefore, Section 3B of the newly amended Act allows prospective heirs to invoke against the owner, rights and claims which do not exist during the lifetime of the owner. It goes without saying that the Legislature cannot protect what does not exist.

Section 3(ix)(e) of the Amending Act which adds a proviso at the end of Section 3(r) of the 1995 Act is void. The proviso says that that the existing waqf by user properties “*registered on or before the commencement of the Amendment Act, will remain as waqf properties except that the property, wholly or in part, is in dispute or is a government property*”. [Emphasis supplied.] The Petitioner submits that the provision is vague and arbitrary and should be struck down. The word ‘dispute’ is not defined anywhere. Further, the Amending Act makes no distinction between an erroneous yet bonafide claim against the waqf and frivolous claims aimed at scandalizing the waqf and abusing the legal process. The Amendment Act paves the way for

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frivolous litigation which may be launched to harass the mutawallis and beneficiaries of waqf properties. It is further submitted that the Amendment Act turns settled legal principles on their head by stating that a property “will remain as waqf” only if it is not in dispute. It goes without saying that the property of any trust does not cease to be a trust property merely because a person claiming adversely to the trust advances the claim that it is not trust property.

Section 3C which has been added by the Amendment Act is void for vagueness. It states that “*any government property identified or declared as waqf before or after the commencement of this Act, shall not be deemed a waqf property.*” [Section 3(fb) which has also been added vide the Amendment Act says that “*any moveable or immoveable property or part thereof **belonging** to a government organization*” is a government property. (Emphasis supplied.)] The Petitioner submits that the said provision takes a simplistic view of land law without considering that in India, rights and interests of the Government vary even in lands vested in it. For example, an individual who is a statutory tenant for the purpose of a land reform legislation may have all the rights of an owner even though the land vests in the State. Similarly, there are leasehold properties which vest in the government but some elements of the traditional relationship between lessor and lessee are missing from the relationship between the State

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and the private individuals involved. The definition of government property does not clear the confusion either as it uses the expression “belonging” which could have various meanings.

The proviso to Section 3B provides that a property shall not be treated as waqf property till the designated officer submits his report whenever any question arises whether a property is a waqf or a government property. The Petitioner submits that the Amendment Act does not provide for any mechanism to ensure that the Waqf Board or the stakeholders in the waqf are able to make a representation before the waqf ceases to be treated as a waqf. When such severe civil consequences flow from a State action, natural justice (enshrined in Articles 14 and 21) warrants that the affected person be given a hearing. Section 3B, particularly in light of the proviso, may create dangerous situations. For example during the pendency of the inquiry, the Government may invoke the proviso to dispose of the land and create third party rights and irreversible equities, rendering the inquiry infructuous.

The object of tribunalisation is to place certain matters requiring specialized knowledge beyond the pale of regular system of adjudication of disputes. Making judgments of a tribunal directly appealable defeats the object of tribunalisation. This Hon’ble Court has

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held in *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651 that a tribunal does not have the trappings of a court. The Judicial Committee of the Privy Council in *Nagendra Nath Dey v. Suresh Chandra Dey* [AIR 1932 P.C. 165] has defined appeal as '*an application by a party to an appellate Court asking it to set aside or revise a decision of a subordinate Court.*' [Emphasis supplied].

The Amendment Act has established a statutory regime in which representatives of the Muslim community will have no effective voice in statutory institutions which ensure the effective administration and management of waqf properties. Section 9 of the unamended Act stated that all members of the Central Waqf Council, except the ex officio Chairperson [Union Minister in charge of waqf] shall mandatorily be Muslims. The amendment Act provides that while ten members must mandatorily be Muslims, the remaining eleven may be chosen from any community. Similarly, Section 14 read with Section 16(a) of the unamended Act required all members of the Waqf Boards to be Muslims. The amended Act provides with respect to Waqf Boards of States and Delhi that only four members have to be mandatorily Muslim while seven may be chosen from any community. Even the requirement that the Board CEO be a Muslim has been done away with. Thus, there may be a situation where the Waqf Board is controlled by non-Muslim members with an unassailable majority led by a non-

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Muslim chairman and a non Muslim CEO as Secretary. The Muslim members may be reduced to a minority with no effective voice in the administration of their community's religious and charitable trust. The same is clearly arbitrary and violative of Articles 14,19 and 21.

The provisions in the Amendment Act which allow non Muslims to be in an unassailable majority in the Waqf Board and the Central Waqf Council are colorable and therefore liable to be struck down. The Legislature refrained from clearly depriving Muslims of control over institutions which run Muslim religious denominations directly on a day to day basis like mosque committees, dargah committees, mutawallis and other such institutions. It, however, seeks to achieve indirectly the same by making these institutions subject to the supervision and administration of a Waqf Board which may possibly have an unassailable majority of non-Muslim members led by a non Muslim Chairman. The same is a violation of Article 25 which enshrines the freedom of religion and Article 26 which gives religious denominations the right administer their property.

The Amendment Act has created an absurd situation where the power to investigate and determine whether a property is waqf under section 32(2)(n) is intact while the provision which deals with the mode of the exercise of the power (Section 40) has been done away with. This

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Hon'ble Court has held in *State of Telangana v. A.P. State Wakf Board*, 2022 SCC OnLine SC 159 that Section 32(2)(n) is the source of power to determine whether a property is waqf but the manner of exercising that power is contemplated under Section 40 of the 1995 Act. It was held that the Wakf Board has power to determine the nature of the property as wakf under Section 32(2)(n) but after complying with the procedure prescribed as contained in Section 40.

Applying the law of limitation to waqf [vide amended Section 107] defeats the purpose behind the Act, namely protection of waqf. The principle "*once a waqf always a waqf*" is rendered otiose if limitation is allowed to run against the waqf. Particularly harmful to waqf is the doctrine of adverse possession as it vests title in those who set up a hostile claim against the true owner. The observations of this Hon'ble Court in *State of Haryana v. Mukesh Kumar*, (2011) 10 SCC 404 on the nature of the doctrine of adverse possession are as follows: -

"44. Adverse possession allows a trespasser- a person guilty of a tort, or even a crime, in the eye of the law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon

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conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.”

LIST OF DATES

- 1954 Wakf Act, 1954, received assent of the President. It was made applicable to Wakfs created before or after its commencement and established State Wakf Boards for management of Wakf properties.
- 1995 Wakf Act, 1995, received assent of the President thereby repealing the Wakf Act, 1954. It introduced Wakf Tribunals for resolution of disputes over Wakf properties and mandated surveys of Wakf properties across India to prevent encroachment.
- 20.09.2013 Wakf (Amendment) Act, 2013, received assent of the President thereby amending the Wakf Act, 1995. It enhanced protections against encroachment and mandated computerization of Wakf records.

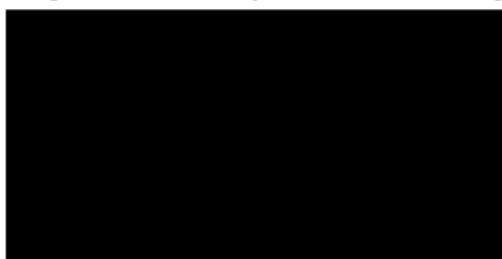
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05.05.2025 The President of India gave assent to the Waqf
(Amendment) Bill, 2025. The Amendment Act was
notified in the Gazette.

08.04.2025 Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA**CIVIL ORIGINAL JURISDICTION****(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)****(PUBLIC INTEREST LITIGATION)****WRIT PETITION (CIVIL) NO. _____ OF 2025****IN THE MATTER OF:**

MUHAMMAD JAMEEL MERCHANT



... Petitioner

-VERSUS-

1. UNION OF INDIA
Through its Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi - 110001
Contesting
... Respondent No.1
2. UNION OF INDIA
Through its Secretary,
Ministry of Minority Affairs,
Government of India,
11th Floor, Pandit Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi - 110003
Contesting
... Respondent No.2
3. UNION OF INDIA
Through its Secretary,
Ministry of Law and Justice,
Government of India,
4th Floor, A-Wing, Shastri Bhawan
New Delhi - 110001
Contesting
... Respondent No.3

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA CHALLENGING THE
CONSTITUTIONAL VALIDITY OF THE WAQF
(AMENDMENT) ACT, 2025**

To,

The Hon'ble Chief Justice of India
and his companion justices of the
Hon'ble Supreme Court of India

The humble petition of the
above named Petitioner:


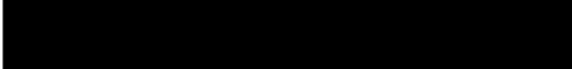
MOST RESPECTFULLY SHOWETH:


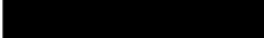
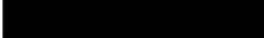
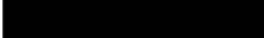
1. The Petitioner is filing the present Writ Petition under Article 32 of the Constitution in the nature of a Public Interest Litigation challenging the constitutional validity of the Waqf (Amendment) Act, 2025.

2. That the Petitioner is a businessman and a social worker who works and resides in the Malwani area of the city of Mumbai in the State of Maharashtra.

3. The Petitioner is a public-spirited person who has initiated public interest litigation in the past.

4. That the necessary details of the Petitioner are as follows

(i) Name	:	Muhammad Jameel Merchant
Father's Name	:	
Address	:	
Occupation	:	
E-mail	:	

Mobile No. : 
Aadhaar No. : 
PAN No. : 
Annual Income : 

Copies of Aadhar Card and PAN Card of the Petitioner are annexed hereto and marked as **ANNEXURE P-1 [Page No. 29]** and **ANNEXURE P-2 [Page No. 30]** as personal identification in this Writ Petition because the same is being filed as a Public Interest Litigation.

5. The Petitioner is a citizen of India.
6. That the Petitioner has no personal gain, private motive or oblique reason in filing the present Petition. The Petition is filed for common cause and the benefits of the society at large.
7. That the Petitioner states that no civil, criminal or revenue litigation involving the Petitioner, which has or could have a legal nexus with the issues involved in the Petition is pending.
8. That the Respondents herein are the Union of India through the Secretary, Ministry of Home Affairs, Union of India through the Secretary, Ministry of Minority Affairs and Union of India through the Secretary, Ministry of Law and Justice.
9. That the Petitioner states that there is no concerned Government authority which could be moved for the reliefs sought for by the Petitioner.

10. That the present Petition is necessitated on account of the fact that the Impugned Acts are, *inter alia*, in violation of Articles 14, 19, 21, 25 and 26 of the Constitution of India.

11. The Brief facts leading to the filing of the present Writ Petition are as follows:-

- (i) That in 1954, Wakf Act, 1954, received assent of the President. It was made applicable to Wakfs created before or after its commencement and established State Wakf Boards for management of Wakf properties. A true copy of the Wakf Act, 1954 dated 1954 is annexed hereto and marked as **ANNEXURE P-3 [Page Nos. 31 to 115]**.
- (ii) That in 1995, Waqf Act, 1995, received assent of the President thereby repealing the Wakf Act, 1954. It introduced Wakf Tribunals for resolution of disputes over Wakf properties and mandated surveys of Wakf properties across India to prevent encroachment.
- (iii) That in 2013, Waqf (Amendment) Act, 2013, received assent of the President thereby amending the Waqf Act, 1995. It enhanced protections against encroachment and mandated computerization of Waqf records. A true copy of the Waqf Act, 1995 after the amendments in 2013 is annexed hereto and marked as **ANNEXURE P-4 [Page Nos. 116 to 165]**.

- (iv) That on 05.04.2025, the President of India gave assent to the Waqf (Amendment) Bill, 2025. The Amendment Act was notified in the Gazette. A true copy of the Waqf (Amendment) Act, 2025 dated 05.04.2025 is annexed hereto and marked as **ANNEXURE P-5 [Page Nos. 166 to 180]**.

12. The following questions of law of general public importance arise for consideration by this Hon'ble Court: -

- (i) Whether the Amending Act which says that a waqf can be made only by a person showing or demonstrating that he is practicing Islam for at least five years is in teeth of the judgment in *K.S. Puttaswamy (Privacy-9J.) v. Union of India* (2017) 10 SCC 1 that freedom of religion encompasses the right not to express one's religious choices?
- (ii) Whether Section 4(ix)(b) which omits waqf by user from the definition of waqf in Section 3(r) of the 1995 Act is discriminatory as endowment without deed is allowed in Hindu law?
- (iii) Whether the Amendment Act contradicts the basic principle of Muslim law laid down by the Judicial Committee of the Privy Council in *Abdul Wahid vs Nuran Bibi* 1885 SCC OnLine PC 4, that the expectant right of an heir in the lifetime of the owner is a mere possibility and not a present or vested interest?

- (iv) Whether making the order of a Tribunal appealable without any intermediate appeal to an Appellate Tribunal is unconstitutional as it defeats the purpose and idea of a Tribunal?
- (v) Whether the Amendment Act has established a statutory regime in which representatives of the Muslim community will have no effective voice in Waqf Boards?
- (vi) Whether the provisions in the Amendment Act which allow non Muslims to be in an unassailable majority in the Waqf Board and the Central Waqf Council are colorable as they violate Articles 25 and 26?
- (vii) Whether the Act should have considered that in India, rights and interests of the Government vary even in lands vested in it?

13. That the Petitioner is therefore filing the present Writ Petition under Article 32 of the Constitution of India on the following amongst other grounds which are taken without prejudice to one another:-

GROUND

- A. That Section 4(ix)(a) of the Amendment Act which amends Section 3(r) of the 1995 Act is in teeth of the judgment delivered by this Hon'ble Court in *K.S. Puttaswamy (Privacy-9J.) v. Union of India* (2017) 10 SCC 1. The said provision in the Amending Act says that a waqf can be made only by a person showing or

demonstrating that he is practicing Islam for at least five years. This Hon'ble Court has held *K.S. Puttaswamy* that freedom of religion encompasses the right not to express one's religious choices. The relevant portion of para 298 is extracted below:-

*“Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, **the faith one will espouse** and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. **The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world.”***

[Emphasis supplied]

The Petitioner submits that requiring a person to demonstrate that he has practiced Islam for five years violates his right not to express his religious choices to the world. It also impinges the larger freedom of the individual to remain silent regarding deeply personal issues. The amending Act creates a situation where to determine the validity of a waqf, courts may have to heavily scrutinize and record evidence on personal aspects of the life of a settlor including whether he prayed, fasted, performed

pilgrimages or not. The same is clearly violative of the Constitution Bench judgment in *Puttaswamy* [supra].

- B. That the Impugned Acts Section 4(ix)(a) of the Amendment Act is clearly arbitrary. Firstly, a newly converted Muslims is not disqualified by Islamic law from dedicating his property to Waqf. Secondly, it is submitted that the Amendment Act has created an absurd situation where a newly converted Muslim may run any waqf as its Mutawalli but would not be able to dedicate his land to the Almighty as waqf. It goes without saying that administering a waqf as mutawalli is an extremely grave responsibility. Administration of the waqf would also require a minimum amount of knowledge of the injunctions of the Islamic faith and familiarity with Muslim social customs. The Act [Section 50A] imposes no disqualification on a recent convert with respect to the post of Mutawalli but prevents him from making a simple declaration that he dedicates his land as waqf. The Petitioner submits that a bare reading of the Act itself shows the absurdity and arbitrariness which lies at the heart of Section 4(ix)(a) of the Amending Act.
- C. That Section 4(ix)(b) which omits waqf by user from the definition of waqf in Section 3(r) of the 1995 Act is

unconstitutional. Similarly, Section 21(a) of the Amending Act which adds Section 36(1A) [which says that from the commencement of the Waqf (Amendment) Act, 2025, “*no waqf shall be created without execution of a waqf deed*”] is unconstitutional. The provision is discriminatory as in Hindu law, trusts may be created even without a deed. The Judicial Committee of the Privy Council has held in *Lala Hem Chand v. Lala Pearey Lal & Ors* [a case involving Jain parties governed by Mitakshara law] on the authority of Mulla’s *Principles of Hindu Law*, that no deed is needed to create an endowment. This Hon’ble Court has held in *Dasratha Rami Reddy vs Subba Rao* (1951) SCR 112 that dedication and charity need not be by instrument or grant and can be established by conduct. One of the foremost authorities on Hindu law [Chief Justice BK Mukherjea, “*The Hindu Law of Religious and Charitable Trusts*,” Fifth Edition, Pgs. 105-106] has taken the same view. It is well settled that while judging the validity of one law, the countervailing factors created by another law may be taken into consideration. The Act has established a discriminatory legal regime where charitable endowments may be created without deeds by those governed by Hindu law, while those who wish to make a waqf cannot do so.

- D. That Section 3(ix)(e) of the Amending Act which adds a proviso at the end of Section 3(r) of the 1995 Act is void. The proviso says that that the existing waqf by user properties “*registered on or before the commencement of the Amendment Act, will remain as waqf properties except that the property, wholly or in part, is in dispute or is a government property*”. [Emphasis supplied.]
- The Petitioner submits that the provision is vague and arbitrary and should be struck down. The word ‘dispute’ is not defined anywhere. Further, the Amending Act makes no distinction between an erroneous yet bonafide claim against the waqf and frivolous claims aimed at scandalizing the waqf and abusing the legal process. The Amendment Act paves the way for frivolous litigation which may be launched to harass the mutawallis and beneficiaries of waqf properties. It is further submitted that the Amendment Act turns settled legal principles on their head by stating that a property “*will remain as waqf*” only if it is not in dispute. It goes without saying that the property of any trust does not cease to be a trust property merely because a person claiming adversely to the trust advances the claim that it is not trust property.
- E. That Section 5 of the Amendment Act is arbitrary and should be struck down. Section 5 of the Amendment Act has added Section

3A(2) to the 1995 Act. This states that the “*creation of a waqf-alal-aulad shall not result in denial of inheritance rights of heirs, including women heirs, of the waqif or any other rights of persons with lawful claims*”. The Petitioner submits that this is a contradiction in terms. In Muslim law, in the lifetime of the owner of the property, no person has any lawful claim or right of inheritance against the owner. A Muslim is the absolute owner of his property and this proposition applies to all properties as the distinction between self-acquired and family properties is largely absent from Muslim law. [Please Mulla, *Principles of Mahomedan Law*, 23rd Edition, Page 58] For example, a Muslim may sell his entire property in his lifetime and his children/spouse/parents and other prospective heirs will have no right to object. There is no concept of birthright in Muslim law and the rights of the heirs accrue only after the death of the owner. [Mulla, Pg.58] The Hon’ble High Court of Judicature at Allahabad noted in *Hasan Ali vs Nazo*, 1889 SCC OnLine All 29 that the Judicial Committee of the Privy Council in *Abdul Wahid vs Nuran Bibi* 1885 SCC OnLine PC 4, approved the proposition that in Muslim law the expectant right of an heir in the lifetime of the owner is a mere possibility and not a present or vested interest. Therefore, Section 3B of the newly amended Act allows

prospective heirs to invoke against the owner, rights and claims which do not exist during the lifetime of the owner. It goes without saying that the Legislature cannot protect what does not exist. The same is a palpable contradiction which renders Section 3B liable to be struck down.

- F. That Section 3B(2) which has been added to the 1995 Act by Section 5 of the Amendment Act is unconstitutional. The said provision requires every waqf registered under the Act, prior to the commencement of the Waqf (Amendment) Act, 2025, to file the details of the waqf and the property dedicated to the waqf on the portal and database, within a period of six months from such commencement. The details sought include the name and address of the creator of the waqf and the mode and date of such creation. It goes without saying that there are many waqfs which are waqf by user and were made centuries ago. In such cases, it is not possible to find out who was the settlor and when and how was the property dedicated. The Amendment Act does not exempt old waqfs or waqf by user from the said provision. The same is void as it places on the administrators of the waqf a burden which is impossible to discharge.
- G. For that Section 3C which has been added by the Amendment Act is void for vagueness. It states that “*any government*

property identified or declared as waqf before or after the commencement of this Act, shall not be deemed a waqf property.” [Section 3(fb) which has also been added vide the Amendment Act says that “*any moveable or immoveable property or part thereof **belonging** to a government organization*” is a government property. (Emphasis supplied.)]

The Petitioner submits that the said provision takes a simplistic view of land law without considering that in India, rights and interests of the Government vary even in lands vested in it. For example, an individual who is a statutory tenant for the purpose of a land reform legislation may have all the rights of an owner even though the land vests in the State. Similarly, there are leasehold properties which vest in the government but some elements of the traditional relationship between lessor and lessee are missing from the relationship between the State and the private individuals involved. The definition of government property does not clear the confusion either as it uses the expression “belonging” which could have various meanings.

- H. That the proviso to Section 3B of the Act added by the Amendment Act is void. As per the said proviso a property shall not be treated as waqf property till the designated officer submits his report whenever any question arises whether a property is a

waqf or a government property. The Petitioner submits that the Amendment Act does not provide for any mechanism to ensure that the Waqf Board or the stakeholders in the waqf are able to make a representation before the waqf ceases to be treated as a waqf. When such severe civil consequences flow from a State action, natural justice (enshrined in Articles 14 and 21) warrants that the affected person be given a hearing. Section 3B, particularly in light of the proviso, may create dangerous situations. For example during the pendency of the inquiry, the Government may invoke the proviso to dispose of the land and create third party rights and irreversible equities, rendering the inquiry infructuous. The danger is particularly grave as there is no timeline mentioned for conducting the inquiry and the same may span years.

- I. That Section 3E of the Amendment Act is clearly discriminatory. The said provision states that no land belonging to members of Scheduled Tribes under the provisions of the Fifth Schedule or the Sixth Schedule to the Constitution shall be declared or deemed to be waqf property. No such restriction has been imposed on creating Hindu religious trusts and charitable endowments vis-a-vis Scheduled Tribes. The Amendment Act is also discriminatory as it prevents Scheduled Tribes who practice

the Islamic faith from making a dedication of their lands which belong to them as per the Fifth and Sixth Schedules to the Constitution while allowing other Muslims to dispose their property as waqf.

- J. That the transfer of ongoing surveys to the Collector has no rational nexus with the object of the Act. The Survey Commissioner was generally a senior civil servant in the revenue Department while the Collector is a relatively junior official. The Collector heads the District administration and therefore is already over burdened.
- K. That Section 83(2) of the Amendment Act is discriminatory as it makes the judgment of the Waqf Tribunal appealable to the High Court within 90 days of the passing of the order by the Tribunal. It is submitted that no such provision exists in the laws dealing with Hindu religious and charitable endowments.
- L. That the object of tribunalisation is to place certain matters requiring specialized knowledge beyond the pale of regular system of adjudication of disputes. Making judgments of a tribunal directly appealable defeats the object of tribunalisation. This Hon'ble Court has held in *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651 that a tribunal does not have the

trappings of a court. The Judicial Committee of the Privy Council in *Nagendra Nath Dey v. Suresh Chandra Dey* [AIR 1932 P.C. 165] has defined appeal as ‘*an application by a party to an appellate Court asking it to set aside or revise a decision of a subordinate Court.*’ [Emphasis supplied]. Therefore, an appeal from a tribunal to the High Court without any intermediate appeal before an appellate tribunal is an anomaly. The Amendment Act is in teeth of the basic principles which lie at the root of the concept of tribunal as it deprives the judgment of the Waqf Tribunal of finality.

- M. That the Amendment Act has established a statutory regime in which representatives of the Muslim community will have no effective voice in statutory institutions which ensure the effective administration and management of waqf properties. Section 9 of the unamended Act stated that all members of the Central Waqf Council, except the ex officio Chairperson [Union Minister in charge of waqf] shall mandatorily be Muslims. The amendment Act provides that while ten members must mandatorily be Muslims, the remaining eleven may be chosen from any community. Similarly, Section 14 read with Section 16(a) of the unamended Act required all members of the Waqf Boards to be Muslims. The amended Act provides with respect

to Waqf Boards of States and Delhi that only four members have to be mandatorily Muslim while seven may be chosen from any community. Even the requirement that the Board CEO be a Muslim has been done away with. Thus, there may be a situation where the Waqf Board is controlled by non-Muslim members with an unassailable majority led by a non-Muslim chairman and a non Muslim CEO as Secretary. The Muslim members may be reduced to a minority with no effective voice in the administration of their community's religious and charitable trust. The same is clearly arbitrary and violative of Articles 14,19 and 21.

- N. That the provisions in the Amendment Act which allow non Muslims to be in an unassailable majority in the Waqf Board and the Central Waqf Council are discriminatory as a bare look at laws dealing with Hindu endowments and charitable institutions shows that all authorities concerned with supervision and administration of Hindu religious and charitable trusts are Hindus.
- O. That the provisions in the Amendment Act which allow non Muslims to be in an unassailable majority in the Waqf Board and the Central Waqf Council are colorable and therefore liable to

be struck down. The Legislature refrained from clearly depriving Muslims of control over institutions which run Muslim religious denominations directly on a day to day basis like mosque committees, dargah committees, mutawallis and other such institutions. It, however, seeks to achieve indirectly the same by making these institutions subject to the supervision and administration of a Waqf Board which may possibly have an unassailable majority of non-Muslim members led by a non Muslim Chairman. The same is a violation of Article 25 which enshrines the freedom of religion and Article 26 which gives religious denominations the right administer their property.

- P. That Section 21 of the Amendment Act which substitutes Section 36(7) is void. The unamended Section 36(7) stated that an application for registration of a waqf should be inquired into by the Board for checking genuineness and correctness of particulars. The amended subsection gives the power to the Collector. The Petitioner submits that the provision is not in consonance with the scheme of the Act and far from streamlining the management of waqf properties creates parallel power centres which will lead to delay and confusion. The Board is the best authority to deal with such measures. The Board maintains records of waqf properties as per Section 32(2)(a). It has Muslim

members who are aware of the customs and norms of Muslim society. A Collector, particularly one who has no experience of dealing with Waqf matters before would find it much more difficult than the Board to check the genuineness and correctness of the application. The provision has no rational nexus with the object of the Act and in fact frustrates. The Petitioner submit that the same is liable to be struck down.

- Q. That the Amendment Act has created an absurd situation where the power to investigate and determine whether a property is waqf under section 32(2)(n) is intact while the provision which deals with the mode of the exercise of the power (Section 40) has been done away with. This Hon'ble Court has held in *State of Telangana v. A.P. State Wakf Board*, 2022 SCC OnLine SC 159 that Section 32(2)(n) is the source of power to determine whether a property is waqf but the manner of exercising that power is contemplated under Section 40 of the 1995 Act. It was held that the Wakf Board has power to determine the nature of the property as wakf under Section 32(2)(n) but after complying with the procedure prescribed as contained in Section 40.
- R. That the application of the Limitation Act vide amendment of Section 107 is clearly discriminatory as laws dealing with

religious and charitable endowments have been exempted from limitation.

- S. That applying the law of limitation to waqf defeats the purpose behind the Act. The principle once a waqf always a waqf is rendered otiose if limitation is allowed to run against the waqf. Particularly harmful to waqf is the doctrine of adverse possession as it vests title in those who set up a hostile claim against the true owner. The observations of this Hon'ble Court in *State of Haryana v. Mukesh Kumar*, (2011) 10 SCC 404 on the nature of the doctrine of adverse possession are as follows:

“44. Adverse possession allows a trespasser - a person guilty of a tort, or even a crime, in the eye of the law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.”

14. The Petitioner craves liberty to urge other grounds in addition to the grounds above at a later stage of the proceedings as appropriate.

15. The Petitioner has not filed any other petition before this Hon'ble Court or any other Court within the territory of India on the subject matter of the instant Petition and for the reliefs prayed for herein.

16. In the aforesaid premises and in the interests of justice, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:-

PRAYER

- (a) Declare the provisions of the Waqf (Amendment) Act, 2025 as unconstitutional; and/or
- (b) Pass such other/further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND, SHALL EVER PRAY.

FILED BY:-



EJAZ MAQBOOL
Advocate for the Petitioner

DRAWN BY:-

Mr. Ejaz Maqbool, Advocate
Mr. Burhan V. Bukhari, Advocate
Mr. Saif Zia, Advocate

Drafted on : 05.04.2025

New Delhi
Filed on : 08.04.2025

IN THE SUPREME COURT OF INDIA**CIVIL ORIGINAL JURISDICTION****WRIT PETITION (CIVIL) NO. _____ OF 2025****IN THE MATTER OF: -**

MUHAMMAD JAMEEL MERCHANT ... PETITIONER

-VERSUS-

UNION OF INDIA & ORS. ... RESPONDENTS

AFFIDAVIT

I, Muhammad Jameel Merchant, [REDACTED]

[REDACTED], do hereby solemnly affirm and state as under:-

1. That I am the Petitioner in the above mentioned Writ Petition and as such I am well conversant with the facts and circumstances of the case and competent to swear the present Affidavit on my own behalf.
2. That I have gone through a copy of the Synopsis and List of Dates running from pages B to L and a copy of the Writ Petition from paragraphs 1 to 16 running from pages 1 to 21 and I state that the contents thereof are true and correct to my knowledge and belief.

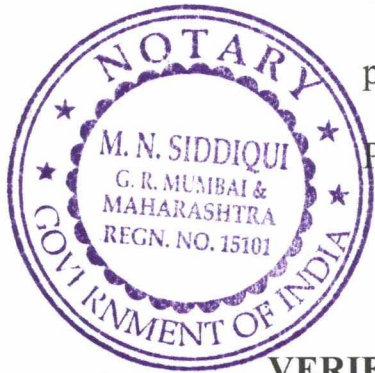




3. That I have gone through copies of the Interlocutory Applications and state that the contents thereof are true and correct to the best of my knowledge and belief.

4. That the annexures annexed to the present Writ Petition are true and correct copies of their respective originals.

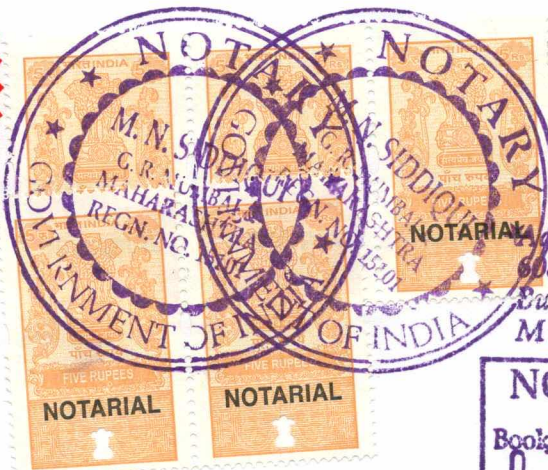
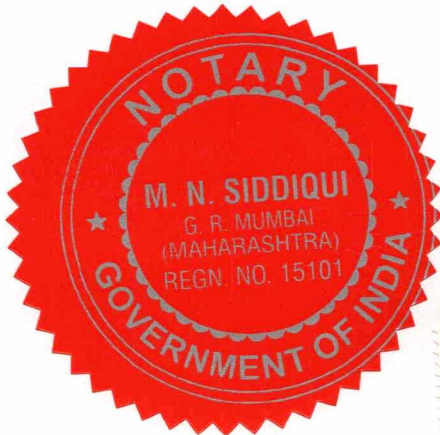
5. That the Petitioner has no personal interests, individual gain, private motive or oblique reasons for filing the present petition. The present petition is not guided for the gain of any individual person, institution or body and there is no motive other than Public Interest in filing the present Petition.



DEPONENT

VERIFICATION

Verified at Mumbai on this 7th day of April, 2025 that the contents of the above Affidavit are correct and true to the best of my knowledge and belief and nothing material has been concealed therefrom.



DEPONENT
BEFORE ME

M. N. SIDDIQUI

Advocate & Notary Govt. of India
608/B, Phulangi CHS Ltd., (Green View Building) Plot No. 67, Mhada Malwani, Malad (W) Mumbai 400095.

07 APR 2025

NOTARY REGISTER	
Book No. <u>7-A</u>	Page No. <u>36</u>
Date <u>07 APR 2025</u>	Sr. No. <u>1009</u>
Signature	

THE CONSTITUTION OF INDIA, 1950

Article 14. Equality before law. -

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. -

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to —

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

¹[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

²[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

³[(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making, —

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special

¹ Ins. by the Constitution (First Amendment) Act, 1951, s. 2 (w.e.f. 18-6-1951).

² Ins. by the Constitution (Ninety-third Amendment) Act, 2005, s. 2 (w.e.f. 20-1-2006)

³ Ins. by the Constitution (One Hundred and Third Amendment) Act, 2019, s. 2 (w.e.f. 14-1-2019)

provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation. – For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

Article 25. Freedom of conscience and free profession, practice and propagation of religion. -

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

- (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. - The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II. - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26. Freedom to manage religious affairs. -

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

Article 29. Protection of interests of minorities. -

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.


(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.


Article 300A. Persons not to be deprived of property save by authority of law. -


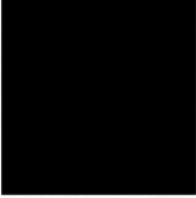
No person shall be deprived of his property save by authority of law.


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ANNEXURE P-1


 भारत सरकार
Government of India


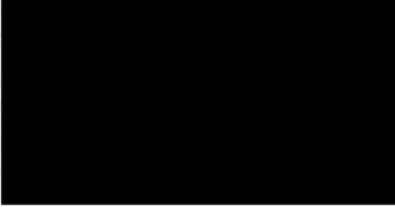


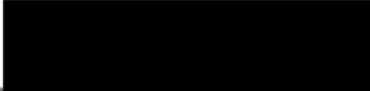
मोहम्मद जमील अब्दुल करीम मर्चेट
Muhammad Jameel Abdul Karim Merchant
जन्म तारीख / 
पुरुष / Male 



माझे आधार, माझी ओळख

 भारतीय विशिष्ट ओळख प्राधिकरण
Unique Identification Authority of India

पत्ता  Address: 



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ANNEXURE P-3

The
Wakf Act, 1954 [Repealed]
(Wakf Act, 1954 [Repealed])

[Act 29 of 1954]

[21st May, 1954]

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SCHEDULE

Wakf Act, 1954

[Act 29 of 1954]

[21st May,
1954]

[*Repealed by Act 43 of 1995, Section 112 (w.e.f. 1-1-1996).*]

An Act to provide for the better administration and supervision of wakfs

Be it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

Chapter I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Wakf Act, 1954.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in a State to which this Act extends on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf for that State; and different dates may be appointed for different States:

²[Provided that, as soon as may be, after the commencement of the Wakf (Amendment) Act, 1984, the Central Government may, by notification in the Official Gazette, appoint a date on which the provisions of this Act, as amended by the Wakf (Amendment) Act, 1984, shall come into force in the States of Uttar Pradesh and West Bengal and in those parts of the States of Gujarat and Maharashtra in

which the provisions of this Act do not apply, and different dates may be appointed for different States or for different areas, and for the different provisions of this Act, as so amended, and, on and from the date so appointed, the corresponding law, applicable to wakfs, in force in that State or in any part thereof, or, as the case may be, in such area, shall cease to operate, and, on such cesser, such corresponding law shall be deemed to have been repealed by an Act enacted by the Legislature of that State, but such cesser shall not affect the previous operation of such corresponding law, and subject thereto, anything done or any action taken in exercise of any power conferred by or under any such corresponding law shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act, as amended by the Wakf (Amendment) Act, 1984, as if this Act, as so amended, were in force on the date on which such thing was done or action was taken :]

³[Provided further that where on account of the territorial changes brought about by the States Reorganisation Act, 1956 (37 of 1956), this Act is, as from the 1st day of November, 1956, applicable only to a part of a State, the Central Government may, by notification in the Official Gazette, bring this Act into force in the remaining part of that State with effect from such date as may be specified in the notification.]

2. Application of the Act.—Save as otherwise expressly provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act:

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer, to which ⁴[the Durgah Khawaja Saheb Act, 1955 (26 of 1955), applies].

3. Definitions.—In this Act, unless the context otherwise requires,—

(a) “beneficiary” means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility ⁵[sanctioned by the Muslim law];

(b) “benefit” does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;

(c) “Board” means a Board of Wakfs established under ⁶[sub-section (1), or as the case may be, under sub-section (1-A), of Section 9];

(d) “⁷[* * *]”

⁸[(dd) “Council” means the Central Wakf Council established under Section 8-A;]

(e) “member” means a member of the Board and includes the Chairman;

(f) "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 ⁹[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, ¹⁰[any person, Committee or Corporation for the time being managing or administering any wakf or wakf 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];

¹¹[(g) 'net annual income', in relation to a wakf, means the net annual income determined in accordance with the provisions of the Explanations to sub-section (1) of Section 46;]

(h) "person interested in a wakf" means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes,—

(i) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khangah, maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;

(ii) the wakif and any descendant of the wakif and the mutawalli;

(i) "prescribed ¹²[, except in Chapter II-A,]" means prescribed by rules made by the State Government under this Act and includes the regulations made by the Board under this Act;

(j) "Shia wakf" means a wakf governed by Shia law;

(k) "Sunni wakf" means a wakf governed by Sunni law;

¹³[(ka) 'Survey Commissioner', means the Survey Commissioner of Wakfs appointed under sub-section (1) of Section 4 and includes any additional or assistant survey commissioner of Wakfs;

(kb) "Tribunal", in relation to any area, means the Tribunal, constituted under sub-section (1) of Section 55, having jurisdiction in relation to that area;]

(l) "wakf" means the permanent dedication by a person professing Islam ¹⁴[or any other person] of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

(i) a wakf by user ¹⁵[but such wakf shall not cease to be a wakf

by reason only of the user having ceased irrespective of the period of such cesser];

¹⁶[(i) grants (including mashrut-ul-khidmat ¹⁷[muafies, khairati, qazi services, madadmash]) for any purpose recognised by the Muslim law as pious, religious or charitable; and]

¹⁸[(iii) a wakf-alal-aulad;]

¹⁹[Provided that in the case of a dedication by a person not professing Islam, the Wakf shall be void if, on the death of such person, any objection to such dedication is raised by one or more of his legal representatives :]

²⁰[(1a) 'Wakf Commissioner' means the Wakf Commissioner appointed under sub-section (1) of Section 21;]

(m) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied.

Chapter II SURVEY OF WAKFS

4. Preliminary survey of wakfs.—(1) The State Government may, by notification in the Official Gazette, appoint for the State a ²²[Survey Commissioner] of Wakfs and as many additional or assistant ²³[Survey Commissioners] of wakfs as may be necessary for the purpose of making a survey of wakf properties existing in the State at the date of the commencement of this Act.

(2) All additional and assistant ²³[Survey Commissioners] of wakfs shall perform their functions under this Act under the general supervision and control of the ²²[Survey Commissioner] of Wakfs.

(3) The ²²[Survey Commissioner] shall, after making such inquiry as he may consider necessary, submit his report ²¹[in respect of wakfs existing at the date of the commencement of this Act in the State or any part thereof,] to the State Government containing the following particulars, namely:—

- (a) the number of wakfs ²⁴[in the State, or as the case may be, any part thereof], showing the Shia wakfs and Sunni wakfs separately;
- (b) the nature and objects of each wakf;
- (c) the gross income of the property comprised in each wakf;
- (d) the amount of land revenue, cesses, rates and taxes payable in respect of such property;
- (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and
- (f) such other particulars relating to each wakf as may be

prescribed.

(4) The ²²[Survey Commissioner] shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

- (a) summoning and examining any witness;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record from any court or office;
- (d) issuing commissions for the examination of any witness or accounts;
- (e) making any local inspection or local investigation;
- (f) any other matter which may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

²⁵[(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).]

5. Publications of list of wakfs.—(1) On receipt of a report under sub-section (3) 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 sub-section (1) and publish, in the Official Gazette, a list of wakfs ²⁶[²⁷[in the State, or as the case may be, the part of the State, whether in existence at the commencement of this Act or coming into existence thereafter,] to which the report relates, and] containing such particulars as may be prescribed.

6. Disputes regarding wakfs.—(1) If any question arises ²⁸[whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of Section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf], the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final:

Provided that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of Section 5:

²⁹[Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969, such suit may be entertained by the civil court within the period of one year from such commencement.]

³⁰[*Explanation.*—For the purposes of this section and Section 6-A, the expression ‘any person interested therein’, occurring in sub-section (1) of this section and in sub-section (1) of Section 6-A, shall, in relation to any property specified as wakf property in a list of wakfs published, under sub-section (2) of Section 5, after the commencement of the Wakf (Amendment) Act, 1984, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under Section 4.]”

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The ³¹[Survey Commissioner] shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

(4) The list of wakfs published under sub-section (2) of Section 5 shall, unless it is modified in pursuance of a decision of the civil court under sub-section (1), be final and conclusive.

³²[(5) On and from the commencement of the Wakf (Amendment) Act, 1984 in a State, no suit or other legal proceeding shall be instituted or commenced in a civil court in that State in relation to any question referred to in sub-section (1).]

► **Limitation under proviso to Section 6 for filing suit.**—Once property is registered in list of wakfs as Wakf-Al-Allah, dispute regarding nature of registered wakfs, held, is open to be examined only within time limit prescribed under Section 6 and merely because appellant-plaintiff in the suit sought declaration that property was Wakf-Al-Aulad, period of limitation would not fall under Article 133 of the Limitation Act. Section 56 of the Wakfs Act has also no application in the context, *Syed Zainul Abedeen v. Rajasthan Board of Muslim Wakf*, (2020) 19 SCC 401.

³³[6-A. power of tribunal to determine disputes regarding wakfs.—

(1) If, if after the commencement of the wakf (Amendment) Act, 1984, any question arises whether the particular property specified as wakf property in a list of wakfs published under sub-section (2) of section 5 is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board of the mutawalli of the wakf, or any person interested therein, may apply to the tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the tribunal in respect of such matter shall be final:

Provided that—

- (a) in the case list of wakfs relating to any part of the State and published or purporting to have been published after the commencement of the wakfs (Amendment) Act, 1984, no such application shall be entertained after the expiry of one year from the date of publication of the list of Wakfs under sub-section (2) of section 5; and
- (b) in the case of list of wakfs relating to any part of the State and published or purporting to have been published at any time within a period of one year immediately preceding the commencement of the Wakf (Amendment) Act, 1984 such an application may be entertained by the tribunal within the period of one year from such commencement:

Provided after that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not be re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provision of sub-section (5) no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason of the pendency of any suit, application or of any appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The wakf commissioner shall not be made a party to any application under sub-section (1).

(4) The list of wakf published under sub-section (2) of section 5, and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Wakf (Amendment) Act, 1984, or which is the subject matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

7. **Recovery of costs of survey.**—(1) The total cost of making a survey ³⁴[including the cost of publication of the list ³⁵[or lists] of wakfs] under this Chapter shall be borne ³⁶[by all the mutawallis of the wakfs the net annual income whereof exceeds one hundred rupees, in proportion to the net annual income accruing in the State to such wakfs], such proportion being assessed by the ³⁷[Survey Commissioner].

(2) Notwithstanding anything contained in the deed or instrument by which the wakf was created, any mutawalli may pay from the income of the wakf any sum due from him under sub-section (1).

(3) Any sum due from a mutawalli under sub-section (1) may, on a certificate issued by State Government, be recovered from the property comprised in the wakf in the same manner as an arrear of land revenue.

8. **Chapter II not to apply to certain States.**—The provisions of this Chapter shall not apply to any State where a survey of wakf properties existing in the State has, before the commencement of this Act, been made under any law in force in that State.

³⁸[Chapter II-A

CENTRAL WAKF COUNCIL

8-A. **Establishment and Constitution of the Central Wakf Council.**—

(1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.

(2) The Council shall consist of a Chairman, who shall be the Union Minister in charge of wakfs, and such other members not exceeding twenty in number, as may be appointed by the Central Government.

(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.]

³⁹[8-B. **Finances of the Council.**—(1) Every Board shall pay from its Wakf Fund annually to the Council such contribution as is equivalent to one per cent. of the aggregate of the net annual income ⁴⁰[* * *] of the wakfs in respect of which contribution is payable under sub-section (1) of Section 46:

Provided that where the Board in the case of any particular wakf has remitted under sub-section (2) of Section 46 the whole of the contribution payable to it under sub-section (1) of that section, then for calculating the contribution payable to the Council under this section, the net annual income ⁴¹[* * *] of the wakf in respect of which such remission has been granted shall not be taken into account.

(2) All monies received by the Council under sub-section (1) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central Wakf Fund.

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central Wakf Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit.]

⁴²[8-C. Accounts and audit.—(1) The Council 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 prescribed by rules made by the Central Government.

(2) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Central Government.

(3) The costs of the audit shall be paid from the Central Wakf Fund.]

⁴³[8-D. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

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

- (a) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council;
- (b) control over and application of the Central Wakf Fund;
- (c) the form and manner in which accounts of the Council may be maintained.

(3) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or ⁴⁴[in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

Chapter III

ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

9. Incorporation.—(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as

may be specified in the notification.

⁴⁵[(1-A) Notwithstanding anything contained in sub-section (1), if the Shia Wakfs in any State constitute in number more than fifteen per cent. of all the wakfs in the State or if the income of the properties of the Shia Wakfs in the State constitutes more than fifteen per cent. of the total income of the properties of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni Wakfs and for Shia Wakfs under such names as may be specified in the notification and in such a case, the provisions of this Act shall, in their application to the State, have effect as if the amendments specified in the Schedule had been made.]

(2) ⁴⁶[The Board] shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

⁴⁷[(3) It shall be lawful for the Board to so re-organise its administrative set-up in the State as to ensure better administration of the wakfs in the State.]

⁴⁸[10. **Composition of the Board.**—(1) The Board shall, in the case of a State as also in the case of the union territory of Delhi, consist of—

- (a) four members, of whom two shall be elected from among themselves by such of the Muslim members of Parliament as have been elected thereto from that State or the union territory of Delhi, as the case may be, and the other two shall be elected from among themselves by such of the Muslim members of the State Legislature as have been elected thereto, and such election 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 elected to Parliament from a State, or, as the case may be the Union territory of Delhi, is only one, or where the number of Muslim members elected to a State Legislature is only one, the Muslim member who has been elected to Parliament from the State or the Union territory of Delhi, as the case may be, and the Muslim member who has been elected to the State Legislature, shall become, by virtue of such election, member of the Board and the remainder of the membership of the Board under this clause shall be filled up by the State Government by appointing suitable persons as members of the Board.

Provided further that where no Muslim has been elected from the State of Union territory of Delhi to Parliament, or, as the case may be to the State legislature, the vacancy in the membership of the Board under this clause shall be filled up by the State Government by the suitable

persons as members of the Board:

Provided also that determining the member of the Shia members or Sunni members of the Board, the State Government shall have regard to the member and value of the Shia Wakfs to be administered by the Board and the appointment of the members shall be made, so far as may be, in accordance with such determination;

- (b) five members, to be appointed by the State Government, of whom—
 - (i) one shall be a Shia in the States where there is no Shia Board;
 - (ii) one shall be a person who, in the opinion of that Government, is a recognised scholar in Islamic theology;
 - (iii) one shall be appointed from among the members of any Muslim organisation in the State; and
 - (iv) two shall be persons possessing administrative experience and knowledge of law;
- (c) one mutawalli, to be appointed by the State Government; and
- (d) the Wakf Commissioner, who shall be, ex officio, member-Secretary of the Board.

Explanation.—The references to “State Legislature” in this sub-section shall be construed in relation to the Union territory of Delhi as references to the Metropolitan Council of Delhi constituted under Section 3 of the Delhi Administration Act, 1966 (19 of 1966).

(2) The Board shall, in the case of a union territory other than the Union territory of Delhi, consist of—

- (a) five members, to be appointed by the Central Government from amongst the categories of persons specified in clause (b) of sub-section (1), and for this purpose, the provisions of the said clause shall apply to the composition of the Board under this sub-section as they apply to the composition of the Board under sub-section (1);
- (b) one mutawalli to be appointed by the Central Government; and
- (c) the Wakf Commissioner, who shall be ex officio, Member-Secretary of the Board.

(3) Whenever the Board is constituted or reconstituted, as the case may be, the members of the Board present at a meeting convened for the purpose by the Wakf Commissioner, shall elect one from amongst themselves (other than the Wakf Commissioner) as the Chairman of the Board.]

11. Appointment of members.—⁴⁹[* * *]

12. Term of office.—The members of the Board shall hold office for five years:

Provided that a member shall, notwithstanding the expiration of his

term of office, continue to hold office until the appointment of his successor is notified in the Official Gazette.

13. Disqualifications for being appointed, or for continuing as, a member of the Board.—A person shall be disqualified for being appointed, or for continuing as, a member of the Board—

- (a) if he is not a Muslim and is less than twenty-one years of age;
- (b) if he is found to be a person of unsound mind;
- (c) if he is an undischarged insolvent;
- ⁵⁰[(d) if he has been convicted of an offence involving moral turpitude, and such conviction has not been convicted or he has not been granted full pardon in respect of such offence;
- (e) if has been, on a previous occasion,—
 - (i) removed from his office as a member mutawalli, or
 - (ii) removed by an order of a competent court or tribunal from any position of trust, either for mismanagement or for corruption.]

14. Meetings of the Board.—(1) The Board shall meet for the transaction of business at such times and places as may be prescribed.

(2) The Chairman, or in his absence, any member chosen by the members from amongst themselves, shall preside at a meeting of the Board.

(3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality of votes, the chairman or, in his absence, any other person presiding shall have a second or casting vote.

15. Functions of the Board.—(1) Subject to any rules that may be made under this Act, ⁵²[general superintendence of all wakfs in State in relation to all members, except those which are expressly required by this Act to be dealt with by the Wakf Commissioner, shall vest] in the Board established for the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs 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 wakfs were created or intended:

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakif, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Muslim law.

⁵³[*Explanation.*— For the removal of doubts it is hereby declared that in this sub-section, ‘wakf’ includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of the Wakf (Amendment) Act, 1984;]

(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 wakf;
- ⁵⁴[(b) to ensure that the income and other property of a wakf are applied to the objects and for the purposes for which that wakf was created or intended;]
- (c) to give directions for the administration of wakfs;
- (d) ⁵⁵[* * *]
- (e) ⁵¹[to direct—
 - (i) the utilization of the surplus income of a wakf consistently with the objects of the wakf;
 - (ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;
 - (iii) in any case where any object of a wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object which shall be similar, ⁵⁶[or nearly similar, 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.]

Explanation.—For the purposes of this clause, the powers of the Board ⁵⁷[shall be exercised under sub-section (1)],—

- (i) in the case of a Sunni wakf, by the Sunni members of the Board only; and
- (ii) in the case of a Shia wakf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that its power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

- (f) ⁵⁸[* * *]
- (g) to appoint and remove mutawallis in accordance with the provisions of this Act;
- (h) ⁵⁸[* * *];
- (i) to institute and defend suits and proceedings in a court of law

relating to wakfs;

⁶⁰[(j) to sanction in accordance with the Muslim law, any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange ⁵⁹[or lease, in accordance with the provisions of this Act]:

Provided that no such sanction shall be given unless at least two-thirds of the members of the Board vote in favour of such transaction.]

(k) to administer the Wakf Fund;

(l) ⁶¹[* * *];

(m) ⁶¹[* * *];

(n) ⁶¹[* * *];

(o) generally do all such acts as may be necessary for the due control, maintenance and administration of wakfs.

(3) Where the Board has ⁶²[* * *] or given any direction under clause (e) of sub-section (2), any person interested in the wakf ⁶³[or affected by such direction] may institute a suit in a civil court of competent jurisdiction for ⁶⁴[setting aside such direction] and the decision of the civil court thereon shall be final.

⁶⁵[15-A. Power to develop urban land which is wakf property.—(1) Where the Board is of opinion that any urban land which is wakf property, and which is not in the possession of the mutawalli of the wakf, and in relation to which no process of acquisition has been commenced under any law for the time being in force relating to the acquisition of land, and which has not vested in the State under any law for the time being in force relating to land reforms (hereinafter referred to as the specified urban land) offers a potential for the development of such land for land uses, such as, the establishment of any shopping centre or market or for the construction of residential flats or for any other commercial uses and that the proposed development of the use of such land is in accordance with any land uses specified, under any law for the time being in force, in any Master Plan or other Plan, if any, prepared by any local or other statutory authority in relation to the area in which such specified urban land is situate, it may make an application to the State Government specifying therein, the nature of the work which is intended to be executed for the development of the use of such land.

(2) On receipt of any application made under sub-section (1), the State Government shall issue a notice requiring—

(a) the local or other statutory authority to state, whether the intended development of the use of specified urban land is in accordance with the land uses specified in the Master Plan or other Plan which has been prepared by such authority for the

area in which such specified urban land is situate and whether any project for the development of the land uses of the specified urban land has been, or is proposed to be, undertaken by such authority, and where no such Plan has been prepared, whether such authority has any objection to the proposed development, by the Board, of the specified urban land for the land uses specified in sub-section (1);

(b) the Director General of Archaeology to state whether the development of the specified urban land for the land uses specified in sub-section (1) is likely to affect prejudicially any ancient or protected monument within the meaning of the Ancient Monuments Preservation Act, 1904 (7 of 1904), or any ancient monument or archaeological site and remains which have been declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) to be of national importance;

(c) the mutawalli of the concerned wakf to state whether he has any objection to the proposed development of the specified urban land for the land uses specified in sub-section (1), and if not, whether he is ready and willing to carry out the proposed work for the development of the specified urban land for such land uses within the time specified in the notice, and whether he has the financial and other means to do so.

(3) The notice referred to in sub-section (2) shall specify the time, not being less than sixty days, within which a reply thereto is to be given.

(4) If no reply is received to the notice issued under sub-section (2) or if after considering such replies as may be received in pursuance of the said notice and if, after making such inquiry as it may think fit, the State Government is satisfied that—

(a) the specified urban land is wakf property and is not in the possession of the mutawalli of the wakf and no process of acquisition of such land has been commenced under any law for the time being in force relating to the acquisition of land and that such land has not vested in the State under any law for the time being in force relating to land reforms;

(b) no project for the development of the land uses of the specified urban land has been, or is proposed to be, undertaken by the local or other statutory authority;

(c) the proposed work for the development of the specified urban land for the land uses specified in sub-section (1) is conducive to the interests of the wakf and is in public interest;

(d) the proposed development of the specified urban land for such

land uses is in accordance with the land uses specified in the Master Plan or other Plan as aforesaid, or, where there is no such Plan, has been approved by the local or other statutory authority aforesaid;

- (e) the proposed development of the specified urban land for such land uses is not likely to prejudicially affect any ancient Preservation Act, 1904 (7 of 1904), or any ancient monument or archaeological site and remains which have been declared to be of national importance under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); and
- (f) the mutawalli does not have any objection to the proposed development of land uses and is either unwilling to execute, or if willing, does not have the means of executing, the proposed work within the time specified in the notice issued to him,

the State Government may take over the management of the specified urban land for such period, not being more than five years or such longer period not being more than fifteen years in the aggregate, as the State Government may, from time to time, specify by notification in the Official Gazette, and shall thereafter, entrust the management of the specified urban land to the Board, for the purposes of making such development of the land uses as are specified in sub-section (1), and may also authorize the Board to remove, from the specified urban land, any building or structure standing thereon, the removal of which is, in the opinion of the State Government, necessary for the purpose of executing any work for the development of the land uses of such specified urban land:

Provided that the Board shall, during the course of management of the specified urban land, carry on work for the development of such land for the land uses specified in sub-section (1), under the direction, control and supervision of the State Government:

Provided further that the High Court may, on the application of any person aggrieved by any order made by the State Government under this sub-section call for the records of the case from the State Government for the purpose of satisfying itself as to the correctness, legality or propriety of the order and may, after examining the records, pass such orders as it may think fit.

Explanation.—For the purposes of this section, specified urban land shall include all rights, leaseholds, powers, authorities and privileges, and shall also include all buildings, workshops and all other rights and interests arising out of the specified urban land, as were, immediately before the date on which management thereof is taken over by the State Government (hereinafter referred to as the appointed day) in the ownership, possession, power or control of the mutawalli of the wakf, and all books of accounts, registers and all the documents of whatever

nature relating thereto.

(5) Any contract, whether express or implied, or other arrangement in so far as it relates to the management of the specified urban land and in force immediately before the appointed day, shall be deemed to have become terminated on the appointed day.

(6) All persons in charge of the management of the specified urban land, immediately before the appointed day, shall, on and from the appointed day, be deemed to have vacated their offices as persons in charge of the management thereof.

(7) Any person who, on the appointed day, has in his possession or under his control, any books, papers or other documents relating to the management of the specified urban land, shall deliver them to the Board or such person as the Board may authorize in this behalf.

(8) For every year or part thereof during which the Board remains in charge of the management of the specified urban land, there shall be paid by the Board annually to the mutawalli for the wakf, an amount equal to the average net annual income derived by the wakf from the specified urban land during the period of three years immediately preceding the appointed day and the amount so paid shall be duly credited to the account of the wakf to which the specified urban land pertains.

(9) The Board may execute any work for the development of the land uses of the specified urban land from its own finances, but where its own finances are not sufficient, it shall be lawful for the Board to raise the necessary finances on the security of the specified urban land.

(10) Any transfer of the specified urban land, or any contract or agreement relating thereto, made within a period of six months immediately preceding the date of service of the notice on the mutawalli under sub-section (2), shall, unless it was made in good faith and for valuable consideration in the due course of management of the specified urban land, be void.

(11) Subject to the provisions of sub-section (4), the Board shall continue to control the management of the specified urban land till such time as all the expenses incurred by it under this section for the development of the land for the land uses specified in sub-section (1), together with interest due thereon, and all expenses incurred for the maintenance of such work or development and other legitimate charges incurred in relation to the development of the specified urban land for such land uses are fully recovered from the income derived by the Board from such land or from any shopping centre, market, residential flats raised thereon or from other commercial uses of the specified urban land.

(12) The Board shall, after the recovery of all expenses and charges

referred to in sub-section (11), or upon the expiry of the period specified under sub-section (4), whichever is earlier, restore the person in charge of the management of the specified urban land immediately before the appointed day, the management of such land, as so developed, together with shopping centres, markets residential flats and other structures, if any, constructed thereon.

(13) The provisions of sub-section (1), (2), (3) and (4) shall, as far as may be, apply to the proposal for the development of the land uses of any urban wakf property which is in the possession of the mutawalli of the wakf, subject to the modification that instead of taking over the management of such property, the State Government may, by order, remove the mutawalli from possession thereof and place the same in the possession of the Board and authorize the Board to carry out the development of such land uses of the urban wakf property as are specified in sub-section (1).

(14) Where, as a result of the development of any specified urban land, or any urban land referred to in sub-section (13), for the land uses specified in sub-section (1), there is a substantial increase in the income of the wakf and the quantum of the increase is such that the whole of such increased income is not needed for the purposes of the wakf, the Board may make a direction in accordance with the provisions of clause (e) of sub-section (2) of Section 15, as to how such surplus income shall be utilized and submit such direction to the State Government for approval, and, thereupon, such surplus income shall be utilized for such purposes as may be specified in the direction as approved by the State Government.]

⁶⁶[15-B. Powers of inspection by Wakf Commissioner or persons authorized by him.—(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 wakf or wakf property, the Wakf Commissioner, or any other person authorized by him in writing in this behalf, may inspect all movable and immovable properties which are wakf properties, and all records, correspondence, plans, accounts and other documents relating thereto:

Provided that such inspection shall be made at least once in two years, in relation to every wakf having a gross annual income exceeding twelve thousand rupees.

(2) Whenever any such inspection as if referred to in sub-section (1) is made, the concerned mutawalli and all officers and other employees working under him, and every person connected with the administration of the wakf, shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also

produce for inspection any movable property or documents relating to the wakf as may be called for by the person making the inspection and furnish to him such information relating to the wakf as may be required by him.

(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is working under him or had been working under him in the past, had misappropriated, misapplied, or fraudulently retained, any money or other wakf property, or had incurred irregular, unauthorized or improper expenditure from the funds of the wakf, the Wakf Commissioner may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property aforesaid should not be passed against him, and after considering such explanation, if any, as such person may furnish, determine the amount or the property which has been misappropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorized or improper expenditure incurred, by such person, and make an order directing such person to make payment of the amount so determined from his personal funds, and not from the funds of the wakf, or, as the case may be, to restore the property aforesaid to the wakf, within such time as may be specified in the order.

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal: Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Wakf Commissioner the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying, pending the disposal of the appeal, the operation of the order made by the Wakf Commissioner under sub-section (3).

(5) The Tribunal, after taking such evidence as it may think fit, may confirm, reverse or modify the order made by the Wakf Commissioner under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.]

[62](#)[15-C. Recovery of the amount determinal under Section 15-B.— Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of Section 15-B, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Wakf Commissioner shall take such steps as he may think fit, for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of

such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under Section 15-B, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Wakf Commissioner, who shall, on receipt thereof, credit the amount to the funds of the concerned wakf.]

⁶⁸[15-D. Conditional attachment by Tribunal.—(1) Where the Wakf Commissioner is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of Section 15-B to make any payment, with intent to defeat or delay the execution of the said order,—

- (a) is about to dispose of the whole or any part of his property; or
- (b) is about to remove the whole or any part of his property from the jurisdiction of the Wakf Commissioner,

he may apply to the Tribunal for the conditional attachment of the said property or such part thereof as he may think necessary.

(2) The Wakf Commissioner shall, unless the Tribunal otherwise directs, specify in the application the property required to be attached and the estimated value thereof.

(3) The Tribunal may direct the mutawalli of the person concerned, as the case may be, within a time to fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in Section 15-C, or to appear and show cause why he should not furnish such security.

(4) The Tribunal may also in the order direct the conditional attachment of the whole or nay portion of the property so specified.

(5) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as if it were an order for attachment made under the provision of the said Code.

(6) If any attachment is made without complying with the provision of sub-section (3), such attachment shall be void.]

16. Committees of the Board.—(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 wakfs.

(2) The constitution, functions and duties ⁶⁹[and the term of office] of such committees shall be determined from time to time by the

Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

17. Resignation of Chairman and members.—The Chairman or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairman or the members shall continue in office until the appointment of his successor is notified in the Official Gazette.

18. Removal of Chairman and members.—(1) The State Government may, by notification in the Official Gazette, remove the Chairman of the Board or any member thereof if he—

- (a) is or becomes subject to any disqualifications specified in Section 13; or
- (b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs; or
- (c) fails, without excuse sufficient in the opinion of the Board, to attend three consecutive meetings of the Board.

(2) Where the Chairman of the Board is removed under sub-section (2), he shall also cease to be a member of the Board.

19. Filling of a vacancy.—When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred.

20. Vacancies amongst members or defect in the constitution not to invalidate acts or proceedings of the Board.—No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

⁷⁰[**21. Appointment of Wakf Commissioner and his term of office, etc.**—(1) There shall be in each State a Wakf Commissioner who shall be the Chief Executive Officer of the Board.

(2) The Wakf Commissioner shall be a person professing Islam and shall be appointed by the State Government by notification in the Official Gazette:

Provided that in the case of Union territories (including the Union territory of Delhi), the Central Government may, by notification in the Official Gazette, appoint one person to be the Wakf Commissioner for two or more Union territories, irrespective of whether or not any common Board has been established for such Union territories:

Provided further that where a common Board has been established under Section 66-F for two or more States, the power to appoint a Wakf

Commissioner for such States shall vest in the Central Government, and the Wakf Commissioner, appointed by the Central Government, as far as may be, in accordance with the provisions of this section, shall function as the Wakf Commissioner in respect of each of the States for which such common Board has been established.

(3) The Wakf Commissioner shall be appointed from amongst such persons as are holding posts in the Senior Scale of Class I of the Judicial Service of the State or posts in the Senior Scale of any Administrative Service in the State:

Provided that no person shall be so appointed unless he has held the post of a Deputy Secretary to the Government of the State, or any other post of an equivalent rank, for a period of not less than five years:

Provided further that if in any State, no person, professing Islam, who had held the post of Deputy Secretary to the Government of the State or any other post of an equivalent rank for a period of five years, or more, is available, it shall be lawful for the State Government to relax the conditions with regard to the said status or rank, as the case may be, and the period for which a post of such status or rank should have been held by a person to become eligible for such appointment.

(4) The Wakf Commissioner shall hold office for such period, not exceeding five years, as may be specified in the notification whereby he is appointed, or until he attains the age of superannuation, whether under the rules for the time being in force in relation to the members of the Service to which he belongs, or in relation to the post which he was holding immediately before his appointment as the Wakf Commissioner, whichever is earlier, and shall, subject to the provisions of this sub-section, be eligible for re-appointment for a like term.

(5) The Wakf Commissioner shall not, during his term of office as such, hold the office of a mutawalli of any wakf and shall devote his whole time and attention to his duties under this Act.

(6) The Wakf Commissioner shall receive such monthly salary, not being less than the salary drawn by him immediately before the date of his appointment as Wakf Commissioner, as may be fixed by the State Government, and shall hold such office with the same rights and privileges as to pension, gratuity, provident fund and other matters as would have been admissible to him if he had not been so appointed and shall continue to do so until his appointment as Wakf Commissioner is duly terminated or until the conditions of his service are duly altered by the State Government.

(7) The State Government may, after consultation with the Board, grant leave of absence to the Wakf Commissioner.

(8) The salaries and allowances to be drawn by the Wakf Commissioner during the period of his leave of absence shall be

specified by the State Government:

Provided that such salaries and allowances shall not be less than the salaries and allowances which he would have drawn had he not been appointed as the Wakf Commissioner.

(9) Whenever leave of absence is granted to the Wakf Commissioner, the State Government may appoint any other person who fulfils the conditions specified in sub-section (1) to act as the Wakf Commissioner during the period of such leave, and the salaries and allowances of the person so appointed shall be fixed by the State Government, and such salaries and allowances shall not be less than the salaries and allowances which he would have drawn had he not been so appointed.

(10) The Wakf Commissioner may resign his office by writing under his own hand addressed to the State Government.

(11) The State Government may give directions to any Wakf Commissioner as to the carrying into execution in the State of any of the provisions of this Act or of any order or direction made thereunder and may also call for from the Wakf Commissioner such information as it may think fit.]

21[21-A. Removal of the Wakf Commissioner.—(1) If at any time it appears to the State Government that the Wakf Commissioner is unsuitable for his office or has been guilty of misconduct or neglect of necessary in the public interest, the State Government may, be notification in the Official Gazette, remove him from such office:

Provided that the Wakf Commissioner shall not be so removed from his office as such except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(2) Whenever the Wakf Commissioner is removed, or resigns, from his office as Wakf Commissioner, the State Government shall appoint a suitable person who fulfils the conditions specified in sub-section (1) of Section 21 as the Wakf Commissioner.]

22[21-B. Powers to make appointments, etc., to vest in the Wakf Commissioner.—(1) The Wakf Commissioner and the Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of his or its functions under this Act.

(2) The powers of appointment of officers and other employees of the Board and of promoting and granting leave to such officers and other employees and of reducing them in rank or suspending or dismissing them for misconduct shall vest in the Wakf Commissioner:

Provided that the Wakf Commissioner shall not appoint any person to a post carrying minimum monthly salary (exclusive of allowances) exceeding one thousand rupees per month except with the previous

approval of the Board:

Provided further that where any officer or other employee holding a post carrying a minimum monthly salary (excluding allowances) exceeding five hundred rupees is reduced in rank or suspended or dismissed by the Wakf Commissioner, such officer or other employee may, within thirty days from the date of the order, prefer an appeal to the Board against the order of the Wakf Commissioner and the decision of the Board shall be final.]

⁷³[21-C. Duties and other powers of the Wakf Commissioner.—(1) Subject to the provisions of this act and of rules made thereunder, the functions of the Wakf Commissioner shall include—

- (a) investigating the nature and extent of wakfs and wakf properties, and causing whenever necessary, an inventory of wakf properties and calling, from time to time for accounts, returns and informations from mutawallis;
- (b) inspecting or causing the making of inspection of, wakf properties, accounts, records or deeds or documents relating thereto;
- (c) doing, generally, all such acts as may be necessary for the due control, maintenance and administration of wakfs.

(2) In exercising his powers under this Act in respect of any wakf, the Wakf Commissioner shall act in conformity with the directions given by the wakf in the deed of wakf, the purpose of the wakf and such usages and customs as are sanctioned by Muslim law.

(3) Save as otherwise expressly provided in this Act, the Wakf Commissioner shall exercise such powers and perform such duties as may be assigned to him or delegated to him by the Board under Section 22.]

⁷⁴[21-D. Power of the Wakf Commissioner not to implement orders or resolutions of the Board in certain cases.—Where the Wakf Commissioner considers that an order or resolution passed by the Board—

- (a) has not been passed in accordance with law; or
- (b) is in excess of, or is an abuse of, the powers conferred on the Board by under this Act or by any other law; or
- (c) if implemented, is likely to—
 - (i) cause financial loss to the Board or to the concerned wakf or to wakfs generally, or
 - (ii) cause danger to human life, health or safety, or
 - (iii) lead to a riot or breach of the peace, or
- (d) is not beneficial to the Board or in any wakf or to wakfs generally,

he may, without implementing such order or resolution place the

matter before the State Government along with a note pointing out the objections which he has to the order or resolution, as the case may be, and the orders of the State Government thereon shall be final and binding on the Board and the Wakf Commissioner.]

⁷⁵[21-E. Delegation of powers by the Wakf Commissioner.—(1) The Wakf Commissioner may delegate such of the administrative, accounting or auditing powers conferred on him by this Act, to the Area Committee, established by the Board, as may be necessary and may, at any time, revoke the delegation so made by him.

(2) Subject to the control of the Wakf Commissioner and general or special directions given or imposed by him, the Area Committee authorised by the Wakf Commissioner to exercise any power, may exercise these powers in the same manner and to the same extent as if they have been conferred on that Committee directly by this Act and not by way of delegation.]

⁷⁶[21-F. Construction of reference with regard to exercise of powers by the Wakf Commissioner. Any reference in this Act to the exercise of any powers by the Wakf Commissioner shall be construed as a reference to the exercise by him of those powers which he is empowered by or under this Act to exercise.]

⁷⁷[22. Delegation of powers by the Board.—The Board may, from time to time, by an order, authorise the Wakf Commissioner to exercise and perform, subject to the control of the Board, such of the powers and duties conferred or imposed on the Board by or under this Act, as may be specified in such order, and may at any time revoke the authorization so made by it, and where any such authorisation is made, the Wakf Commissioner may exercise those powers and duties in the same manner and to the same extent as if they have been conferred on him directly by this Act and not by way of authorization.]

⁷⁸[22-A. Wakf Commissioner may exercise powers through Collectors, etc.—Subject to the provisions of this Act and of the rules made thereunder, the Wakf Commissioner may exercise all or any of the powers conferred on him by or under this Act, through the Commissioner of the Division or the Collector of the district in which the concerned wakf property is situate, or through any other person whom he may appoint for such purpose, and may, from time to time, delegate any of his powers to any such Commissioner of the Division or Collector or any other person and may at any time revoke the delegation so made by him, and where any such delegation of powers is made by the Wakf Commissioner, the person to whom such delegation is made may exercise those powers in the same manner and to the same extent as if they have been conferred on him directly by this Act and not by way of delegation.]

[79](#)[22-B. Powers of Wakf Commissioner to inspect records, registers, etc.—The Wakf Commissioner or any officer of the Board duly authorised by him in this behalf shall, subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force, be entitled at all reasonable time to inspect, in any public office, any records, registers or other documents relating to a wakf or movable or immovable properties which are wakf properties or are claimed to be wakf properties.]

23. Inspection of records and issue of copies.—(1) [81](#)[The Wakf Commissioner may allow inspection of the proceedings of the Board or other records in his custody] and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.

(2) All copies issued under this section shall be certified by the [82](#) [Wakf Commissioner] in the manner provided in Section 76 of the Indian Evidence Act, 1872 (1 of 1872.)

[80](#)[(3) The powers conferred on the [83](#)[Wakf Commissioner] by sub-section (2) may also be exercised by such other officer or officers of the Board as may either generally or specially be [84](#)[authorised in this behalf by the Wakf Commissioner].]

24. Prevention of disqualification for membership of Parliament.—It is hereby declared that the offices of Chairman and members of a Board shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of Parliament.

Chapter IV

REGISTRATION OF WAKFS

25. Registration.—(1) Every wakf whether created before or after the commencement of this Act shall be registered at the office of the [85](#) [Wakf Commissioner].

(2) Application for registration shall be made by the mutawalli: Provided that such applications may be made by the wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the [85](#)[Wakf Commissioner] may prescribe and shall contain the following particulars, so far as possible—

- (a) a description of the wakf properties sufficient for the identification thereof;
- (b) the gross annual income from such properties;
- (c) the amount of land revenue and cesses, and of all rates and taxes annually payable in respect of the wakf properties;
- (d) an estimate of the expenses annually incurred in the

realisation of the income of the wakf properties;

(e) the amount set apart under the wakf for—

(i) the salary of the mutawalli and allowances to individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars prescribed by the [85](#)[Wakf Commissioner].

(4) Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf.

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The [85](#)[Wakf Commissioner] may require the applicant to supply any further particulars or information that [86](#)[he may consider] necessary.

(7) On receipt of an application for registration, the [85](#)[Wakf Commissioner] may, before the registration of the wakf, make such inquiries [87](#)[as he thinks fit] in respect of the genuineness and validity of the application and the correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the [85](#)[Wakf Commissioner] shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(8) In the case of wakfs created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of wakfs created after such commencement, within three months from the date of the creation of the wakf.

[88](#)[(9) Every wakf registered under this section before the commencement of the Wakf (Amendment) Act, 1984 shall be deemed to have been registered on such commencement, at the office of the Wakf Commissioner.

(10) Every application for registration under this section pending immediately before the commencement of the Wakf (Amendment) Act, 1984 before the Board shall, on such commencement, stand transferred to the Wakf Commissioner and the Wakf Commissioner shall deal with such application as if it were an application pending before him.]

26. Register of wakfs.—[89](#)(1) The [90](#)[Wakf Commissioner] shall maintain a register of wakfs which shall contain in respect of each wakf

copies of the wakf deeds, when available and the following particulars, namely:—

- (a) the class of the wakf;
- (b) the name of the mutawalli;
- (c) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage;
- (d) particulars of all wakf 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.

⁹¹[(2) The register of wakfs maintained under this section immediately before the commencement of the Wakf (Amendment) Act, 1984 shall be deemed, on such commencement, to be the register maintained by the Wakf Commissioner under sub-section (1).]

⁹²[**26-A. Power of Wakf Commissioner to appoint Executive Officers.**—(1) Notwithstanding anything contained in this Act, the Wakf Commissioner may, if he is of opinion that it is necessary so to do in the interest of wakfs, appoint, subject to such conditions as may be prescribed, Executive Officers for every wakf having a gross annual income of not less than fifty thousand rupees.

(2) Every Executive Officer appointed under sub-section (1) shall exercise such powers and discharge such duties as pertain only to the administration of the property of the wakf for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Wakf Commissioner: Provided that the Executive Officer who is appointed for a wakf having a gross annual income of not less than sixty thousand rupees, shall ensure that the budget of the wakf is submitted, the accounts of the wakf are regularly maintained, and the yearly statement of accounts are submitted positively within such time as the wakf Commissioner may specify.

(3) While exercising his powers and discharging his functions under sub-section (2), the Executive Officer shall not interfere with any religious duties or any usage or custom of the wakf sanctioned by the Muslim law.

(4) The salaries and allowances of the Executive Officer shall be fixed by the Wakf Commissioner in accordance with the rules made in this behalf under Section 67 and in fixing the quantum of such salary the Wakf Commissioner shall have due regard to the income of the wakf, the extent and nature of the duties of the Executive Officer and shall also ensure that the amount of such salaries and allowances are not disproportionate to the income of the wakf and do not operate as an

unnecessary financial burden on it.

(5) The salaries and allowances of the Executive Officer shall be paid from the funds of the concerned wakf.

(6) The Wakf Commissioner may, for good and sufficient reasons, and after giving to the Executive Officer a reasonable opportunity of being heard, suspend, remove or dismiss him from his post as such Executive Officer.

(7) Any Executive Officer who is aggrieved by any order of removal or dismissal made under sub-section (6) may, within thirty days from the date of communication of the order to him, prefer an appeal against the order to the Tribunal and the Tribunal may, after considering such representation as the Wakf Commissioner may make in the matter, and after giving a reasonable opportunity to the Executive Officer of being heard, confirm, modify or reverse the order.

(8) For the removal of doubts, it is hereby declared that—

- (a) a person may be appointed as the Executive Officer under this section on a whole-time basis or on a part-time basis;
- (b) a person may be appointed as an Executive Officer in an honorary capacity, that is to say, without payment of salary of, as the case may be, without payment of salary and of any allowances;
- (c) the same person may be appointed as an Executive Officer under this section for two or more wakfs, and, where the said person is not appointed in an honorary capacity, the salary and allowances payable to the person so appointed may be paid from the funds of the concerned wakfs, in such manner and in such proportion as the Wakf Commissioner may determine.]

²³[26-B. Powers of the Wakf Commissioner in relation to wakfs which have ceased to exist.—(1) The Wakf Commissioner shall, if he is satisfied that the objects or any part thereof, of a wakf have ceased to exist, whether such cesser took place before or after the commencement of the Wakf (Amendment) Act, 1984, hold an inquiry, in the prescribed manner, to ascertain the properties and funds pertaining to such wakf and after doing so, shall pass an order—

- (a) specifying the property and funds pertaining to the wakf and for the recovery of such property or funds so specified;
- (b) directing that any property or funds pertaining to the wakf which have been recovered shall be applied or utilised for the renovation of any wakf property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, after obtaining the approval of the Board, to any of the purposes specified in sub-clause (iii) of clause (e) of sub-section (2) of

Section 15.

(2) The Wakf Commissioner may, if he has any reason to believe that any building or other place which was being used for religious purpose or instruction or for charity has, whether before or after the commencement of the Wakf (Amendment) Act, 1984, ceased to be used for that purpose, make an application to the Tribunal for an order directing the recovery of possession of such building or other place.

(3) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place-

- (a) is wakf property;
- (b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and
- (c) is not in the occupation of any person who has been authorized by or under any law for the time being in force to occupy such building or other place,

may make an order—

- (i) directing the recovery of such building or place from any person who may be in unauthorised possession thereof; and
- (ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilized, for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of Section 15.]

27. Decision if a property is wakf property.—(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on any question under sub-section (1) shall, unless revoked or modified by a civil court of competent jurisdiction, be final.

²⁴[(3) Where the Board has any reason to believe that, any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is wakf property, the Board may notwithstanding anything contained in such Act, hold an inquiry, in regard to such property, and if after such inquiry, the Board is satisfied that such property is wakf property, call upon the trust or society, as the case may be, either to register such property under this Act as wakf property or show cause why such property should not be so registered:

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a civil court of competent jurisdiction.]

28. Power to cause registration of wakf and to amend register.—The ⁹⁵[Wakf Commissioner] may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or ⁹⁶[may himself] cause the wakf to be registered or may at any time amend the register of wakfs.

29. Notification of change in registered wakfs.—(1) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may, notify the change to the ⁹⁷[Wakf Commissioner].

(2) In the case of any other change in any of the particulars mentioned in Section 25, the mutawalli shall, within three months from the occurrence of the change, notify such change to the ⁹⁷[Wakf Commissioner].

30. Savings.—Notwithstanding anything contained in this Chapter, where any wakf has been registered before the commencement of this Act under any law for the time being in force, it shall not be necessary to register the wakf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

Chapter V

MUTAWALLIS AND WAKF ACCOUNTS

31. Budget.—⁹⁸[(1)] Every mutawalli of a wakf 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 expenditure during that financial year and submit it to the Board for approval:

⁹⁹[Provided that where the gross annual income of the wakf exceeds five thousand rupees, such budget shall be submitted to the Wakf Commissioner for his approval.]

¹⁰⁰[(2) The Wakf Commissioner may, after giving notice to the mutawalli in the prescribed manner, and after considering his representations, if any, pass an order making such alterations, omissions and additions in the budget as he may think fit and the budget so as approved or modified shall be the budget of the wakf for

that year.]

¹⁰¹[31-A. Duties of Wakf Commissioner to prepare budget for wakfs under the direct management of the Board.—(1) The Wakf Commissioner shall, in every year, prepare, in such form and at such time as may be prescribed, a separate budget for the next financial year for each of the wakfs under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

(2) While submitting the budgets under sub-section (1), the Wakf Commissioner shall also prepare a statement giving details of the increase, if any, in the income of each wakf under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.

(3) The Wakf Commissioner shall keep regular accounts and be responsible for the proper management of every wakf under the direct management of the Board.

(4) Every budget submitted by the Wakf Commissioner under sub-section (1) shall comply with the requirements of Section 32 and, for this purpose, references therein to the mutawalli of the wakf shall be construed as references to the Wakf Commissioner.

(5) The audit of accounts of every wakf under the direct management of the Board shall be undertaken by the State Examiner of Local Funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the wakf.

(6) The provisions of sub-sections (2) and (3) of Section 33 and the provisions of Sections 34 and 35 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) Where any wakf is under the direct management of the Board, such administrative charges as may be specified by the Wakf Commissioner shall be payable by the wakf to the Board: Provided that the Wakf Commissioner shall not collect, except with the previous approval of the State Government, more than ten per cent of the gross annual income of the wakf under the direct management of the Board as administrative charges payable to the Board.]

32. Submissions of accounts of wakfs.—¹⁰² [(1) Every mutawalli shall keep regular accounts.]

¹⁰³[(2)] Before the 1st day of May next following the date on which the application referred to in Section 25 has been made and thereafter before the 1st day of May in every year, every mutawalli of a wakf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be prescribed by the Board, of all moneys received or expended by the mutawalli on

behalf of the wakf during the period of twelve months ending on the 31st day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf:

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

33. Audit of accounts of wakfs.—¹⁰⁴[(1) The accounts of wakf submitted to the Board under Section 32 shall be audited and examined in the following manner, namely:—

- (a) in the case of a wakf having no income or a net annual income not exceeding one thousand rupees, the submission of a statement of accounts shall be a sufficient compliance with the provisions of Section 32, and the accounts of two per cent of such wakfs shall be audited annually by an auditor appointed by the Board;
- (b) the accounts of a wakf having a net annual income exceeding one thousand rupees but not exceeding three thousand rupees, shall be prepared in the form of a statement of income and expenditure, supported by property maintained vouchers and receipts, and shall be audited triennially or at such other intervals as may be prescribed, by an auditor appointed by the Wakf Commissioner;
- (c) the accounts of a wakf having a net annual income exceeding three thousand rupees but not exceeding five thousand rupees, shall be audited by an auditor appointed by the Board from out of a panel of auditors prepared by the State Government and such audit shall be made biennially or at such other intervals as may be prescribed and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of the auditors;
- (d) the accounts of a wakf having a net annual income exceeding five thousand rupees, shall be audited by the State Examiner of Local Funds or by any other officer designated for the purpose by the State Government and every such audit shall be made annually or at such other intervals as may be prescribed:

Provided that where the net annual income of the wakf is not less than sixty thousand rupees, the accounts of such wakfs shall be audited concurrently as and when any expenditure is incurred and every such concurrent audit shall be made in accordance with such rules as may be prescribed.]

(2) The auditor shall submit his report to the Board and the report of the auditor shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other

property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

[105](#)[(3) The cost of the audit of the accounts of a wakf shall be met from the funds of that wakf:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to wakfs having a net annual income of more than three thousand rupees but less than five thousand rupees shall be paid in accordance with the scale of remuneration specified by the State Government under clause (c) of sub-section (1):

Provided further that where the audit of the accounts of any wakf is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent of the net annual income of such wakf and such costs shall be met from the funds of the wakf concerned.]

34. Board to pass orders on auditor's report.—[106](#)[(1)] The Board shall examine the auditor's report, [107](#)[or where the auditor's report is submitted after the commencement of the Wakf (Amendment) Act, 1984, the Wakf Commissioner shall examine such report] and may call for the explanation of any person in regard to any matter mentioned therein, and [108](#)[the Board or, as the case may be, the Wakf Commissioner shall pass such orders on the report as it or he may think fit, including orders for the recovery of the amount certified by the auditor under sub-section (2) of Section 33].

[109](#)[(2) The mutawalli or any other person aggrieved by any order made by the Board or the Wakf Commissioner under sub-section (1) may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(3) No application made under sub-section (1) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of Section 33 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board or the Wakf Commissioner under sub-section (1).

(4) The order made by the Tribunal under sub-section (2) shall be final.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in Section 15-C or Section 15-D as if the said order were an order for the recovery of any amount determined under sub-section (3) of Section 15-B.]

35. Sums certified due recoverable as arrears of land revenue.—(1) Every sum certified to be due from any person by an auditor in his report under Section 33 unless such certificate is modified or cancelled by an [110](#)[order of the Board, or the Wakf Commissioner or the Tribunal, as the case may be] made under Section 34, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

36. Duties of mutawallis.—It shall be the duty of every mutawalli—

- (a) to carry out the [111](#)[directions made by—
(i) the Board, or
(ii) the Wakf Commissioner,

in accordance with the provisions of this Act or of any rule or order made thereunder];

- (b) to furnish such returns and supply such information or particulars as may from time to time be [112](#)[required by the Board, or the Wakf Commissioner, as the case may be, in accordance with the provisions of this Act or of any rule or orders made thereunder];

- (c) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;

- (d) to discharge all public dues; and

- (e) to do any other act which he is lawfully required to do by or under this Act.

[113](#)[**36-A. Alienation of wakf property without sanction of Board to be void.**—(1) Notwithstanding anything contained in the wakf deed, any gift, sale, exchange or hypothecation of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or hypothecation is effected with the prior sanction of the Board.

(2) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions, with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in

the wakf, accord sanction to such transaction if it is of opinion that such transaction is—

- (i) necessary or beneficial to the wakf;
- (ii) consistent with the objects to the wakf;
- (iii) the consideration thereof is reasonable and adequate:

Provided that the sale of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed:

Provided further that the Tribunal may, on the application of the aggrieved mutawalli or other person, for reasons to be recorded by it in writing, permit such sale to be made otherwise than by public auction, if it is of opinion that it is necessary so to do in the interest of the wakf.

(3) The utilisation or investment of the amount realized by the sale, exchange or hypothecation of any property shall be made by the mutawalli subject to the approval of the Board, and where any amount has been raised by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.

(4) Every approval given by the Board under sub-section (3) shall be communicated to the mutawalli and shall also be published in the prescribed manner.

(5) The mutawalli or any other person having an interest in the wakf who is aggrieved by the decision given under sub-section (3), may, within ninety days from the date of communication to him of such decision or the publication of the decision, as the case may be, prefer an appeal to the Tribunal against such decision, and, thereupon, the Tribunal may, after giving the appellant and the Board or the Wakf Commissioner, as the case may be, a reasonable opportunity of being heard, confirm, modify or set aside such decision.]

[114](#)[36-B. Recovery of wakf property transferred in contravention of Section 36-A.—(1) If the Board is satisfied, after making an inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakfs maintained under Section 26, has been transferred without the previous sanction of the Board in contravention of the provisions of Section 36-A, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served—

- (a) by giving or tendering the order or by sending it by post to the person for whom it is intended; or
- (b) if such person cannot be found, by affixing the order on some conspicuous part of his last-known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the district court within whose jurisdiction the property is situate and the decision of the district court on such appeal shall be final.

Explanation.—In this sub-section, “district court” means, in any area for which there is a city civil court, that court, and, in any other area, the principal civil court of original jurisdiction.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section, the Collector shall be guided by such rules as may be made in this behalf by the State Government.]

115[36-C. Restriction on purchase of property on behalf of the wakf.— Notwithstanding anything contained in a wakf deed, no immovable property shall be purchased for or on behalf of any wakf from the funds of any wakf except with the prior sanction of the Wakf Commissioner, and the Wakf Commissioner shall not accord such sanction unless he considers that the acquisition of such property is necessary or beneficial to the wakf and that the price proposed to be paid therefore is adequate and reasonable:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto and, the Wakf Commissioner shall, after considering the objections and suggestions that may be received by him from mutawallis or other persons interested in the wakf, make such orders as he may think fit.]

[116](#)[36-D. Removal of encroachments from wakf property.—(1) Whenever the Wakf Commissioner considers, whether on receiving any complaint or on his own motion, that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in the notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Wakf Commissioner is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

Explanation.—In this section and in Section 36-E, “encroacher” means the person by whom any encroachment has been made on any land, building, space or other property which is wakf property.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Wakf Commissioner under that sub-section from instituting a suit in a court of law to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf.]

[117](#)[36-E. Enforcement of the order made under Section 36-D.—Where, the person, ordered under sub-section (3) of Section 36-D to remove any encroachment, omits or fails to remove such encroachment within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Wakf Commissioner may apply to the Sub-Divisional Magistrate within the local limits of whose jurisdiction the land, building, space or other property is situate for evicting the encroacher, and, thereupon, the Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property, and to deliver possession thereof to the concerned mutawalli, and in default of compliance with the order, remove the encroachment, or as the case

may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.]

118[36-F. Restrictions on the powers to grant lease of wakf property.

—(1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument or wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for the making or renewal of lease under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.]

37. Mutawalli entitled to pay certain costs from income of wakf property.—Notwithstanding anything contained in the wakf deed, every mutawalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under Section 25 or any accounts under Section 32 or any information or documents required by the Board or for the purpose of enabling him to carry out the directions of the Board.

38. Power of the Board to pay dues in case of default by mutawalli.—

(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 **119**[the Board, or where such refusal or failure occurs after the commencement of the Wakf (Amendment) Act, 1984, the Wakf Commissioner] may discharge the dues from the Wakf Fund and may recover the amount so paid from the wakf property and may also recover damages not exceeding twelve and a half per cent. of the amount so paid.

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the **119**[Board, or, as the case may be, the Wakf Commissioner], after giving the mutawalli concerned an opportunity of being heard, be recovered in the same manner as an arrear of a land revenue.

39. Creation of reserve fund.—For the purpose of making provision 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 wakf property and for the preservation of the wakf property, [120](#)[the Wakf Commissioner may direct the creation and maintenance, in such manner as he may think fit], of a reserve fund from the income of a wakf.

40. Extension of time.—[121](#)[The Wakf Commissioner may, if he is satisfied] that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

41. Penalties.—If a mutawalli fails—

- (a) to apply for the registration of a wakf;
- (b) to furnish statements of particulars or accounts or returns as required by this Act;
- (c) to supply information or particulars as required by the Board;
- (d) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;
- (e) to deliver possession of any wakf property, if ordered by the Board or the court;
- (f) to carry out the directions of the Board;
- (g) [122](#)[* * *]
- (h) to discharge any public dues; or
- (i) to do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the court that there was reasonable cause for his failure, be punishable with [123](#)[fine which may extend to two thousand rupees].

[124](#)[(1-A) Notwithstanding anything contained in sub-section (1), if,

- (a) a mutawalli omits or fails, with a view to concealing the existence of a wakf, to apply for its registration under this Act,
 - (i) in the case of a wakf created before the commencement of the Wakf (Amendment) Act, 1984, within the period specified therefore in sub-section (8) of Section 25 or within a period of one month from such commencement, whichever period expires later; or
 - (ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

- (b) a mutawalli furnishes any statement, return or information to the Wakf Commissioner or the Board, as the case may be, which he knows or has reason to believe to be false, misleading, untrue or, incorrect in any material particular,

he shall be punishable with imprisonment for a term which may extend

to six months and also with fine which may extend to five thousand rupees.]

(2) No court shall take cognizance of an offence punishable under this Act save upon complaint [125](#)[made by the Board or the Wakf Commissioner or by an officer duly authorised by the Board or the Wakf Commissioner] in this behalf.

(3) No court inferior to that of a [126](#)[Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence punishable under this Act.

[127](#)[(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the fine imposed under sub-section (1), when realised, shall be credited to the Wakf Fund.

(5) In every case where an offender is convicted after the commencement of the Wakf (Amendment) Act, 1984, of an offence punishable under sub-section (1), and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default.]

[128](#)[41-A. Mutawali not to spend any money belonging to a wakf for defending himself.— No Mutawalli shall spend any money out of the funds of thw wakf, of which he is mutawalli, for meeting any costs, charges or expenses, which are or may be, incurred by him, in relation to any suit, appeal or any other proceedings for, or incidental to, his removal from office or for taking any disciplinary action against himself.]

[129](#)[41-B. Power of Board to determine by whom costs, etc., shall be paid.— The Board shall be determine by whom or out of which fund and to what extend any costs, charges or expenses, for or incidental to, any appeal or other proceeding before the Board, shall be paid, and the order for payment made by the Board shall be deemed to be an order passed by a civil court and may be sent by the Board for execution to the court with in the local limits of whose jurisdiction the person who is so ordered to make such payment voluntarily resides or carries on business or personally works for gain and the court to which the order is so sent for execution shall execute such order as if it were an order made by it.]

42. Power to appoint mutawallis in certain cases.—When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

43. Removal of mutawallis.—(1) Notwithstanding anything contained in any other law or the deed of wakf, 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 41; or

[130](#)[(b) has been convicted of an offence of criminal breach of trust or any other offence involving [131](#)[moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence,]; or

(c) [132](#)[* * *]

(d) 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

(e) [132](#)[* * *]

[133](#)[(f) is an undischarged insolvent; or

(g) is proved to be addicted to drinking liquor or other spirituous prepositions, or is addicted to the taking of any narcotic drugs; or

(h) is employed as a paid legal practitioner on behalf of, or against, the wakf; or

(i) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 32; or

(j) is interested, directly or indirectly, in a subsisting lease in respect of any wakfproperty, or in any contract made with, or any work being done for the wakf or is in arrears in respect of any sum due by him to such wakf; or

(k) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or money or other wakf property; or

(l) willfully and persistently disobey the lawful orders made by the Central Government, State Government, Board or Wakf Commissioner under any provision of this Act or rule or order made thereunder.]

(2) [134](#)[* * *]

(3) For the removal of doubts it is hereby declared that the removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the wakf property either as a beneficiary or in any other capacity or his rights, if any, as a sajjadanishin.

(4) No action shall be taken by the Board under sub-section (1) [135](#)[* * *], unless it has held an inquiry into the matter in the prescribed manner and the decision has been taken by a majority of not less than [136](#)[two-thirds] of the members of the Board.

[137](#)[(4-A) A mutawalli who is aggrieved by an order passed under any of the clauses (d) to (l), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.]

[138](#)[(4-B) Where any inquiry under sub-section (4) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary to do so in the interests of the wakf, by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(4-C) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4-AO), the Wakf Commissioner may make an application to the Tribunal for the appointment of a receiver to manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the wakf are safeguarded.]

(5) Where a mutawalli has been removed from his office under sub-section (1) or sub-section (1) [139](#)[* * *], the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer thereof duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property; and the order of the Board shall be deemed to be a decree of a civil court and shall be executed by the civil court as if it had passed the decree.

[140](#)[(6) A mutawalli of a wakf removed from his office under this section shall not be eligible for appointment as a mutawalli of that wakf for a period of five years from the date of such removal.]

[141](#)[43-A. Assumption of direct management of certain wakfs by the Board.—(1) Where no suitable person is available for appointment as a mutawalli of a wakf, 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 wakf, the Board may, by notification in the Official Gazette, assume direct management of the wakf 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 wakf, 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 orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after the close of every financial year, the Board shall send to the State Government, a detailed report in regard to every wakf under its direct management, giving therein—

- (a) the details of the income of the wakf for the year immediately preceding the year under report;
- (b) the steps taken to improve the management and income of the wakf;
- (c) the period during which the wakf 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 wakf to the mutawalli or any committee of management during the year; and
- (d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3) and, after such examination, issue such directions or instructions to the Board as it may think fit and the Board shall comply with such instructions on receipt thereof.]

¹⁴²[43-B. Powers of appointment and removal of mutawalli when to be exercised by the State Government.—Whenever a deed of wakf or any decree or order of a court or any scheme of management of any wakf provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the wakf, then notwithstanding anything contained in such deed of wakf, decree, order or scheme, the powers aforesaid shall be exercisable by the State Government.]

¹⁴²[43-C. Supervision and supersession of Committee of Management.—(1) Whenever the supervision or management of a wakf is vested in any committee appointed by the wakif, 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 such term as may be specified by the wakif, whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and of the Wakf Commissioner, and abide by such direction as the Board or, as the case may be, the Wakf Commissioner may issue from time to time:

Provided further that if the Wakf Commissioner is satisfied that any scheme for the management of a Wakf by a committee is inconsistent with any provision of this Act or of any rule made thereunder scheme in

such manner as may be necessary to bring it in conformity with the directions of the wakif or of the provisions of this Act and the rules made thereunder.

(2) notwithstanding anything contained in this Act and in the deed of wakf, the Board may, if it is satisfied, for reasons to be recorded by it in writing, that a committee referred to in sub-section (1) is not functioning properly and satisfactorily or that the wakf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee and, on such supersession, any direction of the wakif, in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the wakif.

(5) Any order made by the Board under sub-section (2) shall be final. Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, make an application to the Tribunal for the adjudication of the matter:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such adjudication.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the wakf, and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee, may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal, and the Tribunal may, after

giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.]

¹⁴³[43-D. Matters which an order for removal of mutawalli or committee shall contain.—Whenever any order is made in accordance with the provisions of this Act for the removal of a mutawalli or committee, such order shall direct the removed mutawalli or the removed committee, as the case may be, to hand over charge, and to deliver possession of the records, accounts and all properties of the wakf (including cash) to the successor mutawalli or the successor committee, as the case may be, and shall also specify therein a date on or before which such charge shall be handed over and such delivery of possession shall be made.]

¹⁴⁴[43-E. Duty of mutawalli or committee to deliver possession of records, etc.—(1) Where any mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee, as the case may be, who or which has been so removed from office (hereinafter in this section referred to as the removed mutawalli or removed committee, as the case may be) shall hand over charge and deliver possession of the records, accounts and all properties of the wakf (including cash) to the successor mutawalli or the successor committee, as the case may be, within one month from the date specified in the order whereby the removed mutawalli or removed committee has been directed to hand over, charge and to deliver possession of records, accounts and all properties of the wakf (including cash), to the successor mutawalli or successor committee, as the case may be.

(2) Where any removed mutawalli or removed committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or successor committee within the time specified in sub-section (1), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by-

- (a) certified copy of the order appointing such successor mutawalli or successor committee, and
- (b) a certificate issued by the Wakf Commissioner specifying such failure, or obstruction.

To any Magistrate of the first class within the local limits of whose jurisdiction any part of the wakf property is situate, and, thereupon, the Magistrate may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the

delivery of charge and also delivery of possession of such records, accounts and properties (including cash) of the wakf to the successor mutawalli or the successor committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed mutawalli or any member of the removed committee, omits or false to deliver charge or to deliver possession of the records, accounts and properties (including cash) within the time specified by the Magistrate under sub-section (2), the removed mutawalli or every member of such removed committee, as the case may be shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by a successor mutawalli or successor committee, as the case may be, to take over charge and also to take possession of such records, accounts or properties (including cash) and any authorise such person to take such police assistance as may be necessary for the purpose.

(5) No order of appointment of the successor mutawalli or successor committee, and no certificate granted by the Wakf Commissioner under sub-section (2), shall be called in question in the proceedings before the Magistrate under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right title and interest in the properties specified in the order made by the Magistrate under sub-section (2).]

¹⁴⁴[43-F. Power of Wakf Commissioner to frame scheme for the administration of a wakf.—(1) Whenever the Wakf Commissioner is satisfied, whether on his own motion or on the application of not less than five persons interested in any wakf, that it is necessary or desirable to frame a scheme for the proper administration of the wakf, he may, after consultation in the prescribed manner with the mutawalli of the wakf; and where any application is made to him, with the applicants, by an order, frame such scheme fro the administration of the wakf.

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the wakf holding office as such immediately before the date on which the scheme comes into force:

Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the mutawalli so removed, as one of the members of the committee appointed for the

proper administration of the wakf.

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication, shall be final and binding on the mutawalli and all persons interested in the wakf:

Provided that any person aggrieved by an order made under sub-section (1) or sub-section (2) may, within sixty days from the date of the order prefer, an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that the Tribunal shall have no power to make any order staying the operation of the order made under sub-section (1) or sub-section (2).

(4) The Wakf Commissioner may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme which has been framed under this section.

(5) Pending the framing of the scheme for the proper administration of the wakf, the Wakf Commissioner may appoint a suitable person to perform all or any of the function of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.]

44. Application for inquiry.—Any person interested in a wakf may make an application to the [145](#)[Wakf Commissioner] supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the [145](#)[Wakf Commissioner] is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, [146](#)[he shall take such action thereon as he thinks fit].

45. Inquiry by the Board.—[147](#) [(1) The [148](#)[Wakf Commissioner] may, either on an application received under Section 44 or on its [149](#)[his own motion],

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry,

into any matter relating to a wakf and take such action [150](#)[as he thinks fit].]

(2) For the purposes of any inquiry under this Act, [151](#)[the wakf Commissioner or any person authorised by him] in this behalf shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

[152](#)[(3) The Wakf Commissioner holding any inquiry under sub-section (1), shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (18 of 1850).]

Chapter VI

FINANCE OF THE BOARD

46. Annual contributions payable to the Board.—[153](#)[(1) The mutawalli of every wakf, the net annual income of which is not less

than one thousand rupees, shall pay annually, out of the net annual income derived by the wakf, such contribution, not exceeding six per cent of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the wakf.

Explanation 1.—For the purposes of this Act, “net annual income” shall mean the gross income of the wakf from all sources, including nazars and offerings which do not amount to contributions to the corpus of the wakfs, in a year after deducting therefrom, the following, namely:—

- (i) the land revenues paid by it to the Government, including cesses paid to local authorities;
- (ii) the rates, taxes and licence fees, if any, paid by it to the Government or any local authority;
- (iii) expenditure incurred for all or any of the following purposes, namely:—
 - (a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;
 - (b) seeds or seedlings;
 - (c) manure;
 - (d) purchase, and maintenance, of agricultural implements;
 - (e) maintenance of, or repairs to, irrigation, works, cultivation;
 - (f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed ten per cent of the income derived from the lands belonging to the wakf;

- (iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent of the annual rent derived therefrom, or the actual expenditure, whichever is less;
- (v) sale proceeds of immovable properties or rights relating to, or arising out of, immovable properties, if such proceeds are re-invested to earn income for the wakf:

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely:—

- (a) advances and deposits recovered and loans taken or recovered;
- (b) deposits made as security by employees, lesses, or contractors and other deposits, if any;
- (c) withdrawals from banks or of investments;
- (d) amounts recovered towards costs awarded by courts;
- (e) sale proceeds of religious books and publications where such sales are undertaken as an unremunerative enterprise

with a view to propagating religion;

(f) donations in cash or kind or offerings made by the donors as contribution to the corpus of the wakf:

Provided that the interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;

(g) voluntary contributions received in cash or kind for a specific service to be performed by the wakf and expended on such service;

(h) audit recoveries.

Explanation II.—In determining the net annual income for the purposes of this section, only the net profit derived by any wakf from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income;]

(2) The Board may in the case of [154](#)[any mosque or orphanage or any particular wakf] reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of a wakf may realise the contributions payable by him under sub-section (1) from the various persons entitled to receive any pecuniary or other material benefits from the wakf, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of the benefits receivable by such person bears to the entire net annual income of the wakf:

Provided that if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (1), and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a wakf shall, subject to the prior payment of any dues of the Government or any local authority or of any other statutory first charge on the wakf property or the income thereof, be a first charge on the income of the wakf and shall be recoverable, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a mutawalli realises the income of the wakf and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in

the manner aforesaid.

[155](#)[(6) Where, after the commencement of the Wakf (Amendment) Act, 1984, the mutawalli of a wakf fails to submit a return of the net annual income of the wakf within the time specified or therefore or submits a return which, in the opinion of the Wakf Commissioner, is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Wakf Commissioner may, assess the net annual income of the Wakf to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the wakf for the purposes of the section:

Provided that no assessment of net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revision shall be made after considering the reply, if any, given by the mutawalli.

(7) Any mutawalli who is aggrieved by the assessment or revision made by the Wakf Commissioner under sub-section (6) may prefer an appeal to the State Government within thirty days from the date of the receipt of the assessment or revision of return and the state Government may, after giving the appellant and the Wakf Commissioner a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision of the return and the decision of the State Government shall be final.

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of the Wakf (Amendment) Act, 1984, the Wakf Commissioner may, within five years from the last date of the year to which such escaped assessment related, serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act in the first instance.]

[156](#)[**46-A. Power of Wakf Commissioner to direct banks, etc., to make payment.**—(1) Notwithstanding anything contained in any other law for the time being in force, the Wakf Commissioner, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom, any money belonging to a wakf is deposited, to pay the contribution, leviable under Section 46, out of such money, as may be standing to the credit of the wakf in such bank or may be deposited with such person, or out of the monies which may,

from time to time, be received by such bank or other person for or on behalf of the wakf by way of deposit, and on receipt of such orders, the bank or the other person, as the case may, shall, when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

(2) Every payment made by a bank or other person in pursuance of any order made under sub-section (1) shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.

(3) Any bank or other person who is ordered under sub-section (1) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both.]

156[46-B. Deduction of contribution from perpetual annuity payable to the wakf.—(1) Every authority empowered to disburse any perpetual annuity payable to a wakf under any law relating to the abolition of zamindaries or jagirs, or laying sown land ceilings, shall, on receipt of a certificate from the Wakf Commissioner specifying the amount of contribution payable by the wakf under Section 46 which remains unpaid, deduct before making payment of the perpetual annuity to the wakf, the amount specified in such certificate, and remit the amount so deducted to the Wakf Commissioner.

(2) Every amount remitted under sub-section (1) to the Wakf Commissioner shall be deemed to be a payment made by the wakf and shall, to the extent of the amount so remitted, operate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.]

47. Power of the Board to borrow.—For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine and the Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

157[47-A. Mutawalli not to lend or borrow moneys without sanction.—(1) Notwithstanding anything contained in a deed of wakf, no mutawalli, Executive Officer or other person in charge of the

administration of a wakf shall lend any money belonging to the wakf or any wakf property or borrow any money for the purposes of the wakf except with the previous sanction of the Wakf Commissioner.

(2) The Wakf Commissioner may, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (1) is authorised by him to lend or borrow any money or lend any other wakf property.

(3) Where any money is lent or borrowed, or other wakf property is lent in contravention of the provisions of this section, it shall be lawful for the Wakf Commissioner—

- (a) to recover an amount equal to the amount which has been so lent, or borrowed, together with interest due thereon from the personal funds of the person by whom such amount was lent or borrowed;
- (b) to recover the possession of the wakf property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.]

48. Wakf Fund.—¹⁵⁸ [(1) All monies received or realised by the Board under this Act and all other monies received as donations, benefactions or grants by the Board shall form a fund to be called the Wakf Fund.

(1-A) All monies received by the Board as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.]

(2) Subject to any rules that may be made by the State Government in this behalf, the Wakf Fund shall be under the control of the Board.

(3) The Wakf Fund shall be applied to—

- (a) repayment of any loan incurred under Section 47 and payment of interest thereon;
- (b) payment of the cost of audit of the Wakf Fund and the accounts of wakfs;
- (c) payment of the salary and allowances of the Secretary and staff of the Board;
- (d) payment of travelling allowances to the Chairman, members, Secretary and staff of the Board;
- (e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act.

(4) If any balance remains after meeting the expenditure referred to in sub-section (3), the Board may use any portion of such balance for the preservation and protection of wakf properties or for such other purposes as it may deem fit.

49. Budget of the Board.—¹⁵⁹ [(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 expenditure during that financial year and forward a copy of the same to the State Government.

¹⁶⁰[(2) On receipt of the budget forwarded to it under sub-section (1), the State Government shall examine the same and suggest such alterations, corrections, or modifications to be made therein as it may think fit and forward such suggestions to the Board for its consideration.

(3) On receipt of the suggestions from the State Government, the Board may make written representations to that Government with regard to the alterations, corrections or modifications suggested by that Government, and the State Government shall after considering such representations, communicate, within a period of three weeks from the date of receipt thereof, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

(4) On receipt of the decision of the State Government under sub-section (3), the Board shall incorporate in its budget all the alterations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board.]

50. Accounts of the Board.—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 prescribed.

51. Audit of accounts of the Board.—(1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify ¹⁶¹[whether the accounts of every wakf under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify.] all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit shall be paid from the Wakf Fund.

52. State Government to pass orders on auditor's report.—The State Government 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 on the report as it thinks fit.

53. Sums certified due recoverable as arrears of land revenue.— Every sum certified to be due from any person by an auditor in his report under Section 51 unless such certificate is modified or cancelled by an order of the State Government made under Section 52, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the State Government.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

54. No financial liability of Government.—¹⁶² [* * *]

Chapter VII

JUDICIAL PROCEEDINGS

¹⁶³[**55. Appointment, powers and jurisdiction of Tribunals.**—(1) The State Government shall, by notification in the Official Gazette, constitute as many tribunals as it may think fit for the determination of any dispute, question or other matter relating to a wakf or wakf property which such Tribunal is, or may be, required to determine under this Act or any rule or order made thereunder, and may, by the same or subsequent notification in the Official Gazette, define, the local limits of the area in relation to which each Tribunal appointed by it shall exercise jurisdiction under this Act.

(2) Any mutawalli of a wakf, person interested in a wakf or any other person aggrieved by any order made under this Act or any rule or order made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

(3) Where any application made under sub-section (1) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interests of the wakf or any other person interested in the wakf or the wakf property, to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute,

question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District and Sessions Judge or of a Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed:

Provided that where any procedure, different from the prescribed procedure, is specified by this Act, the Tribunal shall follow the procedure specified by this Act.

(7) The decision of the Tribunal shall be final and binding upon the parties to application and it shall have the force of a decree made by a civil court.

(8) Execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 or 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.]

164[55-A. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.—Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall, as soon as practicable, on the conclusion of the hearing of such matter, give its decision in writing

under its signature and furnish a copy of such decision to each of the parties who were present before it at the time of the decision and where any party was not present at the time aforesaid, send a copy of such decision to such party by registered post.]

¹⁶⁴[**55-B. Amendment of decisions.**—Clerical or arithmetical mistakes in any decision or order of a Tribunal or any error arising therein from any accidental slip or omission may at any time be corrected by the Tribunal by which such decision was given or order was made, either on its own motion or on the application of any of the parties to the proceeding, and, whenever any such correction is made, a copy of the decision or order, as so corrected, shall be furnished to each of the parties who were present before the Tribunal at the time of making such correction, and, where any party was not so present, shall be sent to such party by registered post.]

¹⁶⁵[**55-C. Bar of jurisdiction of civil courts in respect of matters determined by Tribunal.**— No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by, or under, this Act to be determined by a Tribunal.]

¹⁶⁶[**55-D. Appointment of receiver in certain cases.**—Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced—

(a) by or on behalf of a Board—

(i) to set aside the sale of any immovable property, which is wakf property, in execution of a decree or order of a civil court;

(ii) to set aside the transfer of any immovable property, which is wakf property, made by the mutawalli thereof, whether for valuable consideration or not, without, or otherwise than in accordance with, the sanction of the Board;

(iii) to recover possession of the property referred to in clause (a) or clause (b) or to restore possession of such property to the mutawalli of the concerned wakf; or

(b) by a mutawalli to recover possession of immovable property, which is wakf property, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board, and which is in the possession of the defendant,

the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property such amount as the court may consider to be necessary for further prosecution of the suit.

(2) The provisions of sub-section (1) shall apply, as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act.]

167[55-E. Bar to the enforcement of right on behalf of unregistered wakfs.—(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of the Wakf (Amendment) Act, 1984, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, after such commencement, in accordance with the provisions of this Act.]

168[55-F. Bar to the challenge of the validity of any notification, etc.—Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any civil court.]

56. Notice of suits by parties against the Board.—No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

57. Notice of suits, etc., by courts.—(1) In every suit or proceeding relating to a **169**[title to, or possession of, wakf property] **170**[or the right of a mutawalli or beneficiary, the court or Tribunal] shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any wakf property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates of taxes due to the Government or any local authority, notice shall be given to the Board by the Court, collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within one month of its coming to know of such suit or proceeding, applies to the court in this behalf.

(4) In the absence of a notice under sub-section (2). the sale shall

be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

58. Proceedings under the Land Acquisition Act, 1894.—(1) If, in the course of proceedings under the Land Acquisition Act, 1894 (1 of 1894) ¹⁷¹[or under any other law for the time being in force relating to the acquisition of land or other property] it appears to the Collector before an award is made that any property under acquisition is wakf property, a notice of such acquisition shall be served by the Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

¹⁷²[*Explanation.*—The reference to Collector in the foregoing provisions of this sub-section shall in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as a reference to the authority under such other law competent to make such award.]

(2) Where the Board has reason to believe that any property under acquisition is wakf property, it may at any time before the award is made appear and plead as a party to the proceeding.

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under Section 31 or Section 32 of the Land Acquisition Act, 1894 (1 of 1894) ¹⁷³[under the corresponding provisions of the other law referred to in sub-section (1)] without giving an opportunity to the Board to be heard.

(4) Any order passed under Section 31 or Section 32 of the Land Acquisition Act, 1894 ¹⁷⁴[under the corresponding provisions of the other law referred to in sub-section (1)] without giving an opportunity to the Board to be heard shall be declared void, if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

59. ¹⁷⁵[Wakf Commissioner] to be made a party to a suit or proceeding regarding a wakf on its application.—In any suit or proceeding in respect of a wakf or any wakf property by or against a stranger to the wakf or any other person, the ¹⁷⁵[Wakf Commissioner] may appear and plead as a party to the suit or proceeding.

60. Bar to compromise of suits by or against mutawallis.—No suit or proceeding in any court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the Borad.

► **Compromise of suit.**—Compromise of suit by or against mutawalli of a

wakf relating to rights of mutawalli, without sanction of Wakf Board, illegal and void, *Aliyathammuda Beethathebiyyapura Pookoya v. Pattakal Cheriya Koya*, (2019) 16 SCC 1.

61. Power to make application to the court in case of failure of mutawalli to discharge his duties.—(1) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, ¹⁷⁶[the Wakf Commissioner may apply] to the court for an order directing the mutawalli ¹⁷⁷[to pay to the Wakf Commissioner or to any person authorized by the Wakf Commissioner] in this behalf the amount necessary for the performance of the Act.

(2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the wakf and the mutawalli wilfully fails to discharge such duties, the ¹⁷⁸[Wakf Commissioner] or any person interested in the wakf may make an application to the court and the court may pass such order thereon as it thinks fit.

¹⁷⁹[61-A. Power of appellate authority to entertain appeal after the expiry of the specified period.— Where, under this Act, any period has been specified for the filing of any appeal, the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period so specified, entertain the appeal after the expiry of the said period.]

Chapter VIII

MISCELLANEOUS

¹⁸⁰[62. Powers of Central Government to regulate the secular activities of wakfs.— (1) For the purpose of regulating the secular activities of wakfs, the Central Government shall have the following powers and functions namely:—

- (a) to lay down general principles and policies of wakfs administration is so far as they relate to the secular activities of the wakfs;
- (b) to co-ordinate the functions of the Central Wakf Council, the Wakf Commissioners and the Board, in so far as they relate to their secular functions;
- (c) to review administration of the secular activities of wakfs generally and to suggest improvements, if any.

(2) In exercising its power and function under sub-section (1), the Central Government may call for any periodic or other reports from any Board or Wakf Commissioner and may issue to the Board or Wakf Commissioner such directions as it may think fit and in the performance of their functions, the Board and the Wakf Commissioners shall comply with such directions.]

63. Directions by the State Government.—Subject to any directions

on questions of policy issued under Section 62, the State Government may, from time to time, give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with any such directions.

181[63-A. **Annual report by the State Government.**— As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State Wakf Board and the administration of wakfs in the state during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be prescribed.]

182[63-B. **Powers of revision of the State Government.**— (1) Save as otherwise provided in this Act, the State Government may either on its own motion or on an application made to it by a mutawalli or any other person interested in the wakf, call for and examine the record of the Board or Wakf Commissioner, as the case may be, in respect of any proceeding (not being a proceeding relating to a matter in respect of which a suit has been instituted, appeal has been filed or application has been made to a court or any proceedings arising out of an application has been made to the Tribunal or an appeal to the State Government as provided by this Act), to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed in such proceedings, and, if in any case, it appears to the State Government that any such decision or order should be modified, annulled, reversed or remitted to the Board for reconsideration, the State Government may pass orders accordingly: Provide that no such order shall be made except after giving to the person who is likely to be prejudicially affected thereby a reasonable opportunity of making his representations against the proposed action.

(2) No application shall be entertained under sub-section (1) in respect of any matter unless an application in relation to the said matter had already being made to the Board has been disposed of by the Board or, where the application relates to any matter in respect of which the Wakf Commissioner is empowered by or under this Act to exercise any power, unless an application had been made to the Wakf Commissioner and has been disposed of by him.

(3) Every application referred to in sub-section (1) shall be made within a period of three months from the date on which the order made in the proceeding to which the application relates, was communicated to the applicant.

64. Power to supersede the Board.—(1) If the State Government is of opinion that the Board is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this

Act or has exceeded or abused its powers [183](#)[or has willfully and without sufficient cause failed to comply with any direction issued by the Central Government under Section 62 or the State Government under Section 63, or if the State Government is satisfied on a consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the wakfs in the State], the State Government may, by notification in the Official Gazette, supersede the Board for such period as may be specified in the notification:

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

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

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

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

- (a) extend the period of supersession for such further period as it may consider necessary; or
- (b) reconstitute the Board in the manner provided in Section 10 and Section 11.

65. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Board or [184](#)[the wakf Commissioner or the Survey Commissioner] or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

[185](#)[**66. Wakf Commissioner, member of Board, etc., to be deemed to be public servants.**— (1) Wakf Commissioner, Survey Commissioner, members of the Board, every auditor officer and servant of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

(2) Every mutawali of a wakf, every member of managing

committee, whether constituted by the Board or under any deed of wakf, every Executive Officer and every person holding any office in a wakf shall also be deemed to be public servant within meaning of Section 21 of the Indian Penal Code (45 of 1860).]

¹⁸⁶[66-A. Special provision for reorganisation of certain Boards.—(1) Where on account of the reorganisation of States ¹⁸⁷[under any law providing for the reorganisation of States], the whole or any part of a State in respect of which a Board was, immediately before the ¹⁸⁸[the date of such reorganisation], functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that ¹⁸⁹[it should be reconstituted as an intra-State Board] for the whole or any part of that State, the State Government may frame a scheme for such dissolution or ¹⁹⁰[such reconstitution], including proposals regarding the transfer of the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.

(2) On receipt of a scheme forwarded to it under sub-section (1), the Central Government may, after consulting the State Governments concerned, approve the scheme with or without modifications and give effect to the scheme so approved by making such order as it thinks fit.

(3) An order under sub-section (2) may provide for all or any of the following matters, namely:—

- (a) the dissolution of the Board;
- (b) the ¹⁹¹[reconstitution] in any manner whatsoever of the Board including the establishment, where necessary, of a new Board;
- (c) the area in respect of which the reconstituted Board or new Board shall function and operate;
- (d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer;
- (e) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;
- (f) the transfer or re-employment of any employees of the Board to, or by, any such transferee and ¹⁹²[subject to the provisions of law providing for the reorganisation of the concerned State], the terms and conditions of service applicable to such employees after such transfer or re-employment;

(g) such incidental, consequential and supplemental matters as may be necessary to give effect to the approved scheme.

(4) Where an order is made under this section transferring the assets, rights and liabilities of any Board, then, by virtue of that order, such assets, rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.

(5) Every order made under this section shall be published in the Official Gazette and this Act and the notifications issued thereunder shall have effect subject to the provisions of the order.

(6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.]

¹⁹³[66-B. Special provision for establishment of Board for part of a State.—(1) Where on account of the territorial changes brought about by ¹⁹⁴[any law providing for the reorganisation of any, State, this Act is, as from the date in which that law comes into force, applicable], this Act is, as from the 1st day of November, 1956, applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then, notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act is in force and in such a case, any reference in this Act to the word “State” in relation to a Board shall be construed as a reference to that part of the State for which the Board is established.

(2) Where any such Board has been established and it appears to the Government of the State that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette, dissolve the Board established for the part of the State or reconstitute and reorganise such Board or establish a new Board for the whole of the State and thereupon, the assets, rights and liabilities of the Board for the part of the State shall vest in, and be the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.]

¹⁹⁵[66-C. Application of Act to properties given or donated by persons not professing Islam for support of certain wakfs.—Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a wakf being—

- (a) a mosque, idgah, imambara, dargah, khangah or a maqbara;
- (b) a Muslim graveyard;
- (c) a choultry or a musafarkhana,

then such property shall be deemed to be comprised in that wakf and be dealt with in the same manner as the wakf in which it is so comprised.]

[196](#)[66-D. Power of Board and Wakf Commissioner to require copies of documents Act., to be furnished.— Notwithstanding anything contained in any law for the time being in force, it shall be law full for the Board, or the Wakf Commissioner to require nay person having the custody of any record, register, report or other document relating to a wakf or any immovable property which is wakf property, to furnish, subject to the payment of necessary costs, copies of, or extracts form, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Wakf Commissioner copies or extra from the required record, register, report or other document.]

[197](#)[66-E. Institution of suit or Legal proceedings in certain cases.— Notwithstanding anything contained in any other law for the time being in force, no suit or other legal proceedings in respect of the administration or management of a wakf, or any other method or dispute for the determination or decision of which provisions have been made in this Act, shall be instituted in any court or Tribunal except under, and in accordance with, the provision of this Act.]

[198](#)[66-F. Power of Central Government to constitute common Boards
(1) Where the Central Government is satisfied that by reason of—
(i) the smallness of the Muslim population in two or more States,
(ii) the slender resources of the wakf in such States, and
(iii) the description between the number and income of the wakf and the Muslim population in such States,

it is expedient in the interest of the wakfs in the State and Muslim population of such States, to have, instead of separate Boards for each of such States, a common Board, it may, after consultation with the Government of each of the concerned States, establish, by notification in the Official Gazette, a common board of such States as it may deemed fit, and may be, by the same or any subsequent notification, specify the place at which the principal office of such common Board shall be located.

(2) Every common Board established under sub-section (1) shall, as far as practicable, consist of the persons specified in sub-section (1), or, as the case may be, sub-section (2) of Section 10.

(3) Whenever any common Board is established under sub-section (1);

(a) all powers vested in the State Government under any deed of wakf or any provision of law for the time being in force relating to wakfs, shall become transferred to, and vested in, the Central Government and, thereupon, reference in such deed of wakf or law to the State Government shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure that at least one representative of each of the concerned States is included as a member of the Board;

(b) references in this Act to a State shall be construed as references to each of the States for which the common Board has been established;

(c) the Central Government may, without prejudice to any rule applicable to a Board in a State, made by notification in the Official Gazette, rules regulating the conduct of business by, and affairs of, the common Board.

(4) The common Board shall be a body corporate, with object not confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.]

[199](#)[66-G. Period of limitation for recovery of wakf properties to be thirty years.— Notwithstanding anything contained in the limitation Act, 1963 (36 of 1963), the period of limitation for any suit for possession of immovable property comprised in any wakf or possession of any interest in such property shall be a period of thirty years and such period such begin to run when the possession of the defendant becomes adverse to the plaintiff.]

[200](#)[66-H. Special provision as to evacuse wakf properties.— The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of Section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950) which immediately before it become such evacuee property within the said meaning was property comprised in any wakf and, in particular, any entrustment (whether by transfer to any documents or in any other manner and whether generally or specified purposes) of any such property to a Board made before the commencement of the Wakf (Amendment) Act, 1984 in pursuance of the instruction of the Custodian under the administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding any thing contained in any other provision of this Act, effect as if such entrustment had operate to—

(a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purpose of sub-section (1) of Section 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of such entrustment, and

(b) authorize such Board to assume direct management of the

wakf concerned for so long as it might deem necessary.

67. Power to make rules.—(1) The State Government may, be notification in the Official Gazette, make rules to carry out the [201](#)[other than those of Chapter II-A].

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

- (a) the particulars which a list of wakfs published under sub-section (2) of Section 5 may contain;
- (b) the conditions and restrictions subject to which the Board may transfer any property;
- (c) the regulation of the functions of the Board;
- (d) [202](#)[* * *];
- (e) the manner in which any inquiry may be held under this Act;
- (f) the powers vested in a civil court which may be exercised by the Board or the Commissioner or any other person while holding an inquiry under this Act;
- (g) the form in which a register of wakfs may be maintained and the further particulars which it may contain;
- (h) the form in which, and the time within which, the budget of the Board may be prepared and submitted by the Board [203](#)[* * *];
- (i) the manner in which the accounts of the Wakf Fund may be kept and audited and the contents of the auditor's report;
- (j) the payment of moneys into the Wakf Fund, the investment, custody and disbursement of such moneys;
- (k) the circumstances under which, and the terms and conditions on which, the Board may be allowed to borrow;
- (l) the circumstances in which, and the conditions subject to which, the Board may reduce or remit the contribution payable in respect of a wakf;
- (m) the procedure to be followed in the recovery of any sum due under this Act as an arrear of land revenue;
- (n) [204](#)[the manner of election of member of the Board by means of a single transferable vote to be prescribed under Section 10;
- (o) the scale of pay, allowances and other conditions of service of officers and other employees appointed by the Wakf Commissioner under Section 21-B;
- (p) the conditions and restrictions subject to which the Wakf Commissioner and any authorized officer of the Board may inspect any record, register or other document in a public office in pursuance of the provisions of Section 22-B;

- (q) the conditions subject to which an Executive Officer may be appointed under Section 26-A and salaries and allowances of such Executive Officer;
- (r) the manner in which an inquiry may be held by the Wakf Commissioner under Section 26-B with regard to wakfs which appear to have ceased to exist or in relation to buildings, or other place which were being used for religious purpose or instruction or for charity, which have ceased to be used for that purpose;
- (s) the manner in which the wakf Commissioner may give notice to the mutawalli under sub-section (2) of Section 31;
- (t) the form in which, and the time with in which, a separate budget for wakfs under the direct management of the Board shall be prepared as required by Section 31-A;
- (u) the intervals at which accounts of wakfs may be audited in pursuance of the provisions of sub-section (1) of Section 33;
- (v) the time within which the sale of any property is to be confirmed under the first proviso to sub-section (2) of Section 36-A, and the manner in which the approval given under sub-section (3) of that section shall be published;
- (w) the manner of service of notice issued under sub-section (1) of Section 36-D and the manner in which any inquiry is to be made under sub-section (3) of that section;
- (x) the other matters which may be specified in the report submitted under sub-section (3) of Section 43-A;
- (y) manner of publication of order made under sub-section (2) of Section 43-C;
- (z) the manner in which consultation may be made with a mutawali under sub-section (1) of Section 43-F;
- (za) manner of publication of order made under sub-section (2) of Section 43-F;
- (zb) the rate at which contribution to be made by a mutawali under Section 46;
- (zc) time within which application is to be made to the Tribunal under sub-section (2) of Section 55 for the determination of any dispute, question or other matter relating to a wakf or wakf property;
- (zd) the procedure which a Tribunal shall follow under sub-section (6) Section 55;
- (ze) the form in which an annual report is to be submitted under Section 63-A and the matters which such report shall contain;
- (zf) rules regulating the conduct the business by, and affairs of, the common Board under clause (c) of sub-section (3) of

Section 66-F;

(zg) any other method which is required to be, or may be, prescribed.].

²⁰⁵[67-A. Rules made by the Central Government to be laid before Parliament.— Every rule made by the Central Government under Section 66-F shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive session aforesaid, both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

68. Power to make regulations.—(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.

(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 place of the meetings of the Board and the number of members required to form a quorum at its meetings;
- (b) the procedure and conduct of business of the Board;
- (c) the constitution and functions of committees of 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 Chairman or members of the Board or members of committees;
- (e) terms and conditions of service of the officers, and servants of the Board;
- (f) the form of application for registration of wakfs, further particulars to be contained therein and the manner and place of registration of wakfs;
- (g) further particulars to be contained in the register of wakfs;
- (h) the books to be kept at the office of the Board;
- (i) the form in which, and the time within which, the budgets of wakfs may be prepared and submitted by the mutawallis and approved by the Board;
- (j) the manner in which the accounts of wakfs may be kept and audited and the contents of the auditor's report;
- (k) the method of calculating the income of a wakf for the purpose

of levying contributions under this Act;

(l) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;

(m) persons by whom any order or decision of the Board may be authenticated;

(n) any other matter which has to be, or may be, prescribed.

(3) All regulations made under this section shall be published in the Official Gazette and the regulations shall have effect from the date of such publication.

[206](#)[68-A. Laying of rules and regulations before State Legislature.— Every rules made under Section 67 and every regulation made under Section 68 shall be laid, as soon as may be after it is made, before the State Legislature.]

[69. Repeal and savings.](#)—(1) The following enactments, namely:—

(1) The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810 (Ben. Reg. 19 of 1810);

(2) [207](#)[* * *] the Religious Endowments Act, 1863 (20 of 1863);

(3) The Charitable Endowments Act, 1890 (6 of 1890);

[208](#)[(3-A) On and from the commencement of the Wakf (Amendment) Act, 1984 Section 92 and 93 of the Code of Civil Procedure, 1908 (5 of 1908);]

(4) The Charitable and Religious Trusts Act, 1920 (14 of 1920);

(5) The Mussalman Wakf Act, 1923 (42 of 1923);

shall not apply to any wakf to which this Act applies.

(2) If, immediately before the commencement of this Act in any State, there is in force in that State any law which corresponds to this Act [other than an enactment referred to in sub-section (1)] that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken.

[209](#)[70. Removal of difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the purposes of this Act, as appear to it to be necessary or expedient for removing the difficulty.]

[210](#)[SCHEDULE

[See Section 9(1-A)]

List of amendments

1. In sub-section (2) of Section 5, for the words "a list of wakfs", the words "a list of Sunni wakfs or, as the case may be, Shia wakfs" shall be substituted.

2. In Section 11,—

(a) for clause (b), the following clause shall be substituted, namely:—

"(b) persons having knowledge of Muslim law and representing, in the case of a Sunni Board of Wakfs, associations such as State Jamiat-ul-Ulama-i-Hind (whether such persons are Hanafi, Ahle-Hadis or Shefai) and in the case of a Shia Board of Wakfs, associations such as State Shia Conference;"

(b) the second proviso shall be omitted.

3. In clause (e) of sub-section (2) of Section 15, the Explanation shall be omitted.

4. For Section 27, the following section shall be substituted, namely:

—
"27. Decision if a property is wakf property.—(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it shall refer the question to a civil court of competent jurisdiction.

(2) The decision of the civil court on any question referred to it under sub-section (1) shall be final".]

1. 15-1-1955—Ajmer, Andaman and Nicobar Islands, Coorg, Hyderabad, Kutch, Madhya Bharat, Madras, Mysore, Patiala and East Punjab States Union, Tripura and Vindhya Pradesh—Notification No. SRO 53, dated 4-1-1955, Gazette of India, Extraordinary, Part II, Section 3, p. 7;

1-2-1955—Assam and Travancore-Cochin, 1-4-1955—Andhra and Rajasthan—Notification No. SRO 282, dated 22-1-1955, Gazette of India, Extraordinary, 1955, Part II, Section 3, p. 199;

20-12-1955—Bhopal,—Notification No. SRO 3696, dated 20-12-1955, Gazette of India, Extraordinary, Part II, Section 3, p. 2501;

1-6-1958—Orissa—Notification No. GSR 428, dated 23-5-1958, Gazette of India, Part II, Section 3(i), p. 319.

2. *Substituted* by Act 69 of 1984, Section 2 (w.e.f. the date to be notified).

3. *Inserted* by Act 30 of 1959, Section 2.

4. *Substituted* by Act 38 of 1969, Section 2.

- ⁵ *Substituted* for "established for the benefit of the Muslim community" by Act 34 of 1964, Section 2.
- ⁶ *Substituted* for "Section 9" by Act 34 of 1964, Section 2.
- ⁷ *Omitted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ⁸ *Inserted* by Act 34 of 1964, Section 2.
- ⁹ *Inserted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ¹⁰ *Substituted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ¹¹ *Substituted* by Act 38 of 1969, Section 3 (deemed always to have been substituted).
- ¹² *Substituted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ¹³ *Inserted* by Act 34 of 1964, Section 2.
- ¹⁴ *Inserted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ¹⁵ *Inserted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ¹⁶ *Inserted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ¹⁷ *Substituted* by Act 34 of 1964, Section 2.
- ¹⁸ *Inserted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ¹⁹ *Substituted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ²⁰ *Inserted* by Act 69 of 1984, Section 3 (w.e.f. the date to be notified).
- ²¹ *Inserted* by Act 38 of 1969, Section 4.
- ²² *Substituted* for "Commissioner" by Act 69 of 1984, Section 4 (w.e.f. the date to be notified).
- ²³ *Substituted* for "commissioners" by Act 69 of 1984, Section 4 (w.e.f. the date to be notified).
- ²⁴ *Substituted* for "in the State" by Act 38 of 1969, Section 4.
- ²⁵ *Inserted* by Act 69 of 1984, Section 4 (w.e.f. the date to be notified).
- ²⁶ *Substituted* for "existing in the State" by Act 38 of 1969, Section 5.
- ²⁷ *Substituted* for "existing in the State, or as the case may be, the part of the State" by Act 69 of 1984, Section 5 (w.e.f. the date to be notified).
- ²⁸ *Substituted* by Act 38 of 1969, Section 6 (deemed always to have been substituted).
- ²⁹ *Inserted* by Act 38 of 1969, Section 6.
- ³⁰ *Inserted* by Act 69 of 1984, Section 6 (w.e.f. the date to be notified).

31. *Substituted* for "Commissioner" by Act 69 of 1984, Section 6 (w.e.f. the date to be notified).
32. *Inserted* by Act 69 of 1984, Section 6 (w.e.f. the date to be notified).
33. *Inserted* by Act 69 of 1984, Section 7 (w.e.f. the date to be notified).
34. *Inserted* by Act 34 of 1964, Section 3.
35. *Inserted* by Act 38 of 1969, Section 7.
36. *Substituted* by Act 38 of 1969, Section 7.
37. *Substituted* for "Commissioner" by Act 69 of 1984, Section 8 (w.e.f. the date to be notified).
38. *Inserted* by Act 34 of 1964, Section 4.
39. *Inserted* by Act 34 of 1964, Section 4.
40. The words "of the properties" *omitted* by Act 38 of 1969, Section 8.
41. The words "of the property" *omitted* by Act 38 of 1969, Section 8.
42. *Inserted* by Act 34 of 1964, Section 4.
43. *Inserted* by Act 34 of 1964, Section 4.
44. *Substituted* by Act 4 of 1986, Section 2 and Schedule (w.e.f. 15-5-1986).
45. *Inserted* by Act 34 of 1964, Section 5.
46. *Substituted* for "The said Board" by Act 34 of 1964, Section 5.
47. *Inserted* by Act 69 of 1984, Section 10 (w.e.f. the date to be notified).
48. *Substituted* by Act 69 of 1984, Section 11 (w.e.f. the date to be notified).
49. *Omitted* by Act 69 of 1984, Section 12 (w.e.f. the date to be notified).
50. *Substituted* by Act 69 of 1984, Section 13 (w.e.f. 27-10-2009).
51. *Substituted* by Act 34 of 1964, Section 7.
52. *Substituted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).
53. *Inserted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).
54. *Substituted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).
55. *Omitted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).
56. *Substituted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).
57. *Substituted* for "shall be exercised" by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).

notified).

58. *Omitted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).

59. *Substituted* for "or lease, as required by Section 36-A" by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).

60. *Substituted* by Act 34 of 1964, Section 7.

61. *Omitted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).

62. *Omitted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).

63. *Substituted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).

64. *Substituted* by Act 69 of 1984, Section 14 (w.e.f. the date to be notified).

65. *Inserted* by Act 69 of 1984, Section 15 (w.e.f. the date to be notified).

66. *Inserted* by Act 69 of 1984, Section 15 (w.e.f. the date to be notified).

67. *Inserted* by Act 69 of 1984, Section 15 (w.e.f. the date to be notified).

68. *Inserted* by Act 69 of 1984, Section 15 (w.e.f. the date to be notified).

69. *Inserted* by Act 69 of 1984, Section 16 (w.e.f. the date to be notified).

70. *Substituted* by Act 69 of 1984, Section 17 (w.e.f. the date to be notified).

71. *Inserted* by Act 69 of 1984, Section 18 (w.e.f. the date to be notified).

72. *Inserted* by Act 69 of 1984, Section 18 (w.e.f. the date to be notified).

73. *Inserted* by Act 69 of 1984, Section 18 (w.e.f. the date to be notified).

74. *Inserted* by Act 69 of 1984, Section 15 (w.e.f. the date to be notified).

75. *Inserted* by Act 69 of 1984, Section 18 (w.e.f. the date to be notified).

76. *Inserted* by Act 69 of 1984, Section 18 (w.e.f. the date to be notified).

77. *Substituted* by Act 69 of 1984, Section 19 (w.e.f. the date to be notified).

78. *Inserted* by Act 69 of 1984, Section 20 (w.e.f. the date to be notified).

79. *Inserted* by Act 69 of 1984, Section 20 (w.e.f. the date to be notified).

80. *Inserted* by Act 34 of 1964, Section 9.

81. *Substituted* for "The Board may allow inspection of its proceedings or other records in its custody" by Act 69 of 1984, Section 21 (w.e.f. the date to be notified).

82. *Substituted* for "Secretary of the Board" by Act 69 of 1984, Section 21 (w.e.f. the date to be notified).

83. *Substituted* for "Secretary" by Act 69 of 1984, Section 21 (w.e.f. the date to be notified).

- ^{84.} *Substituted* for "authorised in this behalf by the Board" by Act 69 of 1984, Section 21 (w.e.f. the date to be notified).
- ^{85.} *Substituted* for "Board" by Act 69 of 1984, Section 22 (w.e.f. the date to be notified).
- ^{86.} *Substituted* for "it may consider" by Act 69 of 1984, Section 22 (w.e.f. the date to be notified).
- ^{87.} *Substituted* for "as it thinks fit" by Act 69 of 1984, Section 22 (w.e.f. the date to be notified).
- ^{88.} *Inserted* by Act 69 of 1984, Section 22 (w.e.f. the date to be notified).
- ^{89.} *Renumbered* by Act 69 of 1984, Section 23 (w.e.f. the date to be notified).
- ^{90.} *Substituted* for "Board" by Act 69 of 1984, Section 23 (w.e.f. the date to be notified).
- ^{91.} *Inserted* by Act 69 of 1984, Section 23 (w.e.f. the date to be notified).
- ^{92.} *Inserted* by Act 69 of 1984, Section 24 (w.e.f. the date to be notified).
- ^{93.} *Inserted* by Act 69 of 1984, Section 24 (w.e.f. the date to be notified).
- ^{94.} *Inserted* by Act 69 of 1984, Section 25 (w.e.f. the date to be notified).
- ^{95.} *Substituted* for "Board" by Act 69 of 1984, Section 26 (w.e.f. the date to be notified).
- ^{96.} *Substituted* for "may itself" by Act 69 of 1984, Section 26 (w.e.f. the date to be notified).
- ^{97.} *Substituted* for "Board" by Act 69 of 1984, Section 27 (w.e.f. the date to be notified).
- ^{98.} *Renumbered* by Act 69 of 1984, Section 28 (w.e.f. the date to be notified).
- ^{99.} *Inserted* by Act 69 of 1984, Section 28 (w.e.f. the date to be notified).
- ^{100.} *Renumbered* by Act 69 of 1984, Section 28 (w.e.f. the date to be notified).
- ^{101.} *Inserted* by Act 69 of 1984, Section 29 (w.e.f. the date to be notified).
- ^{102.} *Inserted* by Act 34 of 1964, Section 10.
- ^{103.} *Renumbered* by Act 34 of 1964, Section 10.
- ^{104.} *Substituted* by Act 69 of 1984, Section 30 (w.e.f. the date to be notified).
- ^{105.} *Substituted* by Act 69 of 1984, Section 30 (w.e.f. the date to be notified).
- ^{106.} Section 34 *renumbered* as sub-section (1) by Act 69 of 1984, Section 31 (w.e.f. the date to be notified).
- ^{107.} *Inserted* by Act 69 of 1984, Section 31 (w.e.f. the date to be notified).
- ^{108.} *Substituted* by Act 69 of 1984, Section 31 (w.e.f. the date to be notified).
- ^{109.} *Inserted* by Act 69 of 1984, Section 31 (w.e.f. the date to be notified).

- ^{110.} *Substituted for "order of the Board" by Act 69 of 1984, Section 32 (w.e.f. the date to be notified).*
- ^{111.} *Substituted for "directions of the Board" by Act 69 of 1984, Section 33 (w.e.f. the date to be notified).*
- ^{112.} *Substituted for "required by the Board" by Act 69 of 1984, Section 33 (w.e.f. the date to be notified).*
- ^{113.} *Substituted by Act 69 of 1984, Section 34 (w.e.f. the date to be notified).*
- ^{114.} *Inserted by Act 34 of 1964, Section 11.*
- ^{115.} *Inserted by Act 69 of 1984, Section 35 (w.e.f. the date to be notified).*
- ^{116.} *Inserted by Act 69 of 1984, Section 35 (w.e.f. the date to be notified).*
- ^{117.} *Inserted by Act 69 of 1984, Section 35 (w.e.f. the date to be notified).*
- ^{118.} *Inserted by Act 69 of 1984, Section 35 (w.e.f. the date to be notified).*
- ^{119.} *Substituted for "Board" by Act 69 of 1984, Section 36 (w.e.f. the date to be notified).*
- ^{120.} *Substituted by Act 69 of 1984, Section 37 (w.e.f. the date to be notified).*
- ^{121.} *Substituted by Act 69 of 1984, Section 38 (w.e.f. the date to be notified).*
- ^{122.} *Omitted by Act 34 of 1964, Section 12.*
- ^{123.} *Substituted by Act 69 of 1984, Section 39 (w.e.f. the date to be notified).*
- ^{124.} *Inserted by Act 69 of 1984, Section 39 (w.e.f. the date to be notified).*
- ^{125.} *Substituted by Act 69 of 1984, Section 39 (w.e.f. the date to be notified).*
- ^{126.} *Substituted by Act 69 of 1984, Section 39 (w.e.f. the date to be notified).*
- ^{127.} *Inserted by Act 69 of 1984, Section 39 (w.e.f. the date to be notified).*
- ^{128.} *Inserted by Act 69 of 1984, Section 40 (w.e.f. the date to be notified).*
- ^{129.} *Inserted by Act 69 of 1984, Section 40 (w.e.f. the date to be notified).*
- ^{130.} *Substituted by Act 34 of 1964, Section 13.*
- ^{131.} *Substituted for "moral turpitude" by Act 69 of 1984, Section 41 (w.e.f. the date to be notified).*
- ^{132.} *Omitted by Act 69 of 1984, Section 41 (w.e.f. the date to be notified).*
- ^{133.} *Inserted by Act 69 of 1984, Section 41 (w.e.f. the date to be notified).*
- ^{134.} *Omitted by Act 69 of 1984, Section 41 (w.e.f. the date to be notified).*
- ^{135.} The words "or sub-section (2)" *omitted by Act 69 of 1984, Section 41 (w.e.f. the date to*

be notified).

^{136.} *Substituted* for the words "three-fourth" by Act 69 of 1984, Section 41 (w.e.f. the date to be notified).

^{137.} *Substituted* by Act 69 of 1984, Section 41 (w.e.f. the date to be notified).

^{138.} *Inserted* by Act 69 of 1984, Section 41 (w.e.f. the date to be notified).

^{139.} *Omitted* by Act 69 of 1984, Section 41 (w.e.f. the date to be notified).

^{140.} *Inserted* by Act 34 of 1964, Section 13.

^{141.} *Substituted* by Act 69 of 1984, Section 42 (w.e.f. the date to be notified).

^{142.} *Inserted* by Act 69 of 1984, Section 43 (w.e.f. the date to be notified).

^{143.} *Inserted* by Act 69 of 1984, Section 43 (w.e.f. the date to be notified).

^{144.} *Inserted* by Act 69 of 1984, Section 43 (w.e.f. the date to be notified).

^{145.} *Substituted* for "Board" by Act 69 of 1984, Section 44 (w.e.f. the date to be notified).

^{146.} *Substituted* by Act 69 of 1984, Section 44 (w.e.f. the date to be notified).

^{147.} *Substituted* by Act 34 of 1964, Section 15.

^{148.} *Substituted* for "Board" by Act 69 of 1984, Section 45 (w.e.f. the date to be notified).

^{149.} *Substituted* for "its own motion" by Act 69 of 1984, Section 45 (w.e.f. the date to be notified).

^{150.} *Substituted* for "as it thinks fit" by Act 69 of 1984, Section 45 (w.e.f. the date to be notified).

^{151.} *Substituted* by Act 69 of 1984, Section 45 (w.e.f. the date to be notified).

^{152.} *Inserted* by Act 69 of 1984, Section 45 (w.e.f. the date to be notified).

^{153.} *Substituted* by Act 69 of 1984, Section 46 (w.e.f. the date to be notified).

^{154.} *Substituted* for "any particular wakf" by Act 69 of 1984, Section 46 (w.e.f. the date to be notified).

^{155.} *Inserted* by Act 69 of 1984, Section 46 (w.e.f. the date to be notified).

^{156.} *Inserted* by Act 69 of 1984, Section 47 (w.e.f. the date to be notified).

^{157.} *Inserted* by Act 69 of 1984, Section 48 (w.e.f. the date to be notified).

^{158.} *Substituted* by Act 34 of 1964, Section 17.

^{159.} *Renumbered* by Act 69 of 1984, Section 49 (w.e.f. the date to be notified).

^{160.} *Inserted* by Act 69 of 1984, Section 49 (w.e.f. the date to be notified).

161. *Inserted by Act 69 of 1984, Section 50 (w.e.f. the date to be notified).*
162. *Omitted by Act 34 of 1964, Section 18.*
163. *Substituted by Act 69 of 1984, Section 51 (w.e.f. the date to be notified).*
164. *Inserted by Act 69 of 1984, Section 52 (w.e.f. the date to be notified).*
165. *Inserted by Act 69 of 1984, Section 52 (w.e.f. the date to be notified).*
166. *Inserted by Act 69 of 1984, Section 52 (w.e.f. the date to be notified).*
167. *Inserted by Act 69 of 1984, Section 52 (w.e.f. the date to be notified).*
168. *Inserted by Act 69 of 1984, Section 52 (w.e.f. the date to be notified).*
169. *Substituted for "title to wakf property" by Act 69 of 1984, Section 53 (w.e.f. the date to be notified).*
170. *Substituted for "or the right of a mutawalli, the court" by Act 69 of 1984, Section 53 (w.e.f. the date to be notified).*
171. *Inserted by Act 69 of 1984, Section 54 (w.e.f. the date to be notified).*
172. *Inserted by Act 69 of 1984, Section 54 (w.e.f. the date to be notified).*
173. *Inserted by Act 69 of 1984, Section 54 (w.e.f. the date to be notified).*
174. *Inserted by Act 69 of 1984, Section 54 (w.e.f. the date to be notified).*
175. *Substituted for "Board" by Act 69 of 1984, Section 55 (w.e.f. the date to be notified).*
176. *Substituted for "the Board may apply" by Act 69 of 1984, Section 56 (w.e.f. the date to be notified).*
177. *Substituted by Act 69 of 1984, Section 56 (w.e.f. the date to be notified).*
178. *Substituted for "Board" by Act 69 of 1984, Section 56 (w.e.f. the date to be notified).*
179. *Inserted by Act 69 of 1984, Section 59 (w.e.f. the date to be notified).*
180. *Substituted by Act 69 of 1984, Section 58 (w.e.f. the date to be notified).*
181. *Inserted by Act 69 of 1984, Section 59 (w.e.f. the date to be notified).*
182. *Inserted by Act 69 of 1984, Section 59 (w.e.f. the date to be notified).*
183. *Inserted by Act 69 of 1984, Section 60 (w.e.f. the date to be notified).*
184. *Substituted for "the Commissioner" by Act 69 of 1984, Section 61 (w.e.f. the date to be notified).*
185. *Substituted by Act 69 of 1984, Section 62 (w.e.f. the date to be notified).*
186. *Inserted by Act 30 of 1959, Section 4.*

187. *Substituted* by Act 69 of 1984, Section 63 (w.e.f. the date to be notified).
188. *Substituted* for "1st day of November, 1956" by Act 69 of 1984, Section 63 (w.e.f. the date to be notified).
189. *Substituted* by Act 69 of 1984, Section 63 (w.e.f. the date to be notified).
190. *Substituted* by Act 69 of 1984, Section 63 (w.e.f. the date to be notified).
191. *Substituted* by Act 69 of 1984, Section 63 (w.e.f. the date to be notified).
192. *Substituted* by Act 69 of 1984, Section 63 (w.e.f. the date to be notified).
193. *Inserted* by Act 30 of 1959, Section 4.
194. *Substituted* by Act 69 of 1984, Section 64 (w.e.f. the date to be notified).
195. *Inserted* by Act 34 of 1964, Section 21.
196. *Inserted* by Act 69 of 1984, Section 65 (w.e.f. the date to be notified).
197. *Inserted* by Act 69 of 1984, Section 65 (w.e.f. the date to be notified).
198. *Inserted* by Act 69 of 1984, Section 65 (w.e.f. the date to be notified).
199. *Inserted* by Act 69 of 1984, Section 65 (w.e.f. 23-6-1986).
200. *Inserted* by Act 69 of 1984, Section 65 (w.e.f. the date to be notified).
201. *Substituted* for "purposes of this Act" by Act 34 of 1964, Section 22.
202. Clause (d) *omitted* by Act 69 of 1984, Section 66 (w.e.f. the date to be notified).
203. *Omitted* by Act 34 of 1964, Section 22.
204. *Substituted* for clause (n) by Act 69 of 1984, Section 66 (w.e.f. the date to be notified).
205. *Inserted* by Act 69 of 1984, Section 67 (w.e.f. the date to be notified).
206. *Inserted* by Act 4 of 1986, Section 2 and Schedule (w.e.f. 15-5-1986).
207. The words and figure "Section 5 of" *omitted* by Act 34 of 1964, Section 23.
208. *Inserted* by Act 69 of 1984, Section 68 (w.e.f. the date to be notified).
209. *Inserted* by Act 34 of 1964, Section 24.
210. *Inserted* by Act 34 of 1964, Section 24.

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THE WAQF ACT, 1995

ACT NO. 43 OF 1995

[22nd November, 1995.]

An Act to provide for the better administration of ¹[Auqaf] and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the ²[Waqf] Act, 1995.

(2) It extends to the whole of India ^{3****}.

(3) It shall come into force in a State on such date⁴ as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area.

2. Application of the Act.—Save as otherwise expressly provided under this Act, this Act shall apply to all ¹[auqaf] whether created before or after the commencement of this Act:

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 (36 of 1955) applies.

3. Definitions.—In this Act, unless the context otherwise requires,—

(a) “beneficiary” means a person or object for whose benefit a ²[waqf] is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law:

(b) “benefit” does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;

(c) “Board” means a Board of ²[Waqf] established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common ²[Waqf] Board established under section 106;

(d) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 23;

(e) “Council” means the Central ²[Waqf] Council established under section 9;

⁵[(e) “encroacher” means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board;]

(f) “Executive Officer” means the Executive Officer appointed by the Board under sub-section (1) of section 38;

⁶[(g) “list of auqaf” means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37;]

(h) “member” means a member of the Board and includes the Chairperson;

1. Subs. by Act 27 of 2013, s. 2, for “wakfs” (w.e.f. 1-11-2013).

2. Subs. by s. 3, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

3. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

4. 1st January, 1996, *vide* notification No. S.O. 1007 (E), dated 27th December, 1995, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii).

5. Ins. by s. 5, *ibid.* (w.e.f. 1-11-2013).

6. Subs. by s. 5, *ibid.*, for clause (g) (w.e.f. 1-11-2013).

(i) “mutawalli” means any person appointed, either verbally or under any deed or instrument by which a ¹[waqf] has been created, or by a competent authority, to be the mutawalli of a ¹[waqf] and includes any person who is a mutawalli of a ¹[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 ¹[waqf] or ¹[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:

²[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;]

(j) “net annual income”, in relation to a ¹[waqf], means net annual income determined in accordance with the provisions of the *Explanations* to sub-section (1) of section 72;

(k) “person interested in a ¹[waqf]” means any person who is entitled to receive any pecuniary or other benefits from the ¹[waqf] and includes—

(i) any person who has a right to ³[offer prayer] or to perform any religious rite in a mosque, idgah, imambara, dargah, ⁴[khanqah, peerkhana and karbala], maqbara, graveyard or any other religious institution connected with the ¹[waqf] or to participate in any religious or charitable institution under the ¹[waqf];

(ii) the ⁵[waqif] and any descendant of the ⁵[waqif] and the mutawalli;

(l) “prescribed”, except in Chapter III, means prescribed by rules made by the State Governments;

(m) “regulations” means the regulations made by the Board under this Act;

(n) “Shia ¹[waqf]” means a ¹[waqf] governed by Shia Law;

(o) “Sunni ¹[waqf]” means a ¹[waqf] governed by Sunni Law;

(p) “Survey Commissioner” means the Survey Commissioner of ¹[Waqf] appointed under sub-section (1) of section 4 and includes any Additional or Assistant Survey Commissioners of ⁶[Auqaf] under sub-section (2) of section 4;

(q) “Tribunal”, in relation to any area, means the Tribunal constituted under sub-section (1) of section 83, having jurisdiction in relation to that area;

⁷[(r) “waqf” means the permanent dedication by any person, of any movable or immovable 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

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Ins. by s. 5, *ibid.* (w.e.f. 1-11-2013).

3. Subs. by s. 5, *ibid.*, for “worship” (w.e.f. 1-11-2013).

4. Subs. by s. 5, *ibid.*, for “khangah” (w.e.f. 1-11-2013).

5. Subs. by s. 4, *ibid.*, for “wakif” (w.e.f. 1-11-2013).

6. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

7. Subs. by s. 5, *ibid.*, for clause (r) (w.e.f. 1-11-2013).

(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 and such other purposes as recognised by Muslim law,

and “waqif” means any person making such dedication;]

(s) “¹[waqf] deed” means any deed or instrument by which a ¹[waqf] has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;

(t) “¹[Waqf] Fund” means a ¹[waqf] fund formed under sub-section (I) of section 77.

CHAPTER II

SURVEY OF ²[AUQAF]

4. Preliminary survey of ²[auqaf].—(I) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of ²[Auqaf] and as many Additional or Assistant Survey Commissioners of ²[Auqaf] as may be necessary for the purpose of making a survey of ³[auqaf in the State].

⁴[(IA) Every State Government shall maintain a list of auqaf referred to in sub-section (I) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013), in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:

Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.]

(2) All Additional and Assistant Survey Commissioner of ²[Auqaf] shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of ²[Auqaf].

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of ²[auqaf] existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

- (a) the number of ²[auqaf] in the State showing the Shia ²[auqaf] and Sunni ²[auqaf] separately;
- (b) the nature and objects of each ¹[waqf];
- (c) the gross income of the property comprised in each ¹[waqf];
- (d) the amount of land revenue, cesses, rates and taxes payable in respect of each ¹[waqf];
- (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each ¹[waqf]; and
- (f) such other particulars relating to each ¹[waqf] as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

- (a) summoning and examining any witness;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record from any court or office;
- (d) issuing commissions for the examination of any witness or accounts;
- (e) making any local inspection or local investigation;
- (f) such other matters as may be prescribed.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

3. Subs. by s. 6, *ibid.*, for “wakfs existing in the State at the date of the commencement of this Act” (w.e.f. 1-11-2013).

4. Ins. by s. 6, *ibid.* (w.e.f. 1-11-2013).

(5) If, during any such inquiry, any dispute arises as to whether a particular ¹[waqf] is a Shia ¹[waqf] or Sunni ¹[waqf] and there are clear indications in the deed of ¹[waqf] as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of ¹[waqf] properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of ²[ten years] from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3):

³[Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.]

5. Publication of list of ⁴[auqaf].—(1) On receipt of a report under sub-section (3) 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 sub-section (1) and ⁵[forward it back to the Government within a period of six months for publication in the Official Gazette] a list of Sunni ⁴[auqaf] or Shia ⁴[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.

⁶[(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.]

6. Disputes regarding ⁴[auqaf].—(1) If any question arises whether a particular property specified as ¹[waqf] property in the list of ⁴[auqaf] is ¹[waqf] property or not or whether a ¹[waqf] specified in such list is a Shia ¹[waqf] or Sunni ¹[waqf], the Board or the mutawalli of the ¹[waqf] or ⁷[any person aggrieved] may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of ⁴[auqaf]:

⁸[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.]

⁹* * * * *

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any ¹[waqf] shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 6, *ibid.*, for “twenty years” (w.e.f. 1-11-2013).

3. Ins. by s. 6, *ibid.* (w.e.f. 1-11-2013).

4. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

5. Subs. by s. 7, *ibid.*, for “publish in the Official Gazette” (w.e.f. 1-11-2013).

6. Ins. by s. 7, *ibid.* (w.e.f. 1-11-2013).

7. Subs. by s. 8, *ibid.*, for “any person interested therein” (w.e.f. 1-11-2013).

8. Ins. by s. 8, *ibid.* (w.e.f. 1-11-2013).

9. The *Explanation* omitted by s. 8, *ibid.* (w.e.f. 1-11-2013).

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of ¹[auqaf] shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

7. Power of Tribunal to determine disputes regarding ¹[auqaf].—(1) If, after the commencement of this Act, ²[any question or dispute] arises, whether a particular property specified as ³[waqf] property in a list of ¹[auqaf] is ³[waqf] property or not, or whether a ³[waqf] specified in such list is a Shia ³[waqf] or a Sunni ³[waqf], the Board or the mutawalli of the ³[waqf], ⁴[or any person aggrieved by the publication of the list of auqaf under section 5] therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that—

(a) in the case of the list of ¹[auqaf] relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of ¹[auqaf]; and

(b) in the case of the list of ¹[auqaf] relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any ³[waqf] shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of ¹[auqaf] and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

⁵[(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.]

⁶[8. State Government to bear cost of survey.—The total cost of making a survey including the cost of publication of the list or lists of auqaf under this Chapter shall be borne by the State Government.]

1. Subs. by Act 27 of 2013, s. 4, for “wakfs” (w.e.f. 1-11-2013).

2. Subs. by s. 9, *ibid.*, for “any question” (w.e.f. 1-11-2013).

3. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

4. Subs. by s. 9, *ibid.*, for “or any person interested” (w.e.f. 1-11-2013).

5. Ins. by s. 9, *ibid.* (w.e.f. 1-11-2013).

6. Subs. by s. 10, *ibid.*, for section 8 (w.e.f. 1-11-2013).

CHAPTER III

CENTRAL ¹[WAQF] COUNCIL

9. Establishment and constitution of Central ¹[Waqf] Council.—²[(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;

³[(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 ¹[waqf] having a gross annual income of rupees five lakhs and above;

(viii) three persons who are eminent scholars in Muslim Law:

⁴[Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.]

(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[(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.]

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 11, *ibid.*, for sub-section (1) (w.e.f. 1-11-2013).

3. Subs. by s. 11, *ibid.*, for sub-clause (ii) (w.e.f. 1-11-2013).

4. Ins. by s. 11, *ibid.* (w.e.f. 1-11-2013).

10. Finance of Council.—(1) Every Board shall pay from its ¹[Waqf] Fund annually to the Council such contribution as is equivalent to one per cent. of the aggregate of the net annual income of the ²[auqaf] in respect of which contribution is payable under sub-section (1) of section 72:

Provided that where the Board, in the case of any particular ¹[waqf] has remitted under sub-section (2) of section 72 the whole of the contribution payable to it under sub-section (1) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the ¹[waqf] in respect of which such remission has been granted shall not be taken into account.

(2) All monies received by the Council under sub-section (1) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central ¹[Waqf] Fund.

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central ¹[Waqf] Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit.

11. Accounts and audit.—(1) The Council 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 prescribed by rules made by the Central Government.

(2) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Central Government.

(3) The costs of the audit shall be paid from the Central ¹[Waqf] Fund.

12. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

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

(a) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council;

(b) control over and application of the Central ¹[Waqf] Fund;

(c) the form and manner in which accounts of the Council may be maintained.

(3) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of three days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

CHAPTER IV

ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

13. Incorporation.—(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of ²[Auqaf] under such name as may be specified in the notification:

³[Provided that in case where a Board of Waqf has not been established, as required under this sub-section, a Board of Waqf shall, without prejudice to the provisions of this Act or any other law for the time being in force, be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013).]

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

3. Ins. by s. 12, *ibid.* (w.e.f. 1-11-2013).

(2) Notwithstanding anything contained in sub-section (1), if the Shia ¹[auqaf] in any State constitute in number more than fifteen per cent. of all the ¹[auqaf] in the State or if the income of the properties of the Shia ¹[auqaf] in the State constitutes more than fifteen per cent. of the total income of properties of all the ¹[auqaf] in the State, the State Government may, by notification in the Official Gazette, establish a Board of ¹[Auqaf] each for Sunni ¹[auqaf] and for Shia ¹[auqaf] under such names as may be specified in the notification.

²[(2A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of Shia waqf, the Members shall belong to the Shia Muslim and in the case of Sunni waqf, the Members shall belong to the Sunni Muslim.]

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

14. Composition of Board.—(1) The Board for a State and ³[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, ³[the National Capital Territory of Delhi];

(ii) Muslim Members of the State Legislature;

⁴[(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 ¹[auqaf] having an annual income of rupees one lakh and above.

⁵[*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;]

⁶[(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;]

1. Subs. by Act 27 of 2013, s. 4, for “wakfs” (w.e.f. 1-11-2013).

2. Ins. by s. 12, *ibid.* (w.e.f. 1-11-2013).

3. Subs. by s. 13, *ibid.*, for “the Union territory of Delhi” (w.e.f. 1-11-2013).

4. Subs. by s. 13, *ibid.*, for sub-clause (iii) (w.e.f. 1-11-2013).

5. Ins. by s. 13, *ibid.* (w.e.f. 1-11-2013).

6. Subs. by s. 13, *ibid.*, for clauses (c), (d) and (e) (w.e.f. 1-11-2013).

¹[(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).

²* * * * *

(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 ³[auqaf] and Sunni ³[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.

²* * * * *

(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.

15. Term of office.—The members of the Board shall hold office for a term of five years ⁴[from the date of notification referred to in sub-section (9) of section 14].

16. Disqualification for being appointed, or for continuing as, a member of the Board.—A person shall be disqualified for being appointed, or for continuing as, a member of the Board if—

(a) he is not a Muslim and is less than twenty-one years of age;

(b) he is found to be a person of unsound mind;

(c) he is an undischarged insolvent;

(d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

1. Ins. by Act 27 of 2013, s. 13 (w.e.f. 1-11-2013).

2. Sub-sections (5) and (7) omitted by s. 13, *ibid.* (w.e.f. 1-11-2013).

3. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

4. Ins. by s. 14, *ibid.* (w.e.f. 1-11-2013).

¹[(*da*) he has been held guilty of encroachment on any waqf property;]

(*e*) he has been on a previous occasion—

(*i*) removed from his office as a member or as a mutawalli, or

(*ii*) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.]

17. Meetings of the Board.—(*I*) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.

(2) The Chairperson, or in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.

(3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote.

18. Committees of the Board.—(*I*) 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 ²[auqaf].

(2) The Constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

19. Resignation of Chairperson and members.—The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairperson or the member shall continue in office until the appointment of his successor is notified in the Official Gazette.

20. Removal of Chairperson and member.—(*I*) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he—

(*a*) is or becomes subject to any disqualifications specified in section 16; or

(*b*) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the ²[auqaf]; or

(*c*) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

(2) Where the Chairperson of the Board is removed under sub-section (*I*), he shall also cease to be a member of the Board.

³[**20A. Removal of Chairperson by vote of no confidence.**—Without prejudice to the provisions of section 20, the Chairperson of a Board may be removed by vote of no confidence in the following manner, namely:—

(*a*) no resolution expressing a vote of confidence or no confidence in any person elected as Chairperson of a Board shall be moved except in the manner prescribed and twelve months have not elapsed after the date of his election as a Chairperson and be removed except with the prior permission of the State Government;

(*b*) notice for no confidence shall be addressed to the State Government stating clearly the grounds on which such motion is proposed to be moved and shall be signed by at least half the total members of the Board;

1. Ins. by Act 27 of 2013, s. 15 (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

3. Ins. by s. 16, *ibid.* (w.e.f. 1-11-2013).

(c) at least three members of the Board signing the notice of no confidence shall personally present to the State Government, the notice together with an affidavit signed by them to the effect that the signatures on no confidence motion are genuine and have been made by the signatories after hearing or reading the contents of the notice;

(d) on receipt of the notice of no confidence, as provided hereinabove, the State Government shall fix such time, date and place as may be considered suitable for holding a meeting for the purpose of the proposed no confidence motion:

Provided that at least fifteen days notice shall be given for such a meeting;

(e) notice for meeting under clause (d) shall also provide that in the event of no confidence motion being duly carried on or, election of the new Chairperson, as the case may be, shall also be held in the same meeting;

(f) the State Government shall also nominate a Gazetted Officer (other than an officer of the department which is concerned with the supervision and administration of the Board) to act as presiding officer of the meeting in which the resolution for no confidence shall be considered;

(g) the quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;

(h) the resolution for no confidence shall be deemed to be carried out, if passed by a simple majority of the members present;

(i) if a resolution for no confidence is carried out, the Chairperson shall cease to hold office forthwith and shall be succeeded by his successor who shall be elected by another resolution in the same meeting;

(j) election of the new Chairperson shall be conducted under clause (i), in the meeting under the chairmanship of the said presiding officer referred to in clause (f), in the following manner, namely:—

(A) Chairperson shall be elected from amongst the elected members of the Board;

(B) nomination of candidates shall be proposed and seconded in the meeting itself and election after withdrawal, if any, shall be held by method of secret ballot;

(C) election shall be held by simple majority of the members present in the meeting and in case of equality of votes, the matter shall be decided by drawing of lots; and

(D) proceedings of the meeting shall be signed by the presiding officer;

(k) new Chairperson elected under clause (h) shall hold the office only up to the remainder of the term of the Chairperson removed by the resolution of no confidence; and

(l) if the motion for passing the resolution of no confidence fails for want of quorum or lack of requisite majority at the meeting, no subsequent meeting for considering the motion of no confidence shall be held within six months of the date of the previous meeting.]

21. Filling of a vacancy.—When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred.

22. Vacancies, etc., not to invalidate proceedings of the Board.—No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its member or any defect in the constitution thereof.

23. Appointment of Chief Executive Officer and his term of office and other conditions of service.—¹[(J) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State

1. Subs. by Act 27 of 2013, s. 17, for sub-section (J) (w.e.f. 1-11-2013).

Government, and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.]

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.

24. Officers and other employees of the Board.—(1) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.

(2) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations.

25. Duties and powers of Chief Executive Officer.—(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include—

(a) investigating the nature and extent of ¹[auqaf] and ²[waqf] properties and calling whenever necessary, an inventory of ²[waqf] properties and calling, from time to time, for accounts, returns and information from mutawallis;

(b) inspecting or causing inspection of ²[waqf] properties and accounts, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of ¹[auqaf].

(2) In exercising the powers of giving directions under sub-section (1) in respect of any ²[waqf], the Board shall act in conformity with the directions by the ²[waqf] in the deed of the ²[waqf], the purpose of ²[waqf] and such usage and customs of the ²[waqf] as are sanctioned by the school of Muslim law to which the ²[waqf] belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

26. Powers of Chief Executive officer in respect of orders or resolutions of Board.—Where the Chief Executive Officer considers that an order or resolution passed by the Board—

(a) has not been passed in accordance with the law; or

(b) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or

(c) if implemented, is likely to—

(i) cause financial loss to the Board or to the concerned ²[waqf] or to the ¹[auqaf] generally; or

(ii) lead to a riot or breach of peace; or

(iii) cause danger to human life, health or safety; or

(d) is not beneficial to the Board or to any ²[waqf] or to ¹[auqaf] generally,

he may, before implementing such order or resolution, place the matter before the Board for its reconsideration and, if such order or resolution is not confirmed by a majority of vote of the members present and voting after such reconsideration, refer the matter to the State Government along with his objections to the order or resolution, and the decision of the State Government thereon shall be final.

1. Subs. by Act 27 of 2013, s. 4, for “wakfs” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

¹[**27. Delegation of powers by the Board.**—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110.]

²[**28. Power of District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate to implement the directions of the Board.**—Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub-Divisional Magistrate of a District in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considers necessary, seek directions from the Tribunal for the implementation of its decisions.]

29. Powers of Chief Executive Officer to inspect records, registers, etc.—³[(1)] The Chief Executive Officer or any officer of the Board duly authorised by him in this behalf shall, ⁴[subject to such conditions as may be prescribed], be entitled at all reasonable time to inspect, in any public office, any records, registers or other documents relating to a ⁵[waqf], or movable or immovable properties which are ⁵[waqf] properties or are claimed to be ⁵[waqf] properties.

⁶[(2) The mutawalli or any other person having the custody of any document related to waqf properties shall produce the same, within the prescribed period, before the Chief Executive Officer on being called upon to do so in writing.

(3) Subject to such conditions as may be prescribed, an agency of the Government or any other organisation shall supply, within ten working days, copies of the records, registers of properties or other documents relating to waqf properties or claimed to be waqf properties, to the Chief Executive Officer on a written request to this effect from him:

Provided that before taking any course of action as mentioned in sub-sections (2) and (3), the Chief Executive Officer shall obtain approval of the Board.]

30. Inspection of records.—(1) The Board may allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.

(2) All copies issued under this section shall be certified by the Chief Executive Officer of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872).

(3) The powers conferred on the Chief Executive Officer by sub-section (2) may be exercised by such other officer or officers of the Board as may either generally or specially be authorised in this behalf by the Board.

31. Prevention of disqualification for membership of Parliament.—It is hereby declared that the offices of the Chairperson or member of a Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a Member of Parliament ⁷[or a Member of Union territory Legislature or a Member of a State Legislature if so declared under a law made by the appropriate State Legislature].

32. Powers and functions of the Board.—(1) Subject to any rules that may be made under this Act, the general superintendence of all ⁸[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 ⁸[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 ⁸[auqaf] were created or intended:

1. Subs. by Act 27 of 2013, s. 18, for section 27 (w.e.f. 1-11-2013).

2. Subs. by s. 19, *ibid.*, for section 28 (w.e.f. 1-11-2013).

3. S. 29 numbered as sub-section (1) thereof by s. 20, *ibid.* (w.e.f. 1-11-2013).

4. Subs. by s. 20, *ibid.*, for certain words (w.e.f. 1-11-2013).

5. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

6. Ins. by s. 20, *ibid.* (w.e.f. 1-11-2013).

7. Ins. by s. 21, *ibid.* (w.e.f. 1-11-2013).

8. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

Provided that in exercising its powers under this Act in respect of any ¹[waqf], the Board shall act in conformity with the directions of the ²[waqif], the purposes of the ¹[waqf] and any usage or custom of the ¹[waqf] sanctioned by the school of Muslim law to which the ¹[waqf] belongs.

Explanation.—For the removal of doubts, it is hereby declared that in this sub-section, “¹[waqf]” includes a ¹[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—

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every ¹[waqf];

(b) to ensure that the income and other property of ³[auqaf] are applied to the objects and for the purposes for which such ³[auqaf] were intended or created;

(c) to give directions for the administration of ³[auqaf];

(d) to settle schemes of management for a ¹[waqf]:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct—

(i) the utilisation of the surplus income of a ¹[waqf] consistent with the objects of ¹[waqf];

(ii) in what manner the income of a ¹[waqf], the objects of which are not evident from any written instrument, shall be utilised;

(iii) in any case where any object of ¹[waqf] has ceased to exist or has become incapable of achievement, that so much of the income of the ¹[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.

Explanation.—For the purposes of this clause, the powers of the Board shall be exercised—

(i) in the case of a Sunni ¹[waqf], by the Sunni members of the Board only; and

(ii) in the case of a Shia ¹[waqf], by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for auditing of account of ³[auqaf];

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any ¹[waqf];

(i) to institute and defend suits and proceedings relating to ³[auqaf];

⁴(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:

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakif” (w.e.f. 1-11-2013).

3. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

4. Subs. by s. 22, *ibid.*, for clause (j) (w.e.f. 1-11-2013).

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.]

(k) to administer the ¹[Waqf] Fund;

(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the ¹[waqf] property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, ¹[waqf] properties, accounts, records or deeds and documents relating thereto;

(n) to investigate and determine the nature and extent of ¹[waqf] and ¹[waqf] property, and to cause, whenever necessary, a survey of such ¹[waqf] property;

²[(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 ³[auqaf].

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the ¹[waqf] or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any ¹[waqf] land, which is a ¹[waqf] property, ⁴[has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like], market, housing flats and the like, it may serve upon the mutawalli of the concerned ¹[waqf] a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, ⁵*** take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from ¹[waqf] funds or from the finances which may be raised on the security of the properties of the ¹[waqf] concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate charges incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawalli of the concerned ¹[waqf] to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned ¹[waqf].

33. Powers of inspection by Chief Executive Officer or persons authorised by him.—(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 ¹[waqf] or ¹[waqf] property, the Chief Executive Officer ⁶[or any other person authorised by him in writing] with the prior approval of the Board, ⁷***, may inspect all movable and immovable properties, which are

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Ins. by s. 22, *ibid.* (w.e.f. 1-11-2013).

3. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

4. Subs. by s. 22, *ibid.*, for “offers a feasible potential for development as a shopping centre” (w.e.f. 1-11-2013).

5. The words “with the prior approval of the Government,” omitted by s. 22, *ibid.* (w.e.f. 1-11-2013).

6. Ins. by s. 23, *ibid.* (w.e.f. 1-11-2013).

7. The words “either himself or any other person authorised by him in writing in this behalf” omitted by s. 23, *ibid.* (w.e.f. 1-11-2013).

¹[waqf] properties, and all records, correspondences, plans, accounts and other documents relating thereto.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned mutawalli and all officers and other employees working under him and every person connected with the administration of the ¹[waqf], shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents relating to the ¹[waqf] as may be called for by the person making the inspection and furnish to him such information relating to the ¹[waqf] as may be required by him.

(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is or was working under him had mis-appropriated, misapplied or fraudulently retained, any money or other ¹[waqf] property, or had incurred irregular, unauthorised or improper expenditure from the funds of the ¹[waqf], the Chief Executive Officer may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property, should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property which has been mis-appropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the ¹[waqf], within such time as may be specified in the order.

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

(5) The Tribunal may, after taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.

34. Recovery of the amount determined under section 33.—Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 33, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer, with the prior approval of the Board shall, take such steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under section 33, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Chief Executive Officer, who shall, on receipt thereof, credit the amount to the funds of the concerned ¹[waqf].

35. Conditional attachment by Tribunal.—(1) Where the Chief Executive Officer is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of section 33 to make any payment, with intent to defeat or delay the execution of the said order,—

(a) is about to dispose of the whole or any part of the property; or

(b) is about to remove the whole or any part of the property from the jurisdiction of the Chief Executive Officer,

he may, with prior approval of the Board, apply to the Tribunal for the conditional attachment of the said property or such part thereof, as he may think necessary.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

(2) The Chief Executive Officer shall, unless the Tribunal otherwise directs, specify in the application the property required to be attached and the estimated value thereof.

(3) The Tribunal may direct the mutawalli or the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in section 34, or to appear and show cause why he should not furnish such security.

(4) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(5) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as if it were an order for attachment made under the provision of the said Code.

CHAPTER V

REGISTRATION OF ¹[AUQAF]

36. Registration.—(1) Every ²[waqf], whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli:

Provided that such applications may be ³[made by the waqf] or his descendants or a beneficiary of the ²[waqf] or any Muslim belonging to the sect to which the ²[waqf] belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain the following particulars:—

(a) a description of the ²[waqf] properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the ²[waqf] properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the ²[waqf] properties;

(e) the amount set apart under the ²[waqf] for—

(i) the salary of the mutawalli and allowances to the individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the ²[waqf] deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the ²[waqf].

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

1. Subs. by Act 27 of 2013, s. 4, for “wakfs” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

3. Subs. by s. 24, *ibid.*, for “made by the wakf” (w.e.f. 1-11-2013).

(7) On receipt of an application for registration, the Board may, before the registration of the ¹[waqf] make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the ¹[waqf] property, the Board shall, before registering the ¹[waqf], give notice of the application to the person administering the ¹[waqf] property and shall hear him if he desires to be heard.

(8) In the case of ²[auqaf] created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of ²[auqaf] created after such commencement, within three months from the date of the creation of the ¹[waqf]:

Provided that where there is no Board at the time of creation of a ¹[waqf], such application will be made within three months from the date of establishment of the Board.

37. Register of ²[auqaf].—³[(1)] The Board shall maintain a register of ²[auqaf] which shall contain in respect of each ¹[waqf] copies of the ¹[waqf] deeds, when available and the following particulars, namely:—

- (a) the class of the ¹[waqf];
- (b) the name of the mutawallis;
- (c) the rule of succession to the office of mutawalli under the ¹[waqf] deed or by custom or by usage;
- (d) particulars of all ¹[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 provided by regulations.

⁴[(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.

(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.]

38. Powers of Board to appoint Executive Officer.—(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 ¹[waqf], appoint on whole-time or part-time 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 ¹[waqf] having a gross annual income of not less than five lakh rupees:

Provided that the person chosen for appointment should be a person professing Islam.

(2) Every Executive Officer appointed under sub-section (1) shall exercise such powers and discharge such duties as pertain only to the administration of the property of the ¹[waqf] for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Board:

Provided that the Executive Officer who is appointed for a ¹[waqf] having a gross annual income of not less than five lakh rupees shall ensure that the budget of the ¹[waqf] is submitted, the accounts of the ¹[waqf] are regularly maintained, and the yearly statement of accounts are submitted within such time as the Board may specify.

(3) While exercising his powers and discharging his functions under sub-section (2), the Executive Officer shall not interfere with any religious duties or any usage or custom of the ¹[waqf] sanctioned by the Muslim law.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

3. S. 37 numbered as sub-section (1) thereof by s. 25, *ibid.* (w.e.f. 1-11-2013).

4. Ins. by s. 25, *ibid.* (w.e.f. 1-11-2013).

(4) The salaries and allowances of the Executive Officer and his staff shall be fixed by the Board and in fixing the quantum of such salary the Board shall have due regard to the income of the ¹[waqf], the extent and nature of the duties of the Executive Officer and shall also ensure that the amounts of such salaries and allowances are not disproportionate to the income of the ¹[waqf] and do not operate as an unnecessary financial burden on it.

(5) The salaries and allowances of the Executive Officer and his staff shall be paid by the Board from the ¹[Waqf] Fund and, if the ¹[waqf] generates any additional income as a result of appointment of the Executive Officer, the Board may claim reimbursement of amounts spent on the salaries and allowances from the fund of the ¹[waqf] concerned.

(6) The Board may, for sufficient reasons, and after giving to the Executive Officer or a member of his staff, a reasonable opportunity of being heard, suspend, remove or dismiss the Executive Officer or a member of his staff from his post.

(7) Any Executive Officer or a member of his staff who is aggrieved by any order or removal or dismissal made under sub-section (6) may, within thirty days from the date of communication of the order, prefer an appeal against the order to the Tribunal and the Tribunal may, after considering such representation as the Board may make in the matter, and after giving a reasonable opportunity to the Executive Officer or a member of his staff of being heard, confirm, modify or reverse the order.

39. Powers of Board in relation to ²[auqaf] which have ceased to exist.—(1) The Board shall, if it is satisfied that the objects or any part thereof, of a ¹[waqf] have ceased to exist, whether such cesser took place before or after the commencement of this Act, cause an inquiry to be held by the Chief Executive Officer, in the prescribed manner, to ascertain the properties and funds pertaining to such ¹[waqf].

(2) On the receipt of the report of inquiry of the Chief Executive Officer, the Board shall pass an order,—

(a) specifying the property and funds of such ¹[waqf];

(b) directing that any property or funds pertaining to such ¹[waqf] which have been recovered shall be applied or utilised for the renovation of any ¹[waqf] property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, to any of the purposes specific in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

(3) The Board may, if it has reason to believe that any building or other place which was being used for religious purpose or instruction or for charity has, whether before or after the commencement of this Act, ceased to be used for that purpose, make an application to the Tribunal for an order directing the recovery of possession of such building or other place.

(4) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place—

(a) is ¹[waqf] property;

(b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and

(c) is not in the occupation of any person who has been authorised by or under any law for the time being in force to occupy such building or other place, make an order—

(i) directing the recovery of such building or place from any person who may be in unauthorised possession thereof, and

(ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilised for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

40. Decision if a property is ¹[waqf] property.—(1) The Board may itself collect information regarding any property which it has reason to believe to be ¹[waqf] property and if any question arises whether a particular property is ¹[waqf] property or not or whether a ¹[waqf] is a Sunni ¹[waqf] or a Shia ¹[waqf], it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is ¹[waqf] property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is ¹[waqf] property, call upon the trust or society, as the case may be, either to register such property under this Act as ¹[waqf] property or show cause why such property should not be so registered:

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

41. Power to cause registration of ¹[waqf] and to amend register.—The Board may direct a mutawalli to apply for the registration of a ¹[waqf], or to supply any information regarding a ¹[waqf] or may itself cause the ¹[waqf] to be registered or may at any time amend the register of ²[auqaf].

42. Change in the management of ²[auqaf] to be notified.—(1) In the case of any change in the management of a registered ¹[waqf] due to the death or retirement or removal of the mutawalli, the incoming mutawalli, shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

43. ²[Auqaf] registered before the commencement of this Act deemed to be registered.—Notwithstanding anything contained in this Chapter, where any ¹[waqf] has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the ¹[waqf] under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

CHAPTER VI

MAINTENANCE OF ACCOUNTS OF ²[AUQAF]

44. Budget.—(1) Every mutawalli of a ¹[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 ³[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 ¹[waqf];

(ii) for the maintenance and preservation of the ¹[waqf] property;

(iii) for the discharge of all liabilities and subsisting commitments binding on the ¹[waqf] under this Act or any other law for the time being in force.

⁴[(3) In case the Board considers any item in the budget being contrary to the objects of the waqf and the provisions of this Act, it may give such direction for addition or deletion of such item as it may deem fit.]

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

3. Subs. by s. 26, *ibid.*, for “ninety days” (w.e.f. 1-11-2013).

4. Subs. by s. 26, *ibid.*, for sub-section (3) (w.e.f. 1-11-2013).

(4) If in the course of the financial year the mutawalli finds it necessary to modify the provisions made in the budget in regard to the receipt or to the distribution of the amounts to be expended under the different heads, he may submit to the Board a supplementary or a revised budget and the provisions of sub-section (3) shall, as far as may be, apply to such supplementary or revised budget.

45. Preparation of budget of ¹[auqaf] under direct management of the Board.—(1) The Chief Executive Officer shall 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 for each of the ¹[auqaf] under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

(2) While submitting the budget under sub-section (1), the Chief Executive Officer shall also prepare statement giving details of the increase, if any, in the income of each ²[waqf] under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.

(3) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every ²[waqf] under the direct management of the Board.

(4) Every budget submitted by the Chief Executive Officer under sub-section (1) shall comply with the requirements of section 46 and, for this purpose, references therein to the mutawalli of the ³[waqf] shall be construed as references to the Chief Executive Officer.

(5) The audit of accounts of every ²[waqf] under the direct management of the Board shall be undertaken by the State Examiner of Local funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the ²[waqf].

(6) The provisions of sub-sections (2) and (3) of section 47 and the provisions of sections 48 and 49 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) Where any ²[waqf] is under the direct management of the Board, such administrative charges as may be specified by the Chief Executive Officer shall be payable by the ²[waqf] to the Board:

Provided that the Chief Executive Officer shall not collect more than ten per cent. of the gross annual income of the ²[waqf] under the direct management of the Board as administrative charges.

46. Submission of Accounts of ¹[auqaf].—(1) Every mutawalli shall keep regular accounts.

(2) Before the ³[1st day of July] next, following the date on which the application referred to in section 36 has been made and thereafter before the ³[1st day of July] in every year, every mutawalli of a ²[waqf] shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the ²[waqf] during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act, have been applicable to the ²[waqf]:

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

47. Audit of accounts of ¹[auqaf].—(1) The accounts of ¹[auqaf] submitted to the Board under section 46 shall be audited and examined in the following manner, namely:—

(a) in the case of a ²[waqf] having no income or a net annual income not exceeding ⁴[fifty thousand rupees], the submission of a statement of accounts shall be a sufficient compliance with the provisions of section 46 and the accounts of two per cent. of such ¹[auqaf] shall be audited annually by an auditor appointed by the Board;

(b) the accounts of the ²[waqf] having net annual income exceeding ⁴[fifty thousand rupees] shall be audited annually, or at such other intervals as may be prescribed, by an auditor appointed by the

1. Subs. by Act 27 of 2013, s. 4, for “wakfs” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “waf” (w.e.f. 1-11-2013).

3. Subs. by s. 27, *ibid.*, for “1st day of May” (w.e.f. 1-11-2013).

4. Subs. by s. 28, *ibid.*, for “ten thousand rupees” (w.e.f. 1-11-2013).

Board from out of the panel of auditors prepared by the State Government and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of auditors;

(c) the State Government may, ¹[under intimation to the Board,] at any time cause the account of any ²[waqf] audited by the State Examiner of Local Funds or by any other officer designated for that purpose by that State Government.

(2) The auditor shall submit his report to the Board and the report of the auditor shall among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit of the accounts of a ²[waqf] shall be met from the funds of that ²[waqf]:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to ³[auqaf] having a net annual income of ⁴[more than fifty thousand rupees] shall be paid in accordance with the scale of remuneration specified by the State Government under clause (c) of sub-section (1):

Provided further that where the audit of the accounts of any ²[waqf] is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent. of the net annual income of such ²[waqf] and such costs shall be met from the funds of the ³[auqaf] concerned.

48. Board to pass orders on auditor's report.—(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.

(2) The mutawalli or any other person aggrieved by any order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1).

(4) The order made by the Tribunal under sub-section (2) shall be final.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of section 35.

49. Sums certified to be due recoverable as arrears of land revenue.—(1) Every sum certified to be due from any person by an auditor in his report under section 47 unless such certificate is modified or cancelled by an order of the Board or of the Tribunal made under section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand notice for the same issued by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same as an arrear of land revenue.

1. Ins. by Act 27 of 2013, s. 28 (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for "wakf" (w.e.f. 1-11-2013).

3. Subs. by s. 4, *ibid.*, for "wakfs" (w.e.f. 1-11-2013).

4. Subs. by s. 28, *ibid.*, for "more than ten thousand rupees but less than fifteen thousand rupees" (w.e.f. 1-11-2013).

50. Duties of mutawalli.—It shall be the duty of every mutawalli—

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(c) to allow inspection of ¹[waqf] properties, accounts or records or deeds and documents relating thereto;

(d) to discharge all public dues; and

(e) to do any other act which he is lawfully required to do by or under this Act.

51. Alienation of ¹[waqf] property without sanction of Board to be void.—²[(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 (27 of 2013).

(1A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void *ab initio*:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that—

(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 (42 of 1991);

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.]

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52. Recovery of ¹[waqf] property transferred in contravention of section 51.—(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a ¹[waqf] entered as such in the register of ¹[waqf] maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51 ⁴[or section 56], it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 29, *ibid.*, for sub-section (1) (w.e.f. 1-11-2013).

3. Sub-sections (2), (3), (4) and (5) omitted by s. 29, *ibid.* (w.e.f. 1-11-2013).

4. Ins. by s. 30, *ibid.* (w.e.f. 1-11-2013).

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served—

(a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served, is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

¹[52A. Penalty for alienation of waqf property without sanction of Board.—(1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.

(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.]

53. Restriction on purchase of property on behalf of ²[waqf].—Notwithstanding anything contained in a ²[waqf] deed, no immovable property shall be purchased for or on behalf of any ²[waqf] from the funds of any ²[waqf] except with prior sanction of the Board, and the Board shall not accord such sanction unless it considers that the acquisition of such property is necessary or beneficial to the ²[waqf] and that the price proposed to be paid therefor is adequate and reasonable:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto and, the Board shall, after considering the objections and suggestions that may be received by it from mutawallis or other persons interested in the ²[waqf], make such orders as it may think fit.

1. Ins. by Act 27 of 2013, s. 31 (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

54. Removal of encroachment from ¹[waqf] property.—(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is ¹[waqf] property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is ¹[waqf] property and that there has been an encroachment on any such ¹[waqf] property, ²[he may, make an application to the Tribunal for grant of order of eviction for removing] such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the ¹[waqf].

³[(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.]

55. Enforcement of orders made under section 54.—Where the person, ordered under ⁴[sub-section (4)] of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may ⁵[refer the order of the Tribunal to the Executive Magistrate] within the local limits of whose jurisdiction the land, building, space or other property, is situate for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

⁶[**55A. Disposal of property left on waqf property by unauthorised occupants.**—(1) Where any person has been evicted from any waqf property under sub-section (4) of section 54, the Chief Executive Officer may, after giving fourteen days' notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality and after proclaiming the contents of the notice by placing it on conspicuous part of the waqf property, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1), the sale proceeds shall, after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to the State

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 32, *ibid.*, for “he may, by an order, require the encroacher to remove” (w.e.f. 1-11-2013).

3. Subs. by s. 32, *ibid.*, for sub-section (4) (w.e.f. 1-11-2013).

4. Subs. by s. 33, *ibid.*, for “sub-section (3)” (w.e.f. 1-11-2013).

5. Subs. by s. 33, *ibid.*, for “apply to the Sub-Divisional Magistrate” (w.e.f. 1-11-2013).

6. Ins. by s. 34, *ibid.* (w.e.f. 1-11-2013).

Government or a local authority or a corporate authority on account of arrears of rent, damages or costs, be paid to such person, as may appear to the Chief Executive Officer to be entitled to the same:

Provided that where the Chief Executive Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the appointment of the same, he may refer such dispute to the Tribunal and the decision of the Tribunal thereon shall be final.]

56. Restriction on power to grant lease of ¹[waqf] property.—(1) ²[A lease for any period exceeding thirty years] of any immovable property which is ¹[waqf] property, shall, notwithstanding anything contained in the deed or instrument of ¹[waqf] or in any other law for the time being in force, be void and of no effect:

³[Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government:

Provided further that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided also that before making lease of any waqf property, the Board shall publish the details of lease and invite bids in at least one leading national and regional news papers.]

(2) ⁴[A lease for a period of one year but not exceeding thirty years] of immovable property which is ¹[waqf] property shall, notwithstanding anything contained in the deed or instrument of ¹[waqf] or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease ^{5***} or renewal thereof under this section review the terms and conditions on which the lease ^{5***} is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct:

³[Provided that the Board shall immediately intimate the State Government regarding a lease for any period exceeding three years of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.]

³[(4) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

57. Mutawalli entitled to pay certain costs from income of ¹[waqf] property.—Notwithstanding anything contained in the ¹[waqf] deed, every mutawalli may pay from the income of the ¹[waqf] property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 36 or any accounts under section 46 or any information or documents required by the Board or for the purpose of enabling him to carry out the directions of the Board.

58. Power of Board to pay dues in case of default by mutawalli.—(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 ¹[Waqf] Fund and may recover the amount so paid from the ¹[waqf] property and may also recover damages not exceeding twelve and a half per cent. of the amount so paid.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by, s. 35, *ibid.*, for “A lease or sub-lease for any period exceeding three years” (w.e.f. 1-11-2013).

3. Ins. by s. 35, *ibid.* (w.e.f. 1-11-2013).

4. Subs. by s. 35, *ibid.*, for “A lease or sub-lease for any period exceeding one year and not exceeding three years” (w.e.f. 1-11-2013).

5. The words “or sub-lease” omitted by s. 35, *ibid.* (w.e.f. 1-11-2013).

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

59. Creation of reserve fund.—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 ¹[waqf] property and for the preservation of the ¹[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 ¹[waqf].

60. Extension of time.—The Board may, if its is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

61. Penalties.—(1) If a mutawalli fails to—

- (a) apply for the registration of a ²[auqaf];
- (b) furnish statements of particulars or accounts or returns as required under this Act;
- (c) supply information or particulars as required by the Board;
- (d) allow inspection of ¹[waqf] properties, accounts, records or deeds and documents relating thereto;
- (e) deliver possession of any ¹[waqf] property, if ordered by the Board or Tribunal;
- (f) carry out the directions of the Board;
- (g) discharge any public dues; or
- (h) do any other act which he is lawfully required to do by or under this Act;

he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to ³[ten thousand rupees for non-compliance of clauses (a) to (d) and in case of non-compliance of clauses (e) to (h), he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to ten thousand rupees].

(2) Notwithstanding anything contained in sub-section (1), if—

(a) a mutawalli omits or fails, with a view to concealing the existing of a ¹[waqf], to apply for its registration under this Act,—

- (i) in the case of a ¹[waqf] created before the commencement of this Act, within the period specified therefor in sub-section (8) of section 36;
- (ii) in the case of any ¹[waqf] created after such commencement, within three months from the date of the creation of the ¹[waqf]; or

(b) a mutawalli furnishes any statement, return, or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular,

he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(3) No court, shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the board in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the fine imposed under sub-section (1), when realised, shall be credited to the ¹[Waqf] Fund.

(6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

3. Subs. by s. 36, *ibid.*, for “eight thousand rupees” (w.e.f. 1-11-2013).

62. Mutawalli not to spend any money belonging to ¹[waqf] for self defence.—No mutawalli shall spend any money out of the funds of the ¹[waqf], of which he is the mutawalli, for meeting any costs, charges, or expenses which are or may be, incurred by him, in relation to any suit, appeal or any other proceeding for, or incidental to, his removal from office or for taking any disciplinary action against himself.

63. Power to appoint mutawallis in certain cases.—When there is a vacancy in the office of the mutawalli of a ¹[waqf] and there is no one to be appointed under the terms of the deed of the ¹[waqf], or where the right of any person to act as mutawalli is disputed, the board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

64. Removal of mutawalli.—(1) Notwithstanding anything contained in any other law or the deed of ¹[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 paid legal practitioner on behalf of, or against, the ¹[waqf]; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any ¹[waqf] property, or in any contract made with, or any work being done for, the ¹[waqf] or is in arrears in respect of any sum due by him to such ¹[waqf]; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the ¹[waqf] or in respect of any money or other ¹[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 fraudulently deals with the property of the ¹[waqf].

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the ¹[waqf] property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the ¹[waqf], by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the ¹[waqf] pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the ¹[waqf] and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the ¹[waqf] are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the ¹[waqf] property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the ¹[waqf] property.

(8) A mutawalli of a ¹[waqf] removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that ¹[waqf] for a period of five years from the date of such removal.

65. Assumption of direct management of certain ²[auqaf] by the Board.—(1) Where no suitable person is available for appointment as a mutawalli of a ¹[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 ¹[waqf], the Board may, by notification in the Official Gazette, assume direct management of the ¹[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 ¹[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 orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after the close of every financial year, the Board shall send to the State Government a detailed report in regard to every ¹[waqf] under its direct management, giving therein—

(a) the details of the income of the ¹[waqf] for the year immediately preceding the year under report;

(b) the steps taken to improve the management and income of the ¹[waqf];

(c) the period during which the ¹[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 ¹[waqf] to the mutawalli or any committee of management during the year; and

(d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3), and after such examination, issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

³[(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act.]

66. Powers of appointment and removal of mutawalli when to be exercised by the State Government.—Whenever a deed of ¹[waqf] or any decree or order of a court of any scheme of management of any ¹[waqf] provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the ¹[waqf], then, notwithstanding anything contained in such deed of ¹[waqf], decree, order or scheme, such powers aforesaid shall be exercisable by the State Government:

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

3. Ins. by s. 37, *ibid.* (w.e.f. 1-11-2013).

67. Supervision and supersession of committee of Management.—(1) Whenever the supervision or management of a ¹[waqf] is vested in any committee appointed by the ¹[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 ¹[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:

Provided further that if the Board is satisfied that any scheme for the management of a ¹[waqf] by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the ¹[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 ¹[waqf] or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act, and in the deed of the ¹[waqf], the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the ¹[waqf] is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the ¹[waqf], in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the ¹[waqf].

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the ¹[waqf], and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal and Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.

68. Duty of mutawalli or committee to deliver possession of records, etc.—(1) Where any mutawalli or committee of management has been removed by the Board in accordance with provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee so removed from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the ¹[waqf] (including cash) to the successor mutawalli or the successor committee, within one month from the date specified in the order.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

(2) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-section (1), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any ¹[District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] within the local limits of whose jurisdiction any part of the ²[waqf] property is situated and, thereupon such ¹[District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the ²[waqf] to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by ³[any Magistrate] under sub-section (2) the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by ³[any Magistrate] under sub-section (2), ³[any Magistrate] may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.

(5) No order of the appointment of the successor mutawalli or committee, shall be called in question in the proceedings before ³[any Magistrate] under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by ³[any Magistrate] under sub-section (2).

69. Power of Board to frame scheme for administration of ²[waqf].—⁴[(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.]

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the ²[waqf] holding office as such immediately before the date on which the scheme comes into force:

Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the mutawalli so removed, as one of the members of the committee appointed for the proper administration of the ²[waqf].

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli, and all persons interested in the ²[waqf]:

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

1. Subs. by Act 27 of 2013, s. 38, for “Magistrate of the first class” and “Magistrate” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

3. Subs. by s. 38, *ibid.*, for “the Magistrate” (w.e.f. 1-11-2013).

4. Subs. by s. 39, *ibid.*, for sub-section (1) (w.e.f. 1-11-2013).

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the ¹[waqf], the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

70. Inquiry relating to administration of ¹[waqf].—Any person interested in a ¹[waqf] may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the ¹[waqf] and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the ¹[waqf] are being mismanaged, it shall take such action thereon as it thinks fit.

71. Manner of holding inquiry.—(1) The Board may, either on an application received under section ²[70] or on its own motion,—

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a ¹[waqf] and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

CHAPTER VII

FINANCE OF THE BOARD

72. Annual contribution payable to Board.—(1) The mutawalli of every ¹[waqf], the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the ¹[waqf], such contributions, not exceeding seven per cent. of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the ¹[waqf].

Explanation 1.—For the purposes of this Act, “net annual income” shall mean the gross income of the ¹[waqf] from all sources, including nazars and offerings which do not amount to contributions to the corpus of the ³[auqaf], in a year after deducting therefrom the following, namely:—

(i) the land revenue paid by it to the Government;

(ii) the rates, cesses, taxes and licence fees, paid by it to the Government or any local authority;

(iii) expenditure incurred for all or any of the ⁴[in respect of lands directly under cultivation by the mutawalli for the benefit of the waqf], namely:—

(a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;

(b) seeds or seedlings;

(c) manure;

(d) purchase and maintenance of agricultural implements;

(e) purchase and maintenance of cattle for cultivation;

(f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed ⁵[twenty per cent.] of the income derived from lands belonging to the ¹[waqf]:

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 40, *ibid.*, for “73” (w.e.f. 1-11-2013).

3. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

4. Subs. by s. 41, *ibid.*, for “following purposes” (w.e.f. 1-11-2013).

5. Subs. by s. 41, *ibid.*, for “ten per cent.” (w.e.f. 1-11-2013).

¹[Provided further that no such deduction shall be permitted in respect of waqf land given on lease, by whatever name called, whether *batai* or share cropping or any other name.]

(iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent. of the annual rent derived therefrom, or the actual expenditure, whichever is less;

(v) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are reinvested to earn income for the ²[waqf]:

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely:—

(a) advances and deposits recovered and loans taken or recovered;

(b) deposits made as security by employees, lessees or contractors and other deposits, if any;

(c) withdrawals from banks or of investments;

(d) amounts recovered towards costs awarded by courts;

(e) sale proceeds of religious books and publications where such sales are undertaken as an un-remunerative enterprise with a view to propagating religion;

(f) donations in cash or kind or offerings made by the donors as contribution to the corpus of the ²[waqf]:

Provided that interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;

(g) voluntary contributions received in cash or kind for a specific service to be performed by the ²[waqf] and expended on such service;

(h) audit recoveries;

Explanation II.—In determining the net annual income for the purposes of this section, only the net profit derived by any ²[waqf] from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income.

(2) The Board may in the case of any mosque or orphanage or any particular ²[waqf] reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of a ²[waqf] may realise the contributions payable by him under sub-section (1) from the various persons entitled to received any pecuniary or other material benefit from the ²[waqf], but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable, the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the ²[waqf]:

Provided that if there is any income of the ²[waqf] available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (1), and in excess of the amount payable under the ²[waqf] deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a ²[waqf] shall, subject to the prior payment of any dues to the Government or any local authority or of any other statutory first charge on the ²[waqf] property or the income thereof, be a first charge on the income of the ²[waqf] and shall be recoverable, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land revenue.

1. Ins. by Act 27 of 2013, s. 41 (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

(5) If a mutawalli realises the income of the ¹[waqf] and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

(6) Where, after the commencement of this Act, the mutawalli of a ¹[waqf] fails to submit a return of the net annual income of the ¹[waqf] within the time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the ¹[waqf] to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the ¹[waqf] for the purposes of this section:

Provided that no assessment of net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revision shall be made after considering the reply if any, given by the mutawalli.

(7) Any mutawalli who is aggrieved by the assessment or revision made by the Chief Executive Officer, under sub-section (6), may prefer an appeal to the Board within thirty days from the date of the receipt of the assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision or the return and the decision of the Board thereon shall be final.

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act, in the first instance.

73. Power of Chief Executive Officer to direct banks or other person to make payments.—(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a ¹[waqf] is deposited, to pay the contribution, leviable under section 72, out of such money, as may be standing to the credit of the ¹[waqf] in such bank or may be deposited with such person, or out of the moneys which may, from time to time, be received by bank or other person for or on behalf of the ¹[waqf] by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall, when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply, with the orders made by the Tribunal on such appeal.

(2) Every payment made by a bank or other person in pursuance of any order made under sub-section (1), shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.

(3) Any bank or other person who is ordered under sub-section (1) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

74. Deduction of contribution from perpetual annuity payable to the ¹[waqf].—(1) Every authority empowered to disburse any perpetual annuity payable to a ¹[waqf] under any law relating to the abolition of zamindars or jagirs, or laying down land ceilings, shall, on receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the ¹[waqf]

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

under section 72 which remains unpaid, deduct before making payment of the perpetual annuity to the ¹[waqf], the amount specified in such certificate and remit the amount so deducted to the Chief Executive Officer.

(2) Every amount remitted under sub-section (1) to the Chief Executive Officer shall be deemed to be a payment made by the ¹[waqf] and shall, to the extent of the amount so remitted, operate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.

75. Power of board to borrow.—(1) For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

(2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

76. Mutawalli not to lend or borrow moneys without sanction.—(1) No mutawalli, Executive Officer or other person in charge of the administration of a ¹[waqf] shall lend any money belonging to the ¹[waqf] or any ¹[waqf] property or borrow any money for the purposes of the ¹[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 ¹[waqf] for such borrowing or lending, as the case may be.

(2) The Board may, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (1) is authorised by him to lend or borrow any money or lend any other ¹[waqf] property.

(3) Where any money is lent or borrowed, or other ¹[waqf] property is lent in contravention of the provisions of this section, it shall be lawful for the Chief Executive Officer,—

(a) to recover an amount equal to the amount which has been so lent or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;

(b) to recover the possession of the ¹[waqf] property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.

77. ¹[Waqf] 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 ¹[Waqf] Fund.

(2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(3) Subject to any rules that may be made by the State Government in this behalf, the ¹[Waqf] Fund shall be under the control of the Board, so, however, that the ¹[Waqf] Fund under the control of common ¹[Waqf] Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The ¹[Waqf] Fund shall be applied to—

(a) repayment of any loan incurred under section 75 and payment of interest thereon;

(b) payment of the cost of audit of the ¹[Waqf] Fund and the accounts of ²[auqaf];

(c) payment of the salary and allowances to the officers and staff of the Board;

(d) payment of traveling allowances to the Chairperson, members, of the Board;

(e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;

(f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

¹[(g) payment of maintenance to Muslim women as ordered by a court of competent jurisdiction under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986).]

(5) If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of ²[waqf] properties or for such other purposes as it may deem fit.

78. Budget of Board.—(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 expenditure during that financial year and forward a copy of the same to the State Government.

(2) On receipt of the budget forwarded to it under sub-section (1), the State Government shall examine the same and suggest such alterations, corrections or modifications to be made therein as it may think fit and forward such suggestions to the Board for its consideration.

(3) On receipt of the suggestions from the State Government the Board may make written representations to that Government with regard to the alterations, corrections or modifications suggested by that Government and the State Government shall, after considering such representations, communicate, within a period of three weeks from the date of receipt thereof, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

(4) On receipt of the decision of the State Government under sub-section (3), the Board shall incorporate in its budget all the alterations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board.

79. Accounts of Board.—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.

80. Audit of accounts of Board.—(1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every ²[waqf] under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit shall be paid from the ²[Waqf] Fund.

81. State Government to pass orders on auditor's report.—The State Government 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 on the report as it thinks fit ³[and a copy of the said auditor's report, along with orders shall be forwarded by the State Government to the Council within a period of thirty days of laying of such report before each House of the State Legislature where it consists of two Houses or where such Legislatures consist of one House, before that House].

82. Dues of Board to be recovered as arrears of land revenue.—(1) Every sum certified to be due from any person by an auditor in his report under section 80, be paid by such person within sixty days after service of a demand notice by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board, after giving the person concerned an opportunity of being heard, be recovered as an arrear of land revenue.

1. Ins. by Act 27 of 2013, s. 42 (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for "wakf" (w.e.f. 1-11-2013).

3. Subs. by s. 43, *ibid.*, for "as it thinks fit" (w.e.f. 1-11-2013).

CHAPTER VIII

JUDICIAL PROCEEDINGS

83. Constitution of Tribunals, etc.—¹[(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.]

(2) Any mutawalli person interested in a ²[waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the ²[waqf].

(3) Where any application made under sub-section (1) relates to any ²[waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the ²[waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the ²[waqf] or any other person interested in the ²[waqf] or the ²[waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such ²[waqf] or ²[waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.

³[(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members shall be such as may be prescribed.]

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

1. Subs. by Act 27 of 2013, s. 44, for sub-section (1) (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

3. Subs. by s. 44, *ibid.*, for sub-section (4) (w.e.f. 1-11-2013).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.—Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a ¹[waqf] or ¹[waqf] property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute.

85. Bar of jurisdiction of civil courts.—No suit or other legal proceeding shall lie in any ²[civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any ¹[waqf], ¹[waqf] property or other matter which is required by or under this Act to be determined by a Tribunal.

86. Appointment of a receiver in certain cases.—Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced—

(a) by or on behalf of a Board—

(i) to set aside the sale of any immovable property, which is ¹[waqf] property, in execution of a decree or order of a civil court;

(ii) to set aside the transfer of any immovable property, which is ¹[waqf] property, made by the mutawalli thereof, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board;

(iii) to recover possession of the property referred to in clause (a) or clause (b) or to restore possession of such property to the mutawalli of the concerned ¹[waqf]; or

(b) by a mutawalli to recover possession of immovable property, which is ¹[waqf] property, which has been transferred by a previous mutawalli ³[or by any other person], whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant,

the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the court may consider to be necessary for further prosecution of the suit.

87. *[Bar to the enforcement of right on behalf of unregistered wakfs.] Omitted by the Wakf (Amendment) Act, 2013 (27 of 2013), s. 47 (w.e.f. 1-11-2013).*

88. Bar to challenge the validity of any notification, etc.—Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any Civil Court.

89. Notice of suits by parties against Board.—No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 45, *ibid.*, for “civil court” (1) (w.e.f. 1-11-2013).

3. Ins. by s. 46, *ibid.* (w.e.f. 1-11-2013).

90. Notice of suits, etc., by courts.—(1) In every suit or proceeding relating to a title to or possession of a ¹[waqf] property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any ¹[waqf] property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates of taxes due to the Government or any local authority, notice shall be given to the Board by the court, Collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within ²[six month] of its coming to know of such suit or proceeding, applies to the court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

91. Proceedings under Act 1 of 1894.—(1) If, in the course of proceedings under the Land Acquisition Act, 1894 or under any law for the time being in force relating to the acquisition of land or other property, ³[and before an award is made, in case the property] under acquisition is ¹[waqf] property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

Explanation.—The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as a reference to the authority under such other law competent to make such award.

(2) Where the Board has reason to believe that any property under acquisition is ¹[waqf] property, it may at any time before the award is made appear and plead as a party to the proceeding.

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard, shall be declared void if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

92. Board to be party to suit or proceeding.—In any suit or proceeding in respect of a ¹[waqf] or any ¹[waqf] property the Board may appear and plead as a party to the suit or proceeding.

93. Bar to compromise of suits by or against mutawallis.—No suit or proceeding in any court by or against the mutawalli of a ¹[waqf] relating to title to ¹[waqf] property or the rights of the mutawalli shall be compromised without the sanction of the Board.

94. Power to make application to the Tribunal in case of failure of mutawalli to discharge his duties.—(1) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, the Board may apply to the Tribunal for an order directing the mutawalli to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of such act.

(2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the ¹[waqf] and the mutawalli wilfully fails to discharge such duties, the Board or any person interested in the ¹[waqf] may make an application to the Tribunal and the Tribunal may pass such order thereon as it thinks fit.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 48, *ibid.*, for “one month” (w.e.f. 1-11-2013).

3. Subs. by s. 49, *ibid.*, for “it appears to the Collector before an award is made that any property” (w.e.f. 1-11-2013).

95. Power of appellate authority to entertain appeal after expiry of specified period.—Where, under this Act any period has been specified for the filing of any appeal, the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period so specified, entertain the appeal after the expiry of the said period.

CHAPTER IX

MISCELLANEOUS

96. Power of Central Government to regulate secular activities of ¹[auqaf].—(1) For the purpose of regulating the secular activities of ¹[auqaf], the Central Government shall have the following powers and functions, namely:—

(a) to lay down general principles and policies of ²[waqf] administration in so far as they relate to the secular activities of the ¹[auqaf];

(b) to co-ordinate the functions of the Central ²[Waqf] Council and the Board, in so far as they relate to their secular functions;

(c) to review administration of the secular activities of ¹[auqaf] generally and to suggest improvements, if any.

(2) In exercising its powers and functions under sub-section (1), the Central Government may call for any periodic or other reports from any Board and may issue to the Board such directions as it may think fit and the Board shall comply with such directions.

Explanation.—For the purposes of this section “secular activities” shall include social, economic, educational and other welfare activities.

97. Directions by State Government.—Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time, give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions:

³[Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf.]

98. Annual report by State Government.—As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State ²[Waqf] Board and the Administration of ¹[auqaf] in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.

99. Power to supersede Board.—(1) If the State Government is of opinion that the Board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under section 96 or the State Government under section 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board’s continuance is likely to be injurious to the interests of the ¹[auqaf] in the State, the State Government may, by notification in the Official Gazette, supersede the Board for a period not exceeding six months:

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

⁴[Provided further that the power of the State Government under this section shall not be exercised unless there is a *prima facie* evidence of financial irregularity, misconduct or violation of the provisions of this Act.]

1. Subs. by Act 27 of 2013, s. 4, for “wakfs” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

3. Ins. by s. 50, *ibid.* (w.e.f. 1-11-2013).

4. Ins. by s. 51, *ibid.* (w.e.f. 1-11-2013).

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all properties vested in the Board shall, during the period of supersession vest in the State Government.

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

¹[(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or]

(b) reconstitute the Board in the manner provided in section 14.

100. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

101. Survey Commissioner, members and officers of the Board, deemed to be public servants.—(1) The Survey Commissioner, members of the Board, every officer, every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(2) Every mutawalli of a ²[waqf], every member of managing committee, whether constituted by the Board or under any deed of ²[waqf], every Executive Officer and every person holding any office in a ³[waqf] shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

102. Special provision for reorganisation of certain Boards.—(1) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was, immediately before the day of such reorganisation, functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted as an Intra-State Board for the whole or any part of that State, the State Government may frame a scheme or such dissolution or such reconstitution, including proposals regarding the transfer of the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.

(2) On receipt of a scheme forwarded to it under sub-section (1), the Central Government may, ³[after consulting the Council and the State Governments] concerned, approve the scheme with or without modifications and give effect to the scheme so approved by making such order as it thinks fit.

(3) An order under sub-section (2) may provide for all or any of the following matters, namely:—

(a) the dissolution of the Board;

(b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board;

(c) the area in respect of which the reconstituted Board or new Board shall function and operate;

(d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer;

1. Subs. by Act 27 of 2013, s. 51, for clause (a) (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

3. Subs. by s. 52, *ibid.*, for “after consulting the State Governments” (w.e.f. 1-11-2013).

(e) the substitution of any such transferee, for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;

(f) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and

(g) such incidental, consequential and supplemental matters as may be necessary to give effect to the approved scheme.

(4) Where an order is made under this section transferring the assets, rights and liabilities of the Board, then, by virtue of that order, such assets, rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.

(5) Every order made under this section shall be published in the Official Gazette.

(6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

103. Special provision for establishment of Board for part of a State.—(1) Where on account of the territorial changes brought about by any law providing for the reorganisation of any State, this Act is as from the date on which that law comes into force applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act is in force and in such a case any reference in this Act to the word “State” in relation of a Board shall be construed as a reference to that part of the State for which the Board is established.

(2) Where any such Board has been established and it appears to the Government of the State, that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette dissolve the Board established for the part of the State or reconstitute and reorganise, such Board or establish a new Board for the whole of the State and thereupon, the assets, rights and liabilities of the Board for the part of the State shall vest in and be the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.

104. Application of Act to properties given or donated by persons not professing Islam for support of certain ¹[waqf].—Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a ¹[waqf] being—

(a) a mosque, idgah, imambara, dargah, khangah or a maqbara;

(b) a Muslim graveyard;

(c) a choultry or a musafirkhana,

then such property shall be deemed to be comprised in that ¹[waqf] and be dealt in the same manner as the ¹[waqf] in which it is so comprised.

²[104A. Prohibition of sale, gift, exchange, mortgage or transfer of waqf property.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift, exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.

(2) Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be void *ab initio*.]

³[104B. Restoration of waqf properties in occupation of Government agencies to waqf Board.—(1) If any waqf property has been occupied by the Government agencies it shall be returned to the Board or the mutawalli within a period of six months from the date of the order of the Tribunal.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Ins. by s. 53, *ibid.* (w.e.f. 1-11-2013).

3. Ins. by s. 54, *ibid.* (w.e.f. 1-11-2013).

(2) The Government agency may, if the property is required for a public purpose, make an application for determination of the rent, or as the case may be, the compensation, by the Tribunal at the prevailing market value.]

105. Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished.—Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a ¹[waqf] or any immovable property, which is ¹[waqf] property, to furnish, subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer, copies or extracts from the required record, register, report or other document.

106. Powers of Central Government to constitute common Boards.—(1) Where the Central Government is satisfied that by reasons of—

- (i) the smallness of the Muslim population in two or more States,
- (ii) the slender resources of the ²[Auqaf] in such States, and
- (iii) the disproportion between the number and income of the ²[auqaf] and the Muslim population in such States,

it is expedient in the interests of the ²[auqaf] in the States and the Muslim population of such States, to have, instead of separate Boards for each of such States, a common Board, it may, ³[after consultation with the Council and the Government] of each of the concerned States, establish, by notification in the Official Gazette, a common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

(2) Every common Board established under sub-section (1) shall, as far as practicable, consist of the persons specified in sub-section (1) or, as the case may be, sub-section (7) of section 14.

(3) Whenever any common Board is established under sub-section (1)—

(a) all powers vested in the State Government under any deed of ¹[waqf] or any provision of law for the time being in force relating to ²[auqaf], shall stand transferred to, and vested in, the Central Government and, thereupon, references in such deed of ¹[waqf] or law to the State Governments shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure, that at least one representative of each of the concerned States is included as a member of the Board;

(b) references in this Act to a State shall be construed as references to each of the States for which the common Board has been established;

(c) the Central Government may, without prejudice to any rule applicable to a Board in a State, may, by notification in the Official Gazette, rules regulating the conduct of business by, and affairs of, the common Board.

(4) The common Board shall be a body corporate, with objects not confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.

107. Act 36 of 1963 not to apply for recovery of ¹[waqf] properties.—Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any ¹[waqf] or for possession of any interest in such property.

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

3. Subs. by s. 55, *ibid.*, for “after consultation with the Government” (w.e.f. 1-11-2013).

108. Special provision as to evacuee ¹[waqf] properties.—The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950) which immediately before it became such evacuee property within the said meaning was property comprised in any ¹[waqf] and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to—

(a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of section 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950), with effect from the date of such entrustment, and

(b) authorise such Board to assume direct management of the ¹[waqf] concerned for so long as it might deem necessary.

²**[108A. Act to have overriding effect.**—The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.]

109. Power to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, other than those of Chapter III.

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

³[(i) the qualifications required to be fulfilled by a person to be appointed as a mutawalli under clause (i) of section 3;

(ia) other particulars which the report of the Survey Commissioner may contain under clause (f) of sub-section (3) of section 4;]

(ii) any other matter under clause (f) of sub-section (4) of section 4;

(iii) the particulars which a list of ⁴[Auqaf] published under sub-section (2) of section 5, may contain;

(iv) the manner of election of members of the Board by means of a single transferable vote, ⁵[under sub-section (1) of] sub-section (2) of section 14;

(v) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 23;

(vi) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers under section 29;

⁶[(via) the period within which the mutawalli or any other person may produce documents related to waqf properties under sub-section (2) of section 31;

(vib) the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 31;]

(vii) the conditions subject to which an Executive Officer and supporting staff may be appointed under sub-section (1) of section 38;

(viii) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (1) of section 39;

1. Subs. by Act 27 of 2013, s. 4, for “wakf” (w.e.f. 1-11-2013).

2. Ins. by s. 56, *ibid.* (w.e.f. 1-11-2013).

3. Subs. by s. 57, *ibid.*, for clause (i) (w.e.f. 1-11-2013).

4. Subs. by s. 4, *ibid.*, for “wakfs” (w.e.f. 1-11-2013).

5. Subs. by s. 57, *ibid.*, for “under” (w.e.f. 1-11-2013).

6. Ins. by s. 57, *ibid.* (w.e.f. 1-11-2013).

(ix) the form in which, and the time within which, a separate budget for ¹[Auqaf] under the direct management of the Board shall be prepared under sub-section (I) of section 45;

(x) the interval at which accounts of ¹[Auqaf] may be audited in pursuance of the provisions of sub-section (I) of section 47;

²* * * *

(xii) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under section 52;

(xiii) the manner of service of notice issued under sub-section (I) of section 54 and the manner in which any inquiry is to be made under sub-section (3) of that section;

(xiv) the manner in which any inquiry may be held under section 64 or section 71;

(xv) the other matters which may be specified in the report submitted under sub-section (3) of section 65;

(xvi) the manner of publication of order made under sub-section (2) of section 67;

(xvii) the manner in which consultation may be made with mutawalli under sub-section (I) of section 69;

(xviii) the manner of publication of order made under sub-section (3) of section 69;

(xix) the rate at which contribution is to be made by a mutawalli under section 72;

(xx) the payment of moneys into the ³[Waqf] Fund, the investment, the custody and disbursement of such moneys under section 77;

(xxi) the form in which, and the time within which, the budget of the Board may be prepared and submitted under section 78;

(xxii) the time within which application is to be made to the Tribunal under sub-section (2) of section 83;

⁴[(xxiii) the terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members under sub-section (4A) of section 83;]

(xxiii) the procedure which the Tribunal shall follow under sub-section (6) of section 83;

(xxiv) the form in which the annual report is to be submitted and the matters which such report shall contain under section 98; and

(xxv) any other matter which is required to be, or may be, prescribed.

110. Powers to make regulations by the Board.—(1) The Board may, with 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.

(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 sub-section (I) 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;

1. Subs. by Act 27 of 2013, s. 4, for “wakfs” (w.e.f. 1-11-2013).

2. Cl. (xi) omitted by s. 57, *ibid.* (w.e.f. 1-11-2013).

3. Subs. by s. 4, *ibid.*, for “wakf” (w.e.f. 1-11-2013).

4. Ins. by s. 57, *ibid.* (w.e.f. 1-11-2013).

- (f) the forms of application for registration of ¹[Auqaf] further particulars to be contained therein and the manner and place of registration of ¹[Auqaf] under sub-section (3) of section 36;
- (g) further particulars to be contained in the register of ¹[Auqaf] under Section 37;
- (h) the form in which, and the time within which, the budgets of ¹[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.

111. Laying of rules and regulations before State Legislature.—Every rule made under section 109 and every regulation made under section 110 shall be laid, as soon as may be after it is made, before the State Legislature.

112. Repeal and savings.—(1) The Wakf Act, 1954 (29 of 1954) and the Wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

113. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

// TRUE COPY //

1. Subs. by Act 27 of 2013, s. 4, for “wakfs” (w.e.f. 1-11-2013).



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असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 14] नई दिल्ली, शनिवार, अप्रैल 5, 2025/चैत्र 15, 1947 (शक)

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 5th April, 2025/Chaitra 15, 1947 (Saka)

The following Act of Parliament received the assent of the President on the 5th April, 2025 and is hereby published for general information:—

THE WAQF (AMENDMENT) ACT, 2025

NO. 14 OF 2025

[5th April, 2025.]

An Act further to amend the Waqf Act, 1995.

BE it enacted by Parliament in the Seventy-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Waqf (Amendment) Act, 2025.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 1 of the Waqf Act, 1995 (hereinafter referred to as the principal Act), in sub-section (1), for the word “Waqf”, the words “Unified Waqf Management, Empowerment, Efficiency and Development” shall be substituted.

Short title and commencement.

Amendment of section 1.

Amendment of
section 2.

3. In section 2 of the principal Act, after the proviso, the following proviso shall be inserted, namely:—

“Provided further that nothing in this Act shall, notwithstanding any judgement, decree or order of any court, apply to a trust (by whatever name called) established before or after the commencement of this Act or statutorily regulated by any statutory provision pertaining to public charities, by a Muslim for purpose similar to a waqf under any law for the time being in force.”.

Amendment of
section 3.

4. In section 3 of the principal Act,—

(i) after clause (a), the following clause shall be inserted, namely:—

‘(aa) “Aghakhani waqf” means a waqf dedicated by an Aghakhani waqif;’;

(ii) after clause (c), the following clause shall be inserted, namely:—

‘(ca) “Bohra waqf” means a waqf dedicated by a Bohra waqif;’;

(iii) after clause (d), the following clause shall be inserted, namely:—

‘(da) “Collector” includes the Collector of land-revenue of a district, or the Deputy Commissioner, or any officer not below the rank of Deputy Collector authorised in writing by the Collector;’;

(iv) after clause (f), the following clauses shall be inserted, namely:—

‘(fa) “Government Organisation” includes the Central Government, State Governments, Municipalities, Panchayats, attached and subordinate offices and autonomous bodies of the Central Government or State Government, or any organisation or Institution owned and controlled by the Central Government or State Government;

‘(fb) “Government property” means movable or immovable property or any part thereof, belonging to a Government Organisation;’;

(v) in clause (i), the words “, either verbally or” shall be omitted;

(vi) after clause (k), the following clause shall be inserted, namely:—

‘(ka) “portal and database” means the waqf asset management system or any other system set up by the Central Government for the registration, accounts, audit and any other detail of waqf and the Board, as may be prescribed by the Central Government;’;

(vii) for clause (l), the following clause shall be substituted, namely:—

‘(l) “prescribed” means prescribed by rules made under this Act;’;

(viii) clause (p) shall be omitted;

(ix) in clause (r),—

(a) in the opening portion, for the words “any person, of any movable or immovable property”, the words “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,” shall be substituted;

(b) sub-clause (i) shall be omitted;

(c) in sub-clause (iv), after the word “welfare”, the words “, or maintenance of widow, divorced woman and orphan, if waqif so intends, in such manner, as may be prescribed by the Central Government,” shall be inserted;

(d) in the long line, for the words “any person”, the words “any such person” shall be substituted;

(e) the following proviso shall be inserted at the end, namely:—

“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;”.

5. After section 3 of the principal Act, the following sections shall be inserted, namely:—

“3A. (1) No person shall create a waqf unless he is the lawful owner of the property and competent to transfer or dedicate such property.

(2) The creation of a waqf-alal-aulad shall not result in denial of inheritance rights of heirs, including women heirs, of the waqif or any other rights of persons with lawful claims.

3B. (1) Every waqf registered under this Act, prior to the commencement of the Waqf (Amendment) Act, 2025, shall file the details of the waqf and the property dedicated to the waqf on the portal and database, within a period of six months from such commencement:

Provided that the Tribunal may, on an application made to it by the mutawalli, extend such period of six months under this section for a further period not exceeding six months as it may consider appropriate, if he satisfies the Tribunal that he had sufficient cause for not filing the details of the waqf on the portal within such period.

(2) The details of the waqf under sub-section (1), amongst other information, shall include the following, namely:—

(a) the identification and boundaries of waqf properties, their use and occupier;

(b) the name and address of the creator of the waqf, mode and date of such creation;

(c) the deed of waqf, if available;

(d) the present mutawalli and its management;

(e) the gross annual income from such waqf properties;

(f) the amount of land-revenue, cesses, rates and taxes annually payable in respect of the waqf properties;

(g) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;

(h) the amount set apart under the waqf for—

(i) the salary of the mutawalli and allowances to the individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(i) details of court cases, if any, involving such waqf property;

(j) any other particular as may be prescribed by the Central Government.

Insertion of new sections 3A, 3B, 3C, 3D and 3E.

Certain conditions of waqf.

Filing of details of waqf on portal and database.

Wrongful
declaration of
waqf.

3C. (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.

Declaration of
protected
monument or
protected area as
waqf to be void.

3D. Any declaration or notification issued under this Act or under any previous Act in respect of waqf properties shall be void, if such property was a protected monument or protected area under the Ancient Monuments Preservation Act, 1904 or the Ancient Monuments and Archaeological Sites and Remains Act, 1958, at the time of such declaration or notification.

7 of 1904.
24 of 1958.

Bar of
declaration of
any land in
Scheduled or
Tribal area as
waqf.

3E. Notwithstanding anything contained in this Act or any other law for the time being in force, no land belonging to members of Scheduled Tribes under the provisions of the Fifth Schedule or the Sixth Schedule to the Constitution shall be declared or deemed to be waqf property.”.

Amendment of
section 4.

6. In section 4 of the principal Act,—

(a) for the marginal heading, the marginal heading “Survey of auqaf.” shall be substituted;

(b) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any survey of auqaf pending before the Survey Commissioner, on the commencement of the Waqf (Amendment) Act, 2025, shall be transferred to the Collector having jurisdiction and the Collector shall make the survey in accordance with the procedure in the revenue laws of the State, from the stage such survey is transferred to the Collector, and submit his report to the State Government.”;

(c) sub-sections (1A), (2) and (3) shall be omitted;

(d) in sub-section (4), in the opening portion, for the words “Survey Commissioner”, the word “Collector” shall be substituted;

(e) in sub-section (5), after the words “Sunni waqf”, the words “or Aghakhani waqf or Bohra waqf” shall be inserted;

(f) sub-section (6) shall be omitted.

Amendment of
section 5.

7. In section 5 of the principal Act,—

(a) in sub-section (1), for the word, brackets and figure “sub-section (3)”, the word, brackets and figure “sub-section (1)” shall be substituted;

(b) in sub-section (2), after the words “Shia auqaf”, the words “or Aghakhani auqaf or Bohra auqaf” shall be inserted;

(c) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) The State Government shall upload the notified list of auqaf on the portal and database within ninety days from the date of its publication in the Official Gazette under sub-section (2).

(2B) The details of each waqf shall contain the identification, boundaries of waqf properties, their use and occupier, details of the creator, mode and date of such creation, purpose of waqf, their present mutawallis and management in such manner as may be prescribed by the Central Government.”;

(d) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The revenue authorities, before deciding mutation in the land records, in accordance with revenue laws in force, shall give a public notice of ninety days, in two daily newspapers circulating in the localities of such area of which one shall be in the regional language and give the affected persons an opportunity of being heard.”;

(e) in sub-section (4), after the words “time to time”, the words “on the portal and database” shall be inserted.

8. In section 6 of the principal Act,—

Amendment of section 6.

(a) in sub-section (1),—

(i) after the words “Sunni waqf”, the words “or Aghakhani waqf or Bohra waqf” shall be inserted;

(ii) the words “and the decision of the Tribunal in respect of such matter shall be final” shall be omitted;

(iii) in the first proviso, for the words “one year”, the words “two years” shall be substituted;

(iv) for the second proviso, the following proviso shall be substituted, namely:—

“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.”;

(b) in sub-section (3), for the words “Survey Commissioner”, the word “Collector” shall be substituted.

9. In section 7 of the principal Act, in sub-section (1),—

Amendment of section 7.

(i) after the words “Sunni waqf”, the words “or Aghakhani waqf or Bohra waqf” shall be inserted;

(ii) the words “and the decision of the Tribunal thereon shall be final” shall be omitted;

(iii) in the first proviso, for the words “one year” wherever they occur, the words “two years” shall be substituted;

(iv) in the second proviso, for the words “Provided further that”, the following shall be substituted, namely:—

“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 had sufficient cause for not making the application within such period:

Provided also that”.

Amendment of
section 9.

10. In section 9 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(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.”.

Amendment of
section 13.

11. In section 13 of the principal Act, for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) The State Government may, if it deems necessary, by notification in the Official Gazette, establish a separate Board of Auqaf for Bohras and Aghakhans.”.

Amendment of
section 14.

12. In section 14 of the principal Act,—

(a) for sub-sections (1), (1A), (2), (3) and (4), the following sub-sections shall be substituted, namely:—

“(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).”;

(b) for sub-section (6), the following sub-section shall be substituted, namely:—

“(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.”;

(c) sub-section (8) shall be omitted.

13. In section 16 of the principal Act,—

(i) for clause (a), the following clauses shall be substituted, namely:—

“(a) he is less than twenty-one years of age;

(aa) in case of a member under clause (c) of sub-section (1) of section 14, he is not a Muslim.”;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) he has been convicted of any offence and sentenced to imprisonment for not less than two years.”.

Amendment of section 17.

14. In section 17 of the principal Act, in sub-section (1), after the words “shall meet”, the words “at least once in every month” shall be inserted.

Omission of section 20A.

15. Section 20A of the principal Act shall be omitted.

Amendment of section 23.

16. In section 23 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) There shall be a full-time Chief Executive Officer of the Board to be appointed by the State Government and who shall be not below the rank of Joint Secretary to the State Government.”.

Amendment of section 28.

17. In section 28 of the principal Act, for the words “be responsible for implementation of the decisions of the Board which may be”, the words “implement the decision of the Board within forty-five days from the date it is” shall be substituted.

Amendment of section 30.

18. In section 30 of the principal Act, in sub-section (2), for the words and figures “section 76 of the Indian Evidence Act, 1872”, the words and figures “section 75 of the Bharatiya Sakshya Adhiniyam, 2023” shall be substituted.

1 of 1872.
47 of 2023.

Amendment of section 32.

19. In section 32 of the principal Act,—

(a) in sub-section (2), in clause (e), the *Explanation* and the proviso shall be omitted;

(b) in sub-section (3), the words “and the decision of the Tribunal thereon shall be final” shall be omitted.

Amendment of section 33.

20. In section 33 of the principal Act,—

(a) in sub-section (4), in the proviso, the words, brackets and figure “and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3)” shall be omitted;

(b) sub-section (6) shall be omitted.

Amendment of section 36.

21. In section 36 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) On and from the commencement of the Waqf (Amendment) Act, 2025, no waqf shall be created without execution of a waqf deed.”;

(b) in sub-section (3),—

(i) in the opening portion, for the words “in such form and manner and at such place as the Board may by regulation provide”, the words “to the Board through the portal and database” shall be substituted;

(ii) for clause (f), the following clause shall be substituted, namely:—

“(f) any other particulars as may be prescribed by the Central Government.”;

(c) in sub-section (4), the words “or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the waqf” shall be omitted;

(d) for sub-section (7), the following sub-sections shall be substituted, namely:—

“(7) On receipt of an application for registration, the Board shall forward the application to the Collector having jurisdiction to inquire the genuineness and validity of the application and correctness of any particulars therein and submit a report to the Board:

Provided that if the application is made by any person other than the person administering the waqf, the Board shall, before registering the waqf, give notice of the application to the person administering the waqf and shall hear him if he desires to be heard.

(7A) Where the Collector in his report mentions that the property, wholly or in part, is in dispute or is a Government property, the waqf in relation to such part of property shall not be registered, unless the dispute is decided by a competent court.”;

(e) in sub-section (8), the proviso shall be omitted;

(f) after sub-section (8), the following sub-sections shall be inserted, namely:—

“(9) The Board, on registering a waqf, shall issue the certificate of registration to the waqf through the portal and database.

(10) No suit, appeal or other legal proceeding for the enforcement of any right on behalf of any waqf which have not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after expiry of a period of six months from the commencement of the Waqf (Amendment) Act, 2025:

Provided that an application may be entertained by the court in respect of such suit, appeal or other legal proceedings after the period of six months specified under this sub-section, if the applicant satisfies the court that he has sufficient cause for not making the application within such period.”.

22. In section 37 of the principal Act,—

Amendment of section 37.

(a) in sub-section (1),—

(i) in the opening portion, after the word “particulars”, the words “in such manner as prescribed by the Central Government” shall be inserted;

(ii) in clause (f), for the words “provided by regulations”, the words “prescribed by the Central Government” shall be substituted;

(b) in sub-section (3), after the words “land record office shall”, the words “before deciding mutation in the land records, in accordance with revenue laws in force, shall give a public notice of ninety days, in two daily newspapers circulating in the localities of such area of which one shall be in the regional language and give the affected persons an opportunity of being heard, then” shall be substituted.

23. Section 40 of the principal Act shall be omitted.

Omission of section 40.

24. In section 46 of the principal Act, in sub-section (2),—

Amendment of section 46.

(a) for the word “July”, at both the places where it occurs, the word “October” shall be substituted;

(b) for the words “in such form and containing such particulars as may be provided by regulations by the Board of all moneys received”, the words “in such form and manner and containing such particulars as may be prescribed by the Central Government, of all moneys received from any source” shall be substituted.

25. In section 47 of the principal Act,—

Amendment of section 47.

(a) in sub-section (1),—

(i) in clause (a),—

(A) for the words “fifty thousand rupees”, the words “one lakh rupees” shall be substituted;

(B) after the words “appointed by the Board”, the following shall be inserted, namely:—

“from out of the panel of auditors prepared by the State Government:

Provided that the State Government shall, while preparing such panel of auditors, specify the remuneration to be paid to such auditors;”;

(ii) for clause (b), the following clause shall be substituted, namely:—

“(b) the accounts of the waqf having net annual income exceeding one lakh rupees shall be audited annually, by an auditor appointed by the Board from out of the panel of auditors as specified in clause (a);”;

(iii) in clause (c), the following proviso shall be inserted, namely:—

“Provided that the Central Government may, by order, direct the audit of any waqf at any time by an auditor appointed by the Comptroller and Auditor-General of India, or by any officer designated by the Central Government for that purpose.”;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) 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.”;

(c) in sub-section (3), both the provisos shall be omitted.

26. In section 48 of the principal Act,—

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The proceedings and orders of the Board under sub-section (1) shall be published in such manner as may be prescribed by the Central Government.”;

(b) in sub-section (3), the words, brackets and figure “and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1)” shall be omitted;

(c) sub-section (4) shall be omitted.

27. After section 50 of the principal Act, the following section shall be inserted, namely:—

“50A. A person shall not be qualified for being appointed, or for continuing as, a mutawalli, if he—

(a) is less than twenty-one years of age;

(b) is found to be a person of unsound mind;

(c) is an undischarged insolvent;

(d) has been convicted of any offence and sentenced to imprisonment for not less than two years;

(e) has been held guilty of encroachment on any waqf property;

(f) has been on a previous occasion—

(i) removed as a mutawalli; or

Amendment of section 48.

Insertion of new section 50A.

Disqualification of mutawalli.

(ii) removed by an order of a competent court or Tribunal from any position of trust either for mismanagement or for corruption.”.

1 of 1894.
30 of 2013.

28. In section 51 of the principal Act, in sub-section (1A), in the second proviso, for the words and figures “the Land Acquisition Act, 1894”, the words and figures “the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” shall be substituted.

Amendment of section 51.

29. In section 52 of the principal Act, in sub-section (4), the words “and the decision of the Tribunal on such appeal shall be final” shall be omitted.

Amendment of section 52.

30. In section 52A of the principal Act,—

Amendment of section 52A.

(a) in sub-section (1),—

(i) for the words “rigorous imprisonment”, the word “imprisonment” shall be substituted;

(ii) in the proviso, for the words “be vested in the Board”, the words “be reverted back to the waqf” shall be substituted;

(b) sub-section (2) shall be omitted;

(c) sub-section (4) shall be omitted.

31. In section 55A of the principal Act, in sub-section (2), in the proviso, the words “and the decision of the Tribunal thereon shall be final” shall be omitted.

Amendment of section 55A.

32. In section 61 of the principal Act,—

Amendment of section 61.

(a) in sub-section (1),—

(i) clauses (e) and (f) shall be omitted;

(ii) for the long line, the following shall be substituted, namely:—

“he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with a fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees.”;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) If a mutawalli fails to—

(i) deliver possession of any waqf property, if ordered by the Board or the Tribunal;

(ii) carry out the directions of the Collector or the Board;

(iii) do any other act which he is lawfully required to do by or under this Act;

(iv) provide statement of accounts under section 46;

(v) upload the details of waqf under section 3B,

he shall be punishable with imprisonment for a term which may extend to six months and also with a fine which shall not be less than twenty thousand rupees but which may extend to one lakh rupees.”;

(c) in sub-section (5), for the words and figures “the Code of Criminal Procedure, 1973”, the words and figures “the Bharatiya Nagarik Suraksha Sanhita, 2023” shall be substituted.

2 of 1974.
46 of 2023.

33. In section 64 of the principal Act,—

Amendment of section 64.

(a) in sub-section (1),—

(i) for clause (g), the following clause shall be substituted, namely:—

“(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”;

(ii) after clause (k), the following clause shall be inserted, namely:—

“(l) is a member of any association which has been declared unlawful under the Unlawful Activities (Prevention) Act, 1967.”;

37 of 1967.

(b) in sub-section (4), the words “and the decision of the Tribunal on such appeal shall be final” shall be omitted.

Amendment of section 65.

34. In section 65 of the principal Act, in sub-section (3), for the words “As soon as possible”, the words “Within six months” shall be substituted.

Amendment of section 67.

35. In section 67 of the principal Act,—

(a) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) Any person aggrieved by the order made under sub-section (2) may, within ninety days from the date of the order, appeal to the Tribunal.”;

(b) in sub-section (6), in the second proviso, the words “and the order made by the Tribunal in such appeal shall be final” shall be omitted.

Amendment of section 69.

36. In section 69 of the principal Act,—

(a) in sub-section (3), the second proviso shall be omitted;

(b) in sub-section (4), the following proviso shall be inserted, namely:—

“Provided that no such order shall be made under this sub-section unless a written notice inviting objections from the person likely to be affected and general public, in such manner as may be prescribed by the State Government.”.

Amendment of section 72.

37. In section 72 of the principal Act,—

(a) in sub-section (1), for the words “seven per cent.”, the words “five per cent. subject to a maximum amount as may be prescribed by the Central Government” shall be substituted;

(b) in sub-section (7), the words “and the decision of the Board thereon shall be final” shall be omitted.

Amendment of section 73.

38. In section 73 of the principal Act, in sub-section (3), the words “and the decision of the Tribunal on such appeal shall be final” shall be omitted.

Amendment of section 83.

39. In section 83 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that any other Tribunal may, by notification, be declared as the Tribunal for the purposes of this Act.”;

(b) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that if there is no Tribunal or the Tribunal is not functioning, any aggrieved person may appeal to the High Court directly.”;

(c) for sub-section (4), the following shall be substituted, namely:—

“(4) Every Tribunal shall consist of three members—

(a) one person, who is or has been a District Judge, who shall be the Chairman;

(b) one person, who is or has been an officer equivalent in the rank of Joint Secretary to the State Government—member;

(c) one person having knowledge of Muslim law and jurisprudence—member:

Provided that a Tribunal established under this Act, prior to the commencement of the Waqf (Amendment) Act, 2025, shall continue to function as such until the expiry of the term of office of the Chairman and the members thereof under this Act.”;

(d) in sub-section (4A), the following proviso shall be inserted, namely:—

“Provided that tenure of the Chairman and the member shall be five years from the date of appointment or until they attain the age of sixty-five years, whichever is earlier.”;

(e) in sub-section (7), the words “final and” shall be omitted;

(f) for sub-section (9), the following sub-section shall be substituted, namely:—

“(9) Any person aggrieved by the order of the Tribunal, may appeal to the High Court within a period of ninety days from the date of receipt of the order of the Tribunal.”.

40. In section 91 of the principal Act,—

Amendment of section 91.

1 of 1894.

(a) in sub-section (1), for the words and figures “the Land Acquisition Act, 1894”, the words and figures “the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” shall be substituted;

30 of 2013.

1 of 1894.

(b) in sub-section (3), for the words and figures “under section 31 or section 32 of the Land Acquisition Act, 1894”, the words and figures “under section 77 or section 78 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” shall be substituted;

30 of 2013.

(c) in sub-section (4),—

1 of 1894.

(i) for the words and figures “under section 31 or section 32 of the Land Acquisition Act, 1894”, the words and figures “under section 77 or section 78 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” shall be substituted;

30 of 2013.

(ii) for the words “shall be declared void if the Board”, the words “shall be kept in abeyance relating to portion of the property claimed by the Board, if the Board” shall be substituted;

(iii) the following proviso shall be inserted, namely:—

“Provided that the Collector after hearing the parties concerned shall make the order within one month of the application of the Board.”.

41. In section 100 of the principal Act, for the words “Survey Commissioner”, the word “Collector” shall be substituted.

Amendment of section 100.

Amendment of section 101.

42. In section 101 of the principal Act,—

(a) in the marginal heading and in sub-section (1), for the words “Survey Commissioner” occurring at both the places, the word “Collector” shall be substituted;

(b) in sub-sections (1) and (2), for the words and figures “section 21 of the Indian Penal Code”, at both the places where they occur, the words, brackets and figures “clause (28) of section 2 of the Bharatiya Nyaya Sanhita, 2023” shall be substituted.

45 of 1860.

45 of 2023.

Omission of section 104.

43. Section 104 of the principal Act shall be omitted.

Substitution of new section for section 107.

44. For section 107 of the principal Act, the following section shall be substituted, namely:—

“107. On and from the commencement of the Waqf (Amendment) Act, 2025, the Limitation Act, 1963 shall apply to any proceedings in relation to any claim or interest pertaining to immovable property comprised in a waqf.”.

Application of Act 36 of 1963.

Omission of sections 108 and 108A.

45. Sections 108 and 108A of the principal Act shall be omitted.

Insertion of new section 108B.

46. After section 108A as so omitted of the principal Act, the following section shall be inserted, namely:—

“108B. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, the Central Government may make rules for all or any of the following matters, namely:—

(a) the waqf asset management system for the registration, accounts, audit and other details of waqf and Board under clause (ka), and the manner of payments for maintenance of widow, divorced woman and orphan under sub-clause (iv) of clause (r), of section 3;

(b) any other particulars under clause (j) of sub-section (2) of section 3B;

(c) the manner in which details of waqf to be uploaded under sub-section (2B) of section 5;

(d) any other particulars under clause (f) of sub-section (3) of section 36;

(e) the manner in which the Board shall maintain the register of auqaf under sub-section (1) of section 37;

(f) such other particulars to be contained in the register of auqaf under clause (f) of sub-section (1) of section 37;

(g) form and manner and particulars of the statement of accounts under sub-section (2) of section 46;

(h) the manner for publishing audit report under sub-section (2A) of section 47;

(i) the manner of publication of proceedings and orders of Board under sub-section (2A) of section 48;

(j) any other matter which is required to be, or may be, prescribed.

Power of Central Government to make rules.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

47. In section 109 of the principal Act, in sub-section (2),—

Amendment of section 109.

(a) clause (ia) shall be omitted;

(b) clause (iv) shall be omitted;

(c) in clauses (via) and (vib), for the word and figures “section 31” at both the places where they occur, the word and figures “section 29” shall be substituted;

(d) after clause (xviii), the following clause shall be inserted, namely:—

“(xviiiia) the manner of giving notice inviting objections under proviso to sub-section (4) of section 69;”.

48. In section 110 of the principal Act, in sub-section (2), clauses (f) and (g) shall be omitted.

Amendment of section 110.

DR. RAJIV MANI,
Secretary to the Govt. of India.

// TRUE COPY //

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I. A. NO. _____ OF 2025

IN

WRIT PETITION (CIVIL) NO. _____ OF 2025

IN THE MATTER OF: -

MUHAMMAD JAMEEL MERCHANT

... APPLICANT/
PETITIONER

-VERSUS-

UNION OF INDIA & ORS.

... RESPONDENTS

APPLICATION FOR STAY

To,

Hon'ble the Chief Justice of India
and his companion judges of the
Supreme Court of India

The humble application of the above
named Applicant/Petitioner:

MOST RESPECTFULLY SHEWETH :

1. The Applicant/Petitioner herein is filing the present Writ Petition under Article 32 of the Constitution in the nature of a Public Interest Litigation challenging the constitutional validity of the Waqf (Amendment) Act, 2025, which amounts to state interference in religious affairs thereby violating the autonomy of religious institutions, and infringing the fundamental rights of the Muslim community as protected under Articles 14, 15, 19, 21, 25 and 26.

2. That the averments made in the accompanying writ petition are not being repeated herein for the sake of brevity and it is submitted that the said averments be taken to be a part of the present application.
3. The Amendment Act provides that if a question arises whether a waqf is government property or waqf, the waqf will cease to be treated as waqf until the inquiry by the designated officer regarding the same concludes in favor of the waqf. Thus, a waqf will cease to be treated as a waqf as soon as a frivolous claim is raised against it.
4. The Petitioner submits that if the Act is not stayed, irreversible changes may be made to waqf properties all over India, creating third party rights and equities.
5. In such circumstances, it is necessary that the Impugned Amendment Act be stayed in the interests of justice.
6. The Applicant/Petitioner states that the present Application is being filed *bona fide* and in the interests of justice.
7. That the Applicant/Petitioner therefore, most respectfully prays that this Hon'ble Court maybe pleased to :

PRAYER

- a) grant *ex-parte ad-interim* stay of the Waqf (Amendment) Act, 2025, pending adjudication on its constitutional validity; and/or

- b) Pass such other/further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

**AND FOR THIS ACT OF KINDNESS THE APPLICANT/
PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.**

FILED BY:-



EJAZ MAQBOOL

Advocate for the Applicant/Petitioner

New Delhi

Dated : 08.04.2025