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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4768-71 OF 2011

IN THE MATTER OF:

BHAGWAN SRI RAMA VIRAJMAN
AND ORS. ...APPELLANTS

VERSUS

SRI RAJENDRA SINGH & ORS ...RESPONDENTS

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COMPILATION OF RELIED-UPON LEGISLATIONS

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THE SPECIFIC RELIEF ACT

(ACT NO. 47 OF 1963)

BY

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With a foreword by

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(2)

The Specific Relief Act, 1963

(ACT NO. 47 OF 1963)[1]

New

to define and amend the law relating to certain kinds of specific relief

Preamble.—Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:

Old

An Act to define and amend the law relating to certain kinds of specific relief

Preamble.—Whereas it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows :

SYNOPSIS

1. History of legislation.
2. Object of the Act.
3. Scope of the Act.
4. Define and amend.
5. Interpretation of the Act.
6. Certain kinds of specific relief obtainable in civil suits.
7. Executory contracts: Positive and negative reliefs.

1. History of legislation.—The Specific Relief Act was passed in 1877 and had since been amended by Acts 4 of 1882, 12 of 1891, 9 of 1899, 21 of 1929, 10 of 1940 and 3 of 1951. It had also been adapted by the Adaptation Orders, A. O. 1937, A. O. 1948 and A. O. 1950. In 1951, it was extended to Part B States and thereafter it was extended to the whole of India (except the State of Jammu and Kashmir and the Scheduled Districts under the Scheduled Districts Act, 1874.

The Act was originally drafted upon the lines of the draft New York Civil Code, 1862, and its main provisions embodied the doctrines evolved by the English Equity Courts, which had previous to the Act been applied in India as principles of equity, justice and good conscience. The Act on the whole had worked well but "there was room for improvement both in the expression and the substance".[2]

In making their recommendations the Law Commission of India considered the various suggestions received by them and gave effect to such of them as appeared to them to be suitable. They dealt with two suggestions of a fundamental nature in the following words:

> "It has been suggested that there is no justification for a separate enactment on specific relief and that the provisions of this Act should be transferred to the Code of Civil Procedure and other enactments. This suggestion is founded on certain observations of Pollock and Mulla[3]:
>
> 'Specific relief, as a form of judicial redress, belongs to the Law of Procedure, and, in a body of written law arranged according to the natural affinities of the subject-matter, would find its place as a distinct part or other division of the Civil Procedure Code.....

1. Published in the *Gazette of India, Extraordinary*, No. 43, Pt. II, Sec. 1, dated 16th December, 1963.
2. Banerji, *Law of Specific Relief*, 2nd Ed., p. 34.
3. Specific Relief Act, 8th Ed., pp. 735, 737.

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S. 2]

(*c*) as respects any period after the commencement of the Constitution all territories for the time being comprised in the territory of India.[1]

For purpose of this Act "India" means the territory of India excluding the State of Jammu and Kashmir.

Under Art. 1 (3) of the Constitution of India, the territory of India shall comprise—

(*a*) the territories of the States,

(*b*) the Union territories specified in the First Schedule, and

(*c*) such other territories as may be acquired.

The territories of the States and the Union are specified in First Schedule to the Constitution.

6. Commencement and operation.—The Specific Relief Act, 1877, was enforced on 1st day of May, 1877. This new Specific Relief Act, 1963 received the assent of the President on 13th December, 1963. It has been published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 1, dated 16th December, 1963. As regards the enforcement of this Act sub-section (3) of this Act leaves it to the Central Government to enforce it from and on any date, which it may by issuing notification in the official Gazette appoint.

New	Old
2. Definitions.—In this Act, unless the context otherwise requires,—	**3. Interpretation clause.**—In this Act, unless there be something repugnant in the subject or context,—
(*a*) "obligation" includes every duty enforceable by law;	"obligation" includes every duty enforceable by law;
(*b*) "settlement" means an instrument (other than a will or codicil as defined by the Indian Succession Act, 1925) (39 of 1925) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of;	"settlement" means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in movable or immovable property is disposed of, or is agreed to be disposed of;

1. *Vide* General Clauses Act, 1897, Sec. 3 (28)

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New

(*c*) "trust" has the same meaning as in Sec. 3 of the Indian Trusts Act, 1882 (2 of 1882), and includes an obligation in the nature of a trust within the meaning of Chapter IX of that Act ;

(*d*) "trustee" includes every person holding property in trust;

(*e*) all other words and expressions used herein but not defined, and defined in the Indian Contract Act, 1872 (9 of 1872), have the meanings respectively assigned to them in that Act.

Old

"trust" includes every species of express, implied, or constructive, fiduciary ownership;

"trustee" includes every person holding expressly, by implication, or constructively, a fiduciary character.

Words defined in Contract Act.—And all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Illustrations

(*a*) Z *bequeaths land to* A "*not doubting that he will pay thereout annuity of* Rs. 1,000 *to* B *for his life*". A *accepts the bequest.* A *is a trustee, within the meaning of this Act, for* B, *to the extent of the annuity.*

(*b*) A *is the legal, medical, or spiritual adviser of* B. *By availing himself of his situation as such adviser,* A *gains some pecuniary advantage which might otherwise have accrued to* B. A *is a trustee for* B, *within the meaning of this Act, of such advantage.*

(*c*) A, *being* B's *banker, discloses for his own purpose the state of* B's *account.* A *is a trustee within the meaning of this Act for* B, *of the benefit gained by him by means of such disclosure.*

(*d*) A, *the mortgagee of certain leaseholds, renews the lease in his own name.* A *is a trustee within the meaning of this Act of the renewed lease, for those interested in the original lease.*

(*e*) A, *of several partners, is employed to purchase goods for the firm.* A *unknown*

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previous occupier. As regards the second rule, it applies when the plaintiff has never been in actual possession or having had possession has been peaceably dispossessed or dispossessed by lawful process, or when the defendant has been placed in possession by the rightful owner either under a good or an imperfect title.

5. **"In the manner provided by the Code of Civil Procedure".**— These words point out that the procedure prescribed for recovering possession of a specific immovable property by a person entitled is the same as is provided by the Code of Civil Procedure, 1908. The provisions of the Code of Civil Procedure, prescribes the institution of suit and the execution of the decree in accordance with the provisions of O. XXI, R. 35 or R. 36, C.P.C., as the procedure under the law for recovering specific immovable property under the law.

New

6. Suit by person dispossessed of immovable property.—(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(*a*) after the expiry of six months from the date of dispossession; or

(*b*) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

Old

6. Suit by person dispossessed of immovable property.—If any person is dispossessed without his consent of immovable property otherwise than in due course of law he or any person claiming through him may by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

No suit under this section shall be brought against the [Central Government or any State Government].

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

Nothing in this section shall bar any person from suing to establish his title to such property, and to recover possession thereof.

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High Court[1] Having considered the rival points of view we are inclined to prefer the view of Shadi Lal, C. J., in the Lahore case.[2] We have already recommended the acceptance of the doctrine of unjust enrichment.[3] According to that doctrine, the obligation to restore an unjust benefit should not depend upon the mere accident of a person coming before the Court as a plaintiff or defendant. We also agree with the view that restoration of *status quo ante* would not amount to the enforcement of the void contract against the defendant. The principle applicable to a minor will also apply to the case of a person of unsound mind. We recommend, therefore, that a sub-section should be included in the new provision suggested by us[4] to the effect that when a defendant successfully resists a suit on the ground that the contract is void, owing to his incapacity at the time of the contract, he must restore any benefit, Whether proprietary or monetary, which he has actually received under the contract. But no question of liability to make any compensation would arise in such a case."

The above recommendations have been incorporated into the present sub-section (2).[5]

New	Old
CHAPTER VI	CHAPTER VI
DECLARATORY DECREES	OF DECLARATORY DECREES
34. Discretion of Court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:	**42. Discretion of Court as to declaration of status of right.**—Any person entitled to any legal character, or to any right to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief:
Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.	**Bar to such Declaration.**—Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

1. Lutcharao *v.* Bhimayya, A. I. R. 1956 Andh. Pra. 182 (187).
2. Khan Gul *v.* Lakha Singh, A. I. R. 1928 Lah. 609 (F. B.).
3. *Vide* pp. 7-9 of our Report on the Limitation Act; Third Report of the Law Commission.
4. Section 36 of App. I.
5. Law Commission of India, Ninth Report, Specific Relief Act, 1877, pp. 44-46.

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"The Specific Relief Act was afterwards passed which undoubtedly widened the scope of the remedy. Under Sec. 42 of that Act (corresponding to Sec. 34 of the present Act) the plaintiff has only to show that he has some legal character or some right to property and that his opponent denying or interested in denying such legal character or title. The object of the section is really to perpetuate and strengthen the testimony regarding the title of the plaintiff so that adverse attack upon it may not weaken it. The policy of the Legislature is not only to secure to a wronged party possession of the property taken away from him, but also to see that he is allowed to enjoy that property peacefully. In other words, if a cloud is cast upon his title or legal character, he is entitled to seek the aid of the Court to dispel it."

3. Scope.—The object of the section is to perpetuate and strengthen testimony regarding title and protect it from adverse attacks, or, as it has been said, to prevent future litigation by removing existing causes of controversy. The policy of the Legislature is not only to secure to a wronged party possession of the property taken away from him but also to see that he is allowed to enjoy that property peacefully. In other words, if a cloud is cast upon his title or legal character he is entitled to seek the aid of the Court to dispel it.[1] The section is intended to express in definite terms the kind of cases in which the specific relief of a declaration of right, apart from all further relief, may be granted. At the same time, care has been taken to avoid multiplicity of suits and to prevent a person getting a declaration of right in one suit and immediately after, the remedy already available in the other. This is clear from the proviso of this section.[2]

4. Scope of.—Where in the trial Court the plaintiff made a prayer for confirmation of possession or in the alternative for recovery of possession, in addition to the relief of declaration, but on appeal the prayer for possession was given up by the plaintiff and the appeal was confined only to the declaration of the title as owners of the properties in question, it was held that the proviso to Sec. 42 (old), [Sec. 34 (new)] of the Specific Relief Act, operated as a bar to the grant of a mere declaration.[3]

New	Old
35. Effect of declaration.—A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.	**43. Effect of declaration.**—A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

1. Ganola Pedda Naganna *v.* Sivanappa, 38 Mad. 1162: 26 I. C. 282: 27 M. L. J. 520: 16 M. L. T. 310.
2. Holland *v.* Challen, 110 U. S. 20.
3. Ganola Pedda Naganna *v.* Sivanappa, *supra*; *see* also 8 All. 31: 20 Mad. 57: 6 Cal. 198.
4. Govinda *v.* Cerumudevi, 13 Mad. 136.
5. Nirmal Chandra Modak *v.* Kohelra Mohan Modak, A. I. R. 1962 Pat. 160 at p. 165, para. 25.

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Old

Illustration

A, a Hindu in a suit to which B, his alleged wife, and her mother are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

SYNOPSIS

1. Legislative changes.
2. Scope of.

1. Legislative changes.—This section is a verbatim reproduction of the previous Sec. 43 with the only difference that the illustration has been omitted.

2. Scope of.—Section 35 (new) of the Specific Relief Act applies to a case of transfer by an unauthorised person who subsequently acquires interest in the property transferred. A charge is not a case of transfer of interest in immovable property. The doctrine of feeding the estoppel has received statutory recognitions in Sec. 43 of the Transfer of Property Act and Sec. 18 (old) [13 (new)] of the Specific Relief Act. It is not possible to invoke the undefined principle of feeding the estoppel in other cases. The doctrine of feeding the estoppel is based on the principle of feeding the grant which involves transfer of interest in immovable property. In a case where neither grant nor transfer of interest in the immovable property was involved, P. B. Mukharji, J. felt considerable doubt in applying the doctrine of feeding the estoppel.[1]

New

PART III

PREVENTIVE RELIEF

CHAPTER VII

INJUNCTIONS GENERALLY

36. Preventive relief how granted.—Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Old

PART III

OF PREVENTIVE RELIEF

CHAPTER IX

OF INJUNCTIONS GENERALLY

52. Preventive relief how granted.—Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Legislative changes.—This section is a verbatim re-production of the previous Sec. 52.

1. Panchanan Pal *v.* Nirode Kumar, A. I. R. 1962 Cal. 13 at p. 16

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New

37. Temporary and perpetual injunctions.—(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908).

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Old

53. Temporary injunctions.—Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure."

Perpetual injunction.—A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit, the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

SYNOPSIS

1. Legislative changes. 2. Scope.

1. Legislative changes.—This section reproduces previous Sec. 53 with some drafting changes only. The two marginal notes occurring under the first and second paragraphs of previous Sec. 53 have been combined together as a single marginal note. The fullstop in the first paragraph of previous Sec. 53 has been omitted and substituted by the word "and". The words "at any period", have been substituted by the words "at any stage".

2. Scope.—The section simply states that temporary injunctions are regulated by the provisions of the Code of Civil Procedure. It nowhere enacts that the Court shall grant only such temporary injunctions as are provided for in the Code. In fact the courts have acted for a long series of years on the view that their powers of control over persons within their jurisdiction by injunctions operating *in personam* are not restricted by the provisions of the Civil Procedure Code, and it is too late to think that the courts can depart from that practice.[1] Injunction can issue only against a named person. Equity acts *in personam* and an injunction must be addressed to the defendant personally.[2] Reading together this section along with O. XXXIX, C. P. C., it may be inferred that a temporary injunction is obtainable (1) in all suits, where it is necessary either (*a*) to preserve the property which is the object-matter of the suit *pendente lite*, or (*b*) to prevent the defendant defrauding his creditors by disposal of his property; (2) in suits for restraining the defendant from committing any injury (including breaches of contract), he may cause illegally caused to any person in body, mind, reputation or property; but not for breach of any legal duty."

1. [illegible] 33 Bom. [illegible] 27 Bom. 357; Hukam Chand v. Kamakshi, 32 Cal. 927; Mongal Chand v. Gopal Das, 34 Cal. 861; Ramdas v. Zenabai
2. N. W. Railway Administration v. N. W. Railway Union, 14 Lah. 330; A. I. R. 1933 Lah. 203; 34 P. L. R. 975.
3. Nelson on *Injunctions*.

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(10)

New

CHAPTER VIII

PERPETUAL INJUNCTIONS

38. Perpetual injunction when granted.—(1) Subject to the other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:—

(*a*) where the defendant is a trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that compensation in money would not afford adequate relief;

(*d*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Old

CHAPTER X

OF PERPETUAL INJUNCTIONS

54. Perpetual injunctions when granted.—Subject to the other provisions contained in, or referred to, by the Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly, or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades, or threatens to invade, the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, (namely):—

(*a*) where the defendant is a trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief;

(*d*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

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Old

Illustrations

(a) A *lets certain lands to* B *and contracts not to dig sand or gravel thereout.* A *may sue for an injunction to restrain* B *from digging in violation of his contract.*

(b) *A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners, sue for an injunction to prevent the breach.*

(c) *The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.*

(d) *The directors of a fire life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.*

(e) *An executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.*

(f) A, *a trustee for* B, *is about to make an imprudent sale of a small part of the trust property.* B *may sue for an injunction to restrain the sale, even though compensation in money would have afforded him an adequate relief.*

(g) A *makes a settlement (not founded on marriage or other valuable consideration) of an estate on* B *and his childern.* A *then contracts to sell the estate to* C. B *or any of his children may sue for an injunction to restrain the sale.*

(h) *In the course of* A's *employment as a vakil, certain papers belonging to his client* B, *come into his possession.* A *threatens to make these papers public, or to communicate their contents to a stranger.* B *may sue for an injunction to restrain* A *from so doing.*

(i) A *is* B's *medical adviser. He demands money of* B, *which* B *declines to pay.* A *then threatens to make known the effect of* B's *communications to him as patient. This is contrary to* A's *duty, and* B *may sue for an injunction to restrain him from so doing.*

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Old

(j) A, *the owner of two adjoining houses, lets one to* B, *and afterwards lets the other to* C. A *and* C *begin to make such alterations in the house let to* C *as will prevent the comfortable enjoyment of the house let to* B. B *may sue for an injunction to restrain them from so doing.*

(k) A *lets certain arable lands to* B *for purposes of husbandry, but without any express contracts as to the mode of cultivation. Contrary to the mode of cultivation customary in the district,* B *threatens to sow the lands with seed injurious thereto, and requiring many years to eradicate.* A *may sue for an injunction to restrain* B *from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.*

(l) A, B *and* C *are partners, the partnership being determinable at will.* A *threatens to do an act tending to the destruction of the partnership property.* B *and* C *may, without seeking a dissolution of the partnership, sue for an injunction to restrain* A *from doing the act.*

(m) A *a Hindu widow in charge of of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing.* The *next reversionary may sue for an injunction to restrain her.*

(n) A, B *and* C *are members of an undivided Hindu family.* A *cuts timber growing on the family property, and threatens to destroy part of the family house, and to sell some of the family utensils.* B *and* C *may sue for an injunction to restrain him.*

(o) A, *the owner of certain houses in Calcutta, becomes insolvent.* B *buys them from the official assignee, and enters into possession.* A *persists in trespassing on and damaging the houses and* B *is thereby compelled at considerable expense to employ men to protect the possession.* B *may sue for an injunction to restrain further acts of trespass.*

(p) *The inhabitants of a village claim a right of way over* A's *land. In a sui*

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Old

against several of them A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction.

(q) A, *in an administration suit, to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.*

(r) *A and B are in possession of contiguous lands, and of the mines underneath them. B works his mine so as to extend under A's mine, and threatens to remove certain pillars which help to support A's mine. A may sue for an injunction to restrain B from so doing.*

(s) A *rings bells or makes some other unnecessary noise so near a house to interfere materially and unreasonably with the physical comfort of the occupier B. B may sue for an injunction restraining A from making the noise.*

(t) A *pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.*

(u) A *infringes B's patent. If the Court is satisfied that the patent is valid, and has been infringed, B may obtain an injunction to restrain the infringement.*

(v) A *pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.*

(w) A *improperly uses the trade-mark of B. B may obtain injunction to restrain the user, provided that B's use of the trade-mark is honest.*

(x) A, *a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.*

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Old

(y) A, *a very eminent man, writes letters on family topics to* B. *After the death of* A *and* B, C, *who is* B's *residuary legatee, proposes to make money by publishing* A's *letters. D, who is A's executor has a property in the letters and may sue for an injunction to restrain* C *from publishing them.*

(z) A *carries on a manufactory, and* B *is his assistant. In the course of his business,* A *imparts to* B *secret process of value.* B *afterwards demands money of* A *threatening in case of refusal to disclose the process to* C, *a rival manufacturer.* A *may sue for an injunction to restrain* B *from disclosing the process.*

SYNOPSIS

1. Legislative changes.
2. Reasons for the change.
3. Scope of the section.
4. Scope of.

1. Legislative changes.—This section corresponds to the previous Sec. 54. The first paragraph of the previous Sec. 54 has been enacted as sub-section (1) with the following changes:

The words "the chapter", have been substituted by the words "this chapter". The words "to the plaintiff" have been inserted between the words "may be granted" and the words "to prevent". The words "in favour of the applicant" have been substituted by the words "in his favour".

The second paragraph of previous Sec. 54 has been incorporated as sub-section (2) with the only insertion of the word "any" before the word "when" and the omission of the words "at the time" as occurring at the end.

The third paragraph has been incorporated as sub-section (3) and Cls. (*a*) and (*b*) have been reproduced verbatim. In Cl. (*c*) the word "pecuniary" has been substituted by the word "in money". Clause (*d*) of previous Sec. 54 has been omitted and Cl. (*e*) has been incorporated as Cl. (*d*) in the present section. The Explanation as well as illustrations have been omitted.

2. Reasons for the change.—The Law Commission of India gave the following reasons for introducing changes on the old Sec. 54 of the repealed Specific Relief Act, 1877. They say: "The use of the word 'applicant' in the first paragraph of Sec. 54 is not appropriate, for a perpetual injunction cannot be had upon an application as distinguished from a suit. Later in the section, the word 'plaintiff' is used. Accordingly, the word 'applicant' in the section should be replaced by the word 'plaintiff'.

"Clause (*d*) of Sec. 54 should be omitted for the reasons for which we have recommended the omission of Cl. (*d*) of Sec. 12."[1]

In the Notes on Cl. 37 which deals with the old Sec. 54 and the new Sec. 38 of the Specific Relief Act, it has been stated:

"This is Sec. 54 of the existing Act with the following changes:

(*i*) For the word 'applicant', the word 'plaintiff' has been substituted as the former expression is inaccurate;

1. Law Commission of India, Ninth Report on Specific Relief Act, 1877 at p. 52.

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(*ii*) section 54 (*d*) of the Act has been omitted for the reasons given against Cl. 9 in respect of the omission of Sec. 12(*d*)."

3. Scope of the section.—This section lays down the general principles which should guide the courts in considering the question of granting or refusing perpetual injunctions in appropriate cases. The principles contained in this section are not new. They have been well-settled and recognised and applied by courts in India, long before they came to be incorporated in the form of the present section. They contain, in simple language, the rules of equity as fomulated in England and introduced in India as rules based on principles of justice, equity and good conscience. In *Shamnagar Jute Factory Co., Ltd.* v. *Ram Narain Chatterji*,[1] a Divisional Bench of the Calcutta High Court laid down the general principles which should govern the granting or withholding of an injunction by a court. The Court said at pages 199, 200 and 201 of the Report:

"The granting of injunctions is now regulated by Secs. 54 and 55 of the Specific Relief Act. But those sections have never been understood as introducing new principles of law into India, but rather as an attempt to express in general terms the rules acted upon by Courts of Equity in England and long since introduced in this country, not because they were English law, but because they were in accordance with equity and good conscience. It is necessary, therefore, to inquire on what principle the courts have acted in England and in India.

"In England injunctions have been sought for the protection of various kinds of proprietary rights, such as to restrain the infringement of easements, to protect the interests of landlords against their tenants, and of tenants-in-common against their co-tenants. And the principle is well settled that in granting or withholding an injunction, the courts exercise a judicial discretion, and weigh the amount of substantial mischief done or threatened to the plaintiff, and compare it with that which the injunction, if granted, would inflict upon the defendant. The doctrine is very clearly explained in *Doherty* v. *Allman*.[2] And the fact that the plaintiff has given notice of objection to what is threatened before it has been carried out does not make the injunction a thing of course. This appears from the case just cited, and from *Isenberg* v. *East Indian House Estate Co.*,[3] English Courts have certainly not shown any special facility in granting injunctions between co-tenants; such injunctions are of very rare occurrence. In this country, as might be expected, questions of this nature arise much more frequently between co-owners than in England, and the decided cases are numerous. We do not think it necessary to examine the whole series of cases in detail. It is enough to say that there are many cases in which an injunction has been granted; and in some cases very general language has been used as to the right of a part owner to restrain his co-owner. It is enough to refer to *Jankee Singh* v. *Bukhooree Singh*,[4] *Indereonarain Singh* v. *Toolseenarain Singh*,[5] *Gurudas Dhur* v. *Bijoy Gobind Bural*,[6] *Holloway* v. *Mahomed Ali*,[7] *Stalkartt* v. *Gopal Panday*.[8]

"But we are not aware of any decision which establishes the broad proposition contended for by the plaintiffs, that one co-owner is entitled to an injunction restraining another co-owner from exceeding his rights, absolutely, and without reference to the amount of damage to be sustained by the one side or the other from the granting or withholding of the injunction.

1. I. L. R. 11 Cal. 189.
2. L. R. 3 App. Cas. 709.
3. 3 De G., J. & S. 263.
4. S. D. A. (1856) 761.
5. S. D. A. (1857) 765.
6. I. B. L. R. A. C. 408: 10 W. R. 171.
7. 12 B. L. R. 191 (note): 16 W. R. 140.
8. 12 B. L. R. 197.

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"On the other hand, a rule in conformity with the English decisions has been acted upon in a number of cases.[1]

"We think that the granting of an injunction is a matter in the judicial discretion of the Court."

4. Scope of.—A wrongful user of the expression "registered" in a trade-mark, when the mark has not been actually registered does not disentitle the plaintiff from maintaining his suit for injunction in a passing of action where the user of the word "registered" is the result of his honest mistakes. In such a case the user should not be visited with any penalty for the wrongful user of the word "registered". In such a case the plaintiff is entitled to injunction against the defendants but he is not entitled to the delivery of offending labels, blocks or goods.[2]

Where a nuisance had been in existence for a long time at a particular place without any objection on any body's part, much less by the plaintiff, mere shifting of the place of that nuisance, would not *ipso facto* give the plaintiff the cause of action for the suit, unless there is evidence on the record to show that by shifting the location or the place of nuisance, the effect of the nuisance has aggravated.[3]

New	Old
39. Mandatory injunctions.—When, to prevent the breach of an obligation it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.	**55. Mandatory injunctions.**—When to prevent the breach of an obligation it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations

(a) A *by new buildings obstructs lights to the access and use of which* B *has acquired a right under the* [*Indian Limitation Act, Part IV*] B *may obtain an injunction, not only to restrain* A *from going on with the buildings but also to pull down so much of them as obstructs* B's *lights.*

(b) A *builds a house with eaves projecting over* B's *land.* B *may sue for an injunction*

1. Lala Biswambhar Lal *v.* Rajaram, 3 B. L. R. App. 67: 13 W. R. 337 (note); Dwarkanath Bhooyea *v.* Gopeenath Bhooyea, 12 B. L. R. 189 (note); Sree Chand *v.* Nim Chand Sahoo, 5 B.L.R. App. 25: 13 W. R. 337; Crowdy *v.* Inder Roy, 18 W. R. 408; Massim Mollah *v.* Panjoo Ghoramee, 21 W. R. 373; Nicholl *v.* Tarinee Churn Bose, 23 W. R. 298; Mohima Chander Ghose *v.* Madhub Chunder Nag, 24 W. R. 80; Rajendro Gir Gossami *v.* Shama Churn Lahori, 6 Cal. 188; Nocury Lall Chuckerbutty *v.* Bindabun Chunder Chuckerbutty, 8 Cal. 708.

2. Indian Dental Works by its proprietors Dhana Lakshmi Ammal *v.* K. Dhana Kali Nandan, A.I.R. 1956 Mad. 127 at p. 132 (para. 26).

3. Basai *v.* Hasan Raza Khan, A. I. R. 1963 All. 340.

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Old

to pull down so much of the caves as so project.

(c) *In the case put as illustration (i) to Sec. 54, the Court may also order all written communications made by* B *as patient to* A, *as medical adviser, to be destroyed.*

(d) *In the case put as illustration* (y) *to Sec. 54 the Court may also order* A's *letters to be destroyed.*

(e) A *threatens to publish statements concerning* B, *which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to* B's *property.*

(f) A *being* B's *medical adviser, threatens to publish* B's *written communications with him, showing that* B *has led an immoral life.* B *may obtain an injunction to restrain the publication.*

(g) *In the cases put as illustrations* (v), *and* (w) *to Sec. 54, and in illustrations* (e) *and* (f) *to this section, the Court may also order the copies produced by piracy, and the trade-marks, wrongfully used, to be delivered up or destroyed.*

Legislative changes.—This section is a verbatim reproduction of the previous Sec. 55 with the only difference that the illustrations have been omitted.

New

40. Damages in lieu of, or in addition to, injunction.—(1) The plaintiff in a suit for perpetual injunction under Sec. 38, or mandatory injunction under Sec. 39, may claim damages either in addition to, or in substitution for, such injunction and the Court may, if it thinks fit, award such damages.

(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:

Provided that where no such damages have been claimed in the plaint, the Court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

(3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

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SYNOPSIS

1. Legislative changes.
2. Reasons for the change—Scope.
3. General note.

1. **Legislative changes.**—This is a new section.

2. **Reasons for the change—Scope.**—The jurisdiction for introducing this new section was pointed out to the Law Commission in these words:

"In England, it is well settled that since the passing of the Judicature Act, 1873, the High Court can, in an action for injunction, exercise its discretion to award damages either in addition to, or in substitution for, an injunction, whether or not damages have also been specifically claimed.[1]

"The same view has been taken in India[2] even though the principle adopted in Sec. 19 was not extended by the framers of the Act to an action for an injunction. In the circumstances, it is advisable to make a specific provision in the Act for this purpose. We recommend that a new provision on the lines of Sec. 19 of the Act be added to cover cases arising under Secs. 54 and 55 of the Specific Relief Act."[3]

3. **General Note.**—This section gives effect to the principles already accepted that the Court can in an action for injunction exercise its discretion to award damages either in addition to or in substitution for an injunction.

"In England, it is well-settled that since the passing of the Judicature Act, 1873, the High Court can, in an action for injunction, exercise its discretion to award damages either in addition to or in substitution for an injunction, whether or not damages have also been specifically claimed.[4]

"The same view has been taken in India[5] even though the principle adopted in Sec. 19 was not extended by the framers of the Act to an action for an injunction. In the circumstances, it is advisable to make a specific provision in the Act for this purpose. We recommend that a new provision on the lines of Sec. 19 of the Act be added to cover cases arising under Secs. 54 and 55 of the Specific Relief Act."

New	Old
41. Injunction when refused.—An injunction cannot be granted—	**56. Injunction when refused.**—Injunction cannot be granted—
(*a*) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;	(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

1. *Vide* Halusbry's *Laws of England*, 2nd Ed., Vol. 18, para. 3, p. 23.
2. Kaliandas *v.* Hiralal A.I.R. 1954 Sau. 139; Callianji Hiralal, *v.* Narsi, 19 Bom. 764; Kalliadas *v.* Tulsi, 23 Bom. 786.
3. Law Commission of India, Ninth Report Specific Relif Act, 1877, pp. 52-53.
4. *Vide* Halsbury's *Laws of England*, 2nd Ed., Vol. 18, para. 3, p. 23.
5. Kaliandas *v.* Hiralal A.I.R. 1954 Sau. 129; Callianji Hiralal *v.* Narsi, *supra*. Kalliadas *v.* Tulsi, *supra*.

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New

(*b*) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(*c*) to restrain any person from applying to any legislative body;

(*d*) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(*e*) to prevent the breach of a contract the performance of which would not be specifically enforced;

(*f*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*g*) to prevent a continuing breach in which the plaintiff has acquiesced;

(*h*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(*i*) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court;

(*j*) when the plaintiff has no personal interest in the matter.

Old

(*b*) to stay proceedings in a court not subordinate to that from which the injunction is sought;

(*c*) to restrain persons from applying to any legislative body;

(*d*) to interfere with the public duties of any department of the Central Government, [* * *] or any [State Government], or with the sovereign acts of a Foreign Government;

(*e*) to stay proceedings in any criminal matter;

(*f*) to prevent the breach of a contract, the performance of which would not be specifically enforced;

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*h*) to prevent a continuing breach of contract in which the applicant has acquiesced;

(*i*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;

(*j*) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(*k*) when the applicant has no personal interest in the matter.

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Old

Illustrations

(a) A *seeks an injunction to train his partner,* B, *from receiving the partnership-debts and effects. It appears that* A *had improperty possessed himself of the books of the firm, and refused* B *access to them. The Court will refuse the injunction.*

(b) A *manufacturers and sells crucibles, designating them as "patent plumbago crucibles" though, in fact, they have never been patented.* B *pirates the designation.* A *cannot obtain an injunction to restrain the piracy.*

(c) A *sells an article called "Mexican Balm," stating that is it compounded of divers rare essences, and has sovereign medicinal qualities.* B *commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's "Mexican Balm."* A *sues* B *for an injunction to restrain the sale.* B *shows that A's "Mexican Balm consists of nothing but scented hog's lard.* A's *use of this description is not an honest one, and he can't obtain an injunction.*

SYNOPSIS

1. Legislative changes. 2. Reasons for the change—Scope.

1. Legislative changes.—This section corresponds to the previous Sec. 56 with the following changes:

In Cl. (*a*) the opening words "to stay" have been substituted by words "to restrain any person from prosecuting". In Cl. (*b*) the opening words "to stay" have been substituted by the words "to restrain any person from instituting or prosecuting in". In Cl. (*c*) the word "any" has been inserted after the opening words "to restrain". Clause (*d*) of previous Sec. 56 has been omitted. Clause (*e*) of the previous Sec. 56 has been re-numbered as Cl. (*d*) with the substitution of the words "to stay" by the words "to restrain any person from instituting or prosecuting any", and the substitution of the word "any" by the word "a". Clauses (*f*) and (*g*) of the previous Sec. 56 have been reproduced and renumbered as Cls. (*e*) and (*f*). Clause (*h*) has been incorporated as Cl. (*g*) of the present section with the omission of the words "of contract" and the substitution of the word "applicant" by the word "plaintiff". Clause (*i*) has been reproduced as Cl. (*h*). Clause (*j*) has been incorporated as Cl. (*i*) with the substitution of the word "applicant" by the word "plaintiff". Clause (*k*) has been reproduced and re-numbered as Cl. (*j*). Illustrations under the previous section have been omitted.

2. Reasons for the change—Scope.—The expression used in Cls. (*a*), (*b*) and (*e*) of old Sec. 56 is "to stay proceedings". This has led to a controversy as to whether an injunction can be directed to the Court itself before

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which the proceeding is pending. The Law Commission with the view taken by the Patna High Court,[1] that an injunction is a remedy *in personam* which is directed against the litigant and not against the Court.

Recommended that suitable changes be made in Cls. (*a*), (*b*) and (*e*) of old Sec. 56 to remove doubts on this point and changes to this effect have been introduced into this section.

Clause (*d*) of old Sec. 56 has been omitted on the ground that the first part of the clause, referring to any Government department in India, is inconsistent with the principle embodied in the second Proviso to Art. 361 (1) of our Constitution. The second part is unnecessary because the immunity of a foreign sovereign in respect of his sovereign acts is well accepted.

No alteration has been made in the remaining clauses of old Sec. 56, except verbal changes.[2]

New	Old
42. Injunction to perform negative agreement.—Notwithstanding anything contained in Cl. (*e*) of Sec. 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:	**57. Injunction to perform negative agreement.**—Notwithstanding Sec. 56, Cl. (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:
Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.	Provided that the applicant has not failed to perform the contract so far as it is binding on him.
	Illustrations
	(a) A *contracts to sell to* B *for Rs.* 1,000 *the good-will of a certain business unconnected with business premises, and further agrees not to carry on that business in Calcutta.* B *pays* A *Rs.* 1,000 *but* A *carries on the business in Calcutta. The Court cannot compel* A *to send his customers to* B, *but* B *may obtain an injunction restraining* A *from carrying on the business in Calcutta.*
	(b) A *contracts to sell to* B *the good-will of a business.* A *then sets up a*

1. Rameshwar *v.* Baldeo, A. I. R. 1938 Pat. 606.

2. Law Commission of India, Ninth Report, Specific Relief Act, 1877, p. 53.

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Old

similar business close by B*'s shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and* B *may obtain injunction to restrain* A *from soliciting the customers, and from doing any act whereby their goodwill may be withdrawn from* B.

(c) A *contracts with* B *to sing for twelve months at* B*'s theatre and not to sing in public elsewhere.* B *cannot obtain specific performance of the contract to sing. But he is entitled to an injunction restraining* A *from singing at any other place of public entertainment.*

(d) A *contracts with* B *that he will serve him faithfully for twelve months as a clerk.* A *is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining* B *from serving a rival house as clerk.*

(e) A *contracts with* B *that in consideration of* Rs. 1,000 *to be paid to him by* B *on a day fixed, he will not sell to a certain person within a specified distance of* B*'s house.* B *fails to pay the money.* A *cannot be restrained from carrying on the business with the help of assistants.*

SYNOPSIS

1. Legislative changes.
2. Scope.
3. Affirmative and negative agreements.
4. Express or implied.
5. Unable to compel specific performance.
6. Shall not preclude, etc.
7. Exceptions—When Section does not apply.
8. Proviso.
9. Joint Stock Companies.

1. Legislative changes.—This section reproduces the previous Sec. 57. There is practically no change in the old and new sections except the omission of the illustrations, and the drafting changes in the opening words of the previous section resulting from renumbering of the sections of the Act.

2. Scope.—Section 42 gives sanction in India to the view expressed by Lord Selborne in *Wolverhampton & C. Ry. Co. v. London and C. Ry. Co.*[1] The section does not represent the present English doctrine[2] but later English decisions cannot affect the codified law of India[3]. As observed by Sir Arthur Wilson in *Tituram's* case[4], The courts in India cannot go outside the provisions of Chapters VII and VIII of Specific Relief Act. Now Sec. 42 is in Chapter VIII and it clearly contains the words "express or implied". It follows that an injunction can be issued even in those personal service contracts

1. (1873) 16 Eq. 434 at p. 440; Burn & Co. *v.* McDonald, (1908) 36 Cal. 354 at p. 364.
2. Burn & Co. *v.* McDonald, 36 Cal. 354 at p. 368.
3. Munisami *v.* Subbarayan, (1907) 31 Mad. 97 at p. 99; Banerji, p. 169; App. G.
4. Tituram Mukherji *v.* Cohan, 33 Cal. 203 at p. 210; Parul *v.* Srinibash, A.I.R. 1952 Cal. 364 at p. 367-8.

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(23)

APPENDIX II

The Indian Limitation Act, 1908

Act No. 9 of 1908

An Act to consolidate and amend the law for the limitation of suits, and for other purposes.

[7th August, 1908.]

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property: It is hereby enacted as follows:—

PART I

PRELIMINARY

1. Short title, extent and commencement.

(1) This Act may be called the Indian Limitation Act, 1908.

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

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,—

(1) "applicant" includes any person from or through whom an applicant derives his right to apply:

(2) "bill of exchange" includes a hundi and a cheque:

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued:

(5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another:

(6) "foreign country" means any country other than India, but includes also the State of Jammu and Kashmir:

(7) "good faith" nothing shall be deemed to be done in good faith which is not done with due care and attention:

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue:

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

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(9A) "India" means the territory of India excluding the State of Jammu and Kashmir :

(10) "suit" does not include an appeal or an application: and

(11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II

Limitation of Suits, Appeals and Applications

3. Dismissal of suits, etc., instituted, etc., after period of limitation.

Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

4. Where Court is closed when period expires.

Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

5. Extension of period in certain cases.

Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. — The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

6. Legal disability.

(1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

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(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations

(a) The right to sue for the hire of a boat accrues to *A* during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b) *A* right to sue accrues to *Z* during his minority. After the accruer, but while *Z* is still a minor, he becomes insane. Time runs against *Z* from the date when his insanity and minority cease.

(c) *A* right to sue accrues to *X* during his minority, *X* dies before attaining majority, and is succeeded by *Y*, his minor son. Time runs against *Y* from the date of his attaining majority.

7. Disability of one of several plaintiffs or applicants.

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations

(a) *A* incurs a debt to a firm of which *B*, *C* and *D* are partners. *B* is insane and *C* is a minor. *D* can give a discharge of the debt without the concurrence of *B* and *C*. Time runs against *B*, *C* and *D*.

(b) *A* incurs a debt to a firm of which *E*, *F* and *G* are partners. *E* and *F* are insane, and *G* is a minor. Time will not run against any of them until either *E* or *F* becomes sane, or *G* attains majority.

8. Special exceptions.

Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations

(a) *A*, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. *A* has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) *A* right to sue for an hereditary office accrues to *A* who at the time is insane. Six years after the accruer *A* recovers his reason. *A* has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given to him under section 6 read with this section.

(c) *A* right to sue as landlord to recover possession from a tenant accrues to *A*, who is an idiot. *A* dies three years after the accruer, his idiocy continuing up to the date of his death. *A*'s representative in interest has, under the ordinary law, nine years from the date of *A*'s death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

9. Continuous running of time.

Where once time has begun to run, no subsequent disability or inability to sue stops it :

Provided that, where letters of administration to the state of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

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10. Suits against express trustees and their representatives.

Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.

11. Suits on foreign contracts.

(1) Suits instituted in India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rules of limitation shall be a defence to a suit instituted in India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III

Computation of Period of Limitation

12. Exclusion of time in legal proceedings.

(1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. Exclusion of time of defendant's absence from India and certain other territories.

In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from India and from the territories beyond India under the administration of the Central Government shall be excluded.

14. Exclusion of time of proceeding bona fide in Court without jurisdiction.

(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil

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proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

15. Exclusion of time during which proceedings are suspended.

(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

16. Exclusion of time during which proceedings to set aside execution sale are pending.

In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

17. Effect of death before right to sue accrues.

(1) Where a person, who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub sections *(1)* and *(2)* applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of an hereditary office.

18. Effect of fraud.

Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded.

or where any document necessary to establish such right has been fraudulently concealed from him.

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

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(28)

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. Effect of acknowledgment in writing.

(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation I. — For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section, "signed" means signed either personally or by an agent duly authorized in this behalf.

Explanation III. — For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

20. Effect of payment on account of debt or of interest on legacy.

(1) Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorized agent, a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Effect of receipt of produce of mortgaged land.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section *(1)*.

Explanation.—Debt includes money payable under a decree or order of Court.

21. Agent of person under disability.

(1) The expression "agent duly authorized in this behalf," in sections 19 and 20 shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

Acknowledgment or payment by one of several joint contractors, etc.

(2) Nothing in the said sections renders one of several joint contractors, partners,

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executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

(3) For the purposes of the said sections—

(a) an acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorized agent of, any widow or other limited owner of property who is governed by the Hindu law, shall be a valid acknowledgment or payment, as the case may be, as against a reversioner succeeding to such liability; and

(b) where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

22. Effect of substituting or adding new plaintiff or defendant.

(1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section *(1)* shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

23. Continuing breaches and wrongs.

In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

24. Suit for compensation for act not actionable without special damage.

In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustration

A owns the surface of a field, *B* owns the subsoil. *B* digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence.

25. Computation of time mentioned in instruments.

All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

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PART IV

ACQUISITION OF OWNERSHIP BY POSSESSION

26. Acquisition of right to easements.

(1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section *(1)* belongs to the Government, that sub-section shall be read as if for the words "twenty years" the "sixty years" were substituted.

Explanation. — Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations

(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890, to first January, 1910. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

27 Exclusion in favour of reversioner of servient tenement.

Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

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Illustration

A sues for a declaration that he is entitled to a right of way over *B*'s land. *A* proves that he has enjoyed the right for twenty-five years; but *B* shows that during ten of these years *C*, a Hindu widow, had a life interest in the land, that on *C*'s death *B* became entitled to the land and that within two years after *C*'s death he contested *A*'s claim to the right. The suit must be dismissed, as *A*, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. Extinguishment of right to property.

At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V

SAVINGS AND REPEALS

29. Savings.

(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

(3) Nothing in this Act shall apply to suits under the Indian Divorce Act.

(4) Sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882 may for the time being extend.

30. *[Provision for States for which the period prescribed is shorter than that prescribed by any law previously in force in a Part B State.] Rep. by the Adaptation of Laws (No. 2) Order, 1956.*

31. *[Provision for suits by certain mortgagees in territories mentioned in the second Schedule.] Rep. by the Repealing and Amending Act, 1930 (VIII of 1930), s. 3 and Sch. II.*

32. *[Repeals.] Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

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THE FIRST SCHEDULE

(See section 3)

FIRST DIVISION : SUITS

Description of suit	Period of limitation	Time from which period begins to run
Part I.—Thirty days		
1.—To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863.	Thirty days ...	When notice of the award is delivered to the plaintiff.
Part II.—Ninety days		
2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in India.	Ninety days ...	When the act or omission takes place.
Part III.—Six months		
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immovable property.	Six months ...	When the dispossession occurs.
4.—*(Rep. by Act XX of 1937.)*		
Part IV.—One year		
5.—Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, 1908 where the provision of such summary procedure does not exclude the ordinary procedure in such suits and under Order XXXVII of the said Code.	One year ...	When the debt or liquidated demand becomes payable or when the property becomes recoverable.
6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan or labourer.	One year ...	When the wages accrue due.
8.—For the price of food or drink sold by the keeper	One year ...	When the food or drink is delivered.

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Description of suit	Period of limitation	Time from which period begins to run
	Part IV.—One year—contd.	
of a hotel, tavern or lodging-house.		
9.—For the price of lodging.	One year ...	When the price becomes payable.
10.—To enforce a right of pre-emption whether the right is founded on law, or general usage, or on special contract	One year ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order : (1) Order under the Code of Civil Procedure, 1908, on a claim preferred to, or an objection made to the attachment of property attached in execution of a decree; (2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.	One year ...	The date of the order.
11A.—By a person against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person	One year ...	The date of the order.

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Description of suit	Period of limitation	Time from which period begins to run
	Part IV—One year—contd.	
dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.		
12.—To set aside any of the following sales :— (*a*) sale in execution of a decree of a Civil Court ; (*b*) sale in pursuance of a decree or order of a Collector or other officer of revenue ; (*c*) sale for arrears of Government revenue, or for any demand recoverable as such arrears ; (*d*) sale of a patni taluq sold for current arrears of rent. *Explanation.* — In this article "patni" includes any intermediate tenure saleable for current arrears of rent.	One year ...	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	One year ...	The date of the final decision or order in the case by a Court competent to determine it finally.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year ...	The date of the act or order.
15.—Against Government to sel aside any attachment, lease or transfer of immovable property by the revenue-authorities for	One year ...	When the attachment, lease or transfer is made.

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Description of suit	Period of limitation	Time from which period begins to runs
Part IV—One year—contd.		
arrears of Government revenue.		
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	One year ...	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.	One year ...	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	One year ...	The date of the refusal to complete.
19.—For compensation for false imprisonment.	One year ...	When the imprisonment ends.
20.—By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855.	One year ...	The date of the death of the person wronged.
21.—By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	One year ...	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	One year ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	One year ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel.	One year ...	When the libel is published,
25.—For compensation for slander.	One year ...	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year ...	When the loss occurs.

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Description of suit	Period of limitation	Time from which period begins to run
	Part IV—One year—contd.	
27.—For compensation for inducing a person to break a contract with the plaintiff.	One year ...	The date of the breach.
28.—For compensation for an illegal, irregular or excessive distress.	One year ...	The date of the distress.
29.—For compensation for wrongful seizure of movable property under legal process.	One year ...	The date of the seizure.
30.—Against a carrier for compensation for losing or injuring goods.	One year ...	When the loss or injury occurs.
31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	One year ...	When the goods ought to be delivered.
	Part V.—Two years.	
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years ...	When the perversion first becomes known to the person injured thereby.
33.—Under the Legal Representatives' Suits Act, 1855, against an executor.	Two years ...	When the wrong complained of is done.
34.—Under the same Act against an administrator.	Two years ...	Ditto.
35.—Under the same Act against any other representative.	Two years ...	Ditto.
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	Two years ...	When the malfeasance, misfeasance or nonfeasance takes place.
	Part VI.—Three years.	
37.—For compensation for obstructing a way or a watercourse.	Three years ...	The date of the obstruction.
38.—For compensation for diverting a watercourse.	Three years ...	The date of the diversion.

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Description of suit	Period of limitation	Time from which period begins to run
Part VI — Three years — contd.		
39. — For compensation for trespass upon immovable property.	Three years ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Three years ...	The date of the infringement.
41.—To restrain waste.	Three years ...	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Three years ...	When the injunction ceases.
43.—Under the Indian Succession Act, 1925, section 360 or section 361, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years ...	The date of the payment or distribution.
44.—By a ward who has attained majority, to set aside a transfer of property by his guardian.	Three years ...	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code:— The Bengal Land-revenue Settlement Regulation, 1822. The Bengal Land-revenue Settlement Regulation, 1825. The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.	Three years ...	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Three years ...	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Proce.	Three years ...	The date of the final order in the case.

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Description of suit	Period of limitation	Time from which period begins to run
Part VI—Three years—contd.		
dure, 1898, or the Mamlatdars' Courts Act, 1906, or by any one claiming under such person; to recover the property comprised in such order.		
48.—For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Three years ...	When the person having the right to the possession of the property first learns in whose possession it is.
48A.—To recover movable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	Three years ...	When the sale becomes known to the plaintiff.
48B.—To set aside sale of movable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years ...	When the sale becomes known to the plaintiff.
49.—For other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Three years ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats or household furniture.	Three years ...	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Three years ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Three years ...	The date of the delivery of the goods.

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Description of suit	Period of limitation	Time from which period begins to run
Part VI — Three years — contd.		
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years ...	When the period of credit expires.
54.—For the price of goods sold and deliverd to be paid for by a bill of exchange, no such bill being given.	Three years ...	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years ...	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years ...	When the work is done.
57.—For money payable for money lent.	Three years ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Three years ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Three years ...	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Three years ...	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Three years ...	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years ...	When the money is received.

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Description of suits	Period of limitation	Time from which period begins to run
Part VI — Three years—contd.		
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Three years ...	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years ...	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years ...	When the time specified arrives or the contingency happens.
66.—On a single bond, where a day is specified for payment.	Three years ...	The day so specified.
67.—On a single bond, where no such day is specified.	Three years ...	The date of executing the bond.
68.—On a bond subject to a condition.	Three years ...	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Three years ...	When the bill or note falls due.
70.—On a bill of exchange payable at a sight or after sight, but not at fixed time.	Three years ...	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Three years ...	When the bill is presented at the place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years ...	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any	Three years ...	The date of the bill or note.

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Description of suit	Period of limitation	Time from which period begins to run
Part VI—Three years—contd.		
writing restraining or postponing the right to sue.		
74.—On a promissory note or bond payable by instalments.	Three years ...	The expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due.	Three years ...	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years ...	The date of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given.	Three years ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Three years ...	The date of the refusal to accept.
79.—By the acceptor of an accommodation-bill against the drawer.	Three years ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Three years ...	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	Three years ...	When the surety pays the creditor.
82.—By a surety against a co-surety.	Three years ...	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Three years ...	When the plaintiff is actually indemnified.
84.—By an attorney or vakil for his costs of a suit or a	Three years ...	The date of the termination of the suit or business, or

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Description of suit	Period of limitation	Time from which period begins to run
	Part VI—Three years—contd.	
particular business, there being no express agreement as to the time when such costs are to be paid.		(where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years ...	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86.—*(a)* On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	Three years ...	*(a)* The date of the death of the deceased.
(b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.	Three years ...	*(b)* The date of the occurrence causing the loss.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Three years ...	When the insurers elect to avoid the policy.
88.—Against a factor of an account.	Three years ...	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made; when the agency terminates.
89.—By a principal against his agent for movable property received by the latter and not accounted for.	Three years ...	Ditto.
90.—Other suits by principals against agents for neglect or misconduct.	Three years ...	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Three years ...	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Three years ...	When the issue or registration becomes known to the plaintiff.

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Description of suit	Period of limitation	Time from which period begins to run
Part VI—Three years—contd.		
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Three years ...	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Three years ...	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Three years ...	When the fraud becomes known to the party wronged.
96.—For relief on the ground or mistake.	Three years ...	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Three years ...	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years ...	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a share in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Three years ...	The date of the payment in excess of the plaintiff's own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years ...	When the right to contribution accrues.
101.—For a seaman's wages.	Three years ...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Three years ...	When the wages accrue due.
103.—By a Muhammadan for exigible dower (*mu'ajjal*).	Three years ...	When the dower is demanded and refused or (where, during the continuance of the marriage no such demand has

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Description of suit	Period of limitation	Time from which period begins to run
Part VI—Three years—contd.		
		been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower *(mu'wajjal)*.	Three years ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Three years ...	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Three years ...	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Three years ...	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Three years ...	When the trees are cut down.
109.—For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years ...	When the profits are received.
110.—For arrears of rent	Three years ...	When the arrears become due.
111.—By a vendor of immoveable property for personal payment of unpaid purchase-money.	Three years ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Three years ...	When the call is payable.
113.—For specific performance of a contract.	Three years ...	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Three years ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.

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Description of suit	Period of limitation	Time from which period begins to run
	Part VI—Three years—contd.	
115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Three years ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which tho suit is instituted occurs, or (where the breach is continuing) when it ceases.
	Part VII.—Six years.	
116.—For compensation for breach of a contract in writing registered.	Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure, 1908.	Six years ...	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Six years ...	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Six years ...	When the rights of the adopted son, as such, are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Six years ...	When the right sue to accrues.
	Part VIII.—Twelve years.	
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluq or other saleable tenure sold for arrears of rent.	Twelve years ...	When the sale becomes final and conclusive.
122.—Upon a judgment obtained in India, or a recognisance.	Twelve years ...	The date of the judgment or recognisance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Twelve years ...	When the legacy or share becomes payable or deliverable.

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Description of suit	Period of limitation	Time from which period begins to run
Part VIII — Twelve years — contd.		
124.—For possession of an hereditary office.	Twelve years ...	Where the defendant takes possession of the office adversely to the plaintiff. *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage.	Twelve years ...	The date of the alienation.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Twelve years ...	When the alienee takes possession of the property.
127.—By a person excluded from joint family property to enforce a right to share therein.	Twelve years ...	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	Twelve years ...	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Twelve years ...	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Twelve years ...	When the right to resume or assess the land first accrues.
131.—To establish a periodically recurring right.	Twelve years ...	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immovable property.	Twelve years ...	When the money sued for becomes due.

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Description of suit	Period of limitation	Time from which period begins to run
Part VIII—Twelve years—contd.		
Explanation. — For the purposes of this article— (*a*) the allowance and fees respectively called *malikana* and *haqqs*, and (*b*) the value of any agricultural or other produce the right to receive which is secured by a charge upon immovable property, and (*c*) advances secured by mortgage by deposit of title deed. shall be deemed to be money charged upon immovable property.		
133. *(Rep. by Act I of 1929, S. 3).*		
134.—To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	Twelve years ...	When the transfer becomes known to the plaintiff.
134A.—To set aside a transfer of immovable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years ...	When the transfer becomes known to the plaintiff.
134B.—By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years ...	The death, resignation or removal of the transferor.

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Description of suit	Period of limitation	Time from which period begins to run
Part VIII.—Twelve years—contd.		
134C.—By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of movable property comprised in the endowment which has been sold by a previous manager for valuable consideration.	Twelve years ...	The death, resignation or removal of the seller.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immovable property mortgaged.	Twelve years ...	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immovable property sold when the vendor was out of possession at the date of the sale.	Twelve years ...	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Twelve years ...	When the judgment-debtor is first entitled to possession.
138.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	Twelve years ...	The date when the sale becomes absolute.
139.—By a landlord to recover possession from a tenant.	Twelve years ...	When the tenancy is determined.
140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immovable property.	Twelve years ...	When his estate falls into possession.
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.	Twelve years ...	When the female dies.

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Description of suit	Period of limitation	Time from which period begins to run
	Part VIII—Twelve years—contd.	
142.—For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years ...	The date of the dispossession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Twelve years ...	When the forfeiture is incurred or the condition is broken.
144.—For possession of immovable property or any interest therein not hereby otherwise specially provided for.	Twelve years ...	When the possession of the defendant becomes adverse to the plaintiff.
	Part IX—Thirty years.	
145.—Against a depository or pawnee to recover movable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged.	Thirty years ...	When any part of the principal or interest was last paid on account of the mortgage-debt.
146A.—By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years ...	The date of the dispossession or discontinuance.
	Part X—Sixty years.	
147.—By a mortgagee for foreclosure or sale.	Sixty years ...	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immovable property mortgaged.	Sixty years ...	When the right to redeem or to recover possession accrues: Provided that all claims to redeem arising under instru.

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Description of suit	Period of limitation	Time from which period begins to run
Part X—Sixty years—contd.		
		ments of mortgage of immovable property situate in Lower Burma which had been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that State immediately before the same day.
149.—Any suit by or on behalf of the Central Government or any State Government except a suit before the Supreme Court in the exercise of its original jurisdiction.	Sixty years ...	When the period of limitation would begin to run under this Act against a like suit by a private person.

SECOND DIVISION : APPEALS

Description of appeal	Period of limitation	Time from which period begins to run
150.—Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session or by a High Court in the exercise of its original criminal jurisdiction.	Seven days ...	The date of the sentence.
150A. *Rep. by Act XVII of 1949, S. 6.*		
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay, or of the High Court of Punjab in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
152.—Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed from.
153.—Under the same Court to a High Court from an order of a Subordinate Court refusing leave to appeal to the Supreme Court.	Thirty days ...	The date of the order.

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Description of appeal	Period of limitation	Time from which period begins to run
Second Division : Appeals—contd.		
154.—Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.	Thirty days ...	The date of the sentence or order appealed from.
155.—Under the same Code to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days ...	Ditto.
156.—Under the Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days ...	The date of the decree or order appealed from.
157.—Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Three months ...	The date of the order appealed from.

THIRD DIVISION : APPLICATIONS

Description of application	Period of limitation	Time from which period begins to run
158.—Under the Arbitration Act, 1940, to set aside an award or to get an award remitted for reconsideration.	Thirty days ...	The date of service of the notice of filing of the award.
159.—For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (f) or under Order XXXVII of the Code of Civil Procedure, 1908.	Ten days ...	When the summons is served.
160.—For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days ...	When the application for review is rejected.
161.—For a review of judgment by a Court of Small Causes (other than a Presidency Small Cause Court) or by a	Fifteen days ...	The date of the decree or order.

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Description of application	Period of limitation	Time from which period begins to run.
Third Division : Applications—contd.		
Court invested with the jurisdiction of a Court of Small Causes when exercising that jurisdiction.		
162.—For a review of judgment by any of the following Courts, namely, the High Courts at Calcutta and Madras and the High Courts of Bombay, Madhya Pradesh and Punjab in the exercise of its original jurisdiction.	Twenty days ...	Ditto.
163.—By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days ...	The date of the dismissal.
164.—By a defendant, for an order to set aside a decree passed *ex parte*.	Thirty days ...	The date of the decree or, where the summons was not duly served, when the applicant has knowledge of the decree.
165.—Under the Code of Civil Procedure, 1908, by a person dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Thirty days ...	The date of the dispossession.
166.—Under the same Code to set aside a sale in execution of a decree including any such application by a judgment-debtor.	Thirty days ...	The date of the sale.
167.—Com[illegible]g of resistance n to delivery of immova- decreed or [illegible] of a	Thirty days ...	The date of the resistance or obstruction.

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Description of application	Period of limitation	Time from which period begins to run.
Third Division : Applications—contd.		
168.—For the re-admission of an appeal dismissed for want of prosecution.	Thirty days ...	The date of the dismissal.
169.—For the re-hearing of an appeal heard *ex parte*.	Thirty days ...	The date of the decree in appeal, or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170.—For leave to appeal as a pauper.	Thirty days ...	The date of the decree appealed from.
171.—Under the Code of Civil Procedure, 1908, for an order to set aside an abatement.	Sixty days ...	The date of the abatement.
172.—Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Sixty days ...	The date of the order of dismissal.
173.—For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days ...	The date of the decree or order.
174.—For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	Ninety days ...	When the payment or adjustment is made.
175.—For payment of the amount of a decree by instalments.	Six months ...	The date of the decree.
176.—Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Ninety days ...	The date of the death of the deceased plaintiff or appellant.
177.—Under the same Code to have the legal representative of a deceased de-	Ninety days ...	The date of the death of the deceased defendant or respondent.

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Description of application	Period of limitation	Time from which period begins to run
Third Division: Applications—contd.		
fendant or of a deceased respondent made a party.		
178.—Under the Arbitration Act, 1940, for the filing in Court of an award.	Ninety days ...	The date of service of the notice of the making of the award.
179.—By a person desiring to appeal under the Code of Civil Procedure, 1908 to the Supreme Court for leave to appeal.	Ninety days ...	The date of the decree appealed from.
180.—By a purchaser of immovable property at a sale in execution of a decree for delivery of possession.	Three years ...	When the sale becomes absolute.
181.—Application for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.	Three years ...	When the right to apply accrues.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.	Three years; or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or 5. (where the application next hereinafter mentioned has been made) the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order, or

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Description of application	Period of limitation	Time from which period begins to run
Third Division : Applications—contd.		
		6. (in respect of any amount, recovered by execution of the decree or order, which the decree holder has been directed to refund by a decree passed in a suit for such refund) the date of such last. mentioned decree or, in the case of an appeal therefrom, the date of the final decree of the Appellate Court or of the withdrawal of the appeal, or 7. (where the application is to enforce any payment which the deeree or order directs to be made at a certain date) such date. *Explanation I.* — Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all. Where the decree or order has been passed severally against more person than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said

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Description of application	Period of limitation	Time from which period begins to run
Third Division : Applications—concld.		
		persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them or against his or their representatives, shall take effect against them all. *Explanation II.* — "Proper Court" means the Court whose duty it is to execute the decree or order.
183.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or on order of the Supreme Court.	Twelve years ...	When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right: Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be.

THE SECOND SCHEDULE.—[*Territories referred to in section 31.*] *Rep. by the Repealing and Amending Act, 1930 (8 of 1930), S. 3 and Sch. II.*

The THIRD SCHEDULE. — [*Enactments repealed.*] *Rep. by the Second Repealing and Amending Act, 1914 (17 of 1914), S. 3 and Sch. II.*

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A. I. R. Commentaries

THE LIMITATION ACT

(XXXVI OF 1963)

WITH

EXHAUSTIVE, ANALYTICAL AND CRITICAL COMMENTARIES

5th (1976) Edition

BY

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APPENDIX II

The Indian Limitation Act, 1908

Act No. 9 of 1908

An Act to consolidate and amend the law for the limitation of suits, and for other purposes.

[7th August, 1908.]

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property: It is hereby enacted as follows:—

PART I

PRELIMINARY

1. Short title, extent and commencement.

(1) This Act may be called the Indian Limitation Act, 1908.

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

(3) This section and section 3 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,

(1) "applicant" includes any person from or through whom an applicant derives his right to apply;

(2) "bill of exchange" includes a hundi but not a promissory note;

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another, or binds himself to do or forbear from doing anything to the other, on condition;

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued;

(5) "easement" includes a right not arising from contract by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another;

(6) "foreign country" means any country other than India, but includes also the State of Jammu and Kashmir;

(7) "good faith": nothing shall be deemed to be done in good faith which is not done with due care and attention;

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue;

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

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(9A) "India" means the territory of India excluding the State of Jammu and Kashmir :

(10) "suit" does not include an appeal or an application; and

(11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II

Limitation of Suits, Appeals and Applications

3. Dismissal of suits, etc., instituted, etc., after period of limitation.

Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation. — A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer, in the case of a pauper, when his application for leave to sue as a pauper is made, and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

4. Where Court is closed when period expires.

Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court reopens.

5. Extension of period in certain cases.

Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. — The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

6. Legal disability.

(1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

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(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority, X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

7. Disability of one of several plaintiffs or applicants.

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all, but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations

(a) A incurs a debt to a firm of which B, C and D are partners. B is insane and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane and G is a minor. Time will not run against any of them until either E or F becomes sane or G attains majority.

8. Special exceptions.

Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations

(a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section the extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority within which he may bring his suit.

(b) A right to sue for a debt accrues to A, who at that time is insane. Six years after the accruer A recovers his reason. A has six years under the ordinary law from the date when his insanity ceased within which to institute a suit. No extension of time will be given to him under section 6 read with this section.

(c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

9. Continuous running of time.

Where once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

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10. Suits against express trustees and their representatives.

Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.

11. Suits on foreign contracts.

(1) Suits instituted in India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rules of limitation shall be a defence to a suit instituted in India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. Exclusion of time in legal proceedings.

(1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. Exclusion of time of defendant's absence from India and certain other territories.

In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from India and from the territories beyond India under the administration of the Central Government shall be excluded.

14. Exclusion of time of proceeding bona fide in Court without jurisdiction.

(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil

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proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

15. Exclusion of time during which proceedings are suspended.

(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

16. Exclusion of time during which proceedings to set aside execution sale are pending.

In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

17. Effect of death before right to sue accrues.

(1) Where a person, who, if he were living, would have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub sections *(1)* and *(2)* applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of an hereditary office.

18. Effect of fraud.

Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

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(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. Effect of acknowledgment in writing.

(*1*) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(*2*) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed, but, subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section, "signed" means signed either personally or by an agent duly authorized in this behalf.

Explanation III.—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

20. Effect of payment on account of debt or of interest on legacy.

(*1*) Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorized agent, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Effect of receipt of produce of mortgaged land.

(*2*) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (*1*).

Explanation.—Debt includes money payable under a decree or order of Court.

21. Agent of person under disability.

(*1*) The expression "agent duly authorized in this behalf," in sections 19 and 20 shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

Acknowledgment or payment by one of several joint contractors, etc.

(*2*) Nothing in the said sections renders one of several joint contractors, partners

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executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

(3) For the purposes of the said sections—

(a) an acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorized agent of, any widow or other limited owner of property who is governed by the Hindu law, shall be a valid acknowledgment or payment, as the case may be, as against a reversioner succeeding to such liability: and

(b) where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

22. Effect of substituting or adding new plaintiff or defendant.

(1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section *(1)* shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

23. Continuing breaches and wrongs.

In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

24. Suit for compensation for act not actionable without special damage.

In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific damage actually results therefrom, the period of limitation shall be computed from the time when the damage results.

Illustration

A owns the surface of a field. *B* owns the subsoil. *B* digs coal thereout, without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence.

25. Computation of time mentioned in instruments.

All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

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PART IV

ACQUISITION OF OWNERSHIP BY POSSESSION

26. Acquisition of right to easements.

(1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section *(1)* belongs to the Government, that sub-section shall be read as if for the words "twenty years" the "sixty years" were substituted.

Explanation. — Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations

(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890, to first January, 1910. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

27 Exclusion in favour of reversioner of servient tenement.

Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

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Illustration

A sues for a declaration that he is entitled to a right of way over *B's* land. *A* proves that he has enjoyed the right for twenty-five years; but *B* shows that during ten of these years *C*, a Hindu widow, had a life interest in the land, that on *C's* death *B* became entitled to the land and that within two years after *C's* death he contested *A's* claim to the right. The suit must be dismissed, as *A*, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. Extinguishment of right to property.

At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V

SAVINGS AND REPEALS

29. Savings.

(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law, and

(b) the remaining provisions of this Act shall not apply.

(3) Nothing in this Act shall [illegible] the Indian Divorce Act.

(4) Sections 25 and 27 and the definition of "agreement" in section 2 shall not apply to cases arising in territories to which the Indian Trusts Act, 1882, may for the time being extend.

30. *[Provision for States for which the period prescribed is shorter than that prescribed by any law previously in force in a Part B State.] Rep. by the Adaptation of Laws (No. 2) Order, 1956.*

31. *[Provision for suits by certain mortgagees in territories mentioned in the second Schedule.] Rep. by the Repealing and Amending Act, 1930 (VIII of 1930), s. 3 and Sch. II.*

32. *[Repeals.] Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

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THE FIRST SCHEDULE

(See section 3)

FIRST DIVISION : SUITS

Description of suit	Period of limitation	Time from which period begins to run
	Part I.—Thirty days	
1.—To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863.	Thirty days ...	When notice of the award is delivered to the plaintiff.
	Part II.—Ninety days	
2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in India.	Ninety days ...	When the act or omission takes place.
	Part III.—Six months	
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immovable property.	Six months ...	When the dispossession occurs.
4.—(Rep. by Act XX of 1937.)		
	Part IV.—One year	
5.—Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, 1908 where the provision of such summary procedure does not exclude the ordinary procedure in such suits and under Order XXXVII of the said Code.	One year ...	When the debt or liquidated demand becomes payable or when the property becomes recoverable.
6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan or labourer.	One year ...	When the wages accrue due.
8.—For the price of food or drink sold by the keeper	One year ...	When the food or drink is delivered.

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Description of suit	Period of limitation	Time from which period begins to run
Part IV.—One year—contd.		
of a hotel, tavern or lodging-house.		
9.—For the price of lodging.	One year ...	When the price becomes payable.
10.—To enforce a right of pre-emption whether the right is founded on law, or general usage, or on special contract	One year ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order : (1) Order under the Code of Civil Procedure, 1908, on a claim preferred to, or an objection made to the attachment of property attached in execution of a decree. (2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.	One year ...	The date of the order.
11A.—By a person against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person	One year ...	The date of the order.

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Description of suit	Period of limitation	Time from which period begins to run
Part IV—One year—contd.		
dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.		
12.—To set aside any of the following sales:—	One year ...	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
(a) sale in execution of a decree of a Civil Court;		
(b) sale in pursuance of a decree or order of a Collector or other officer of revenue;		
(c) sale for arrears of Government revenue or for any demand recoverable as such arrears;		
(d) sale of a patni taluq sold for current arrears of rent.		
Explanation. — In this article "patni" includes any intermediate tenure saleable for current arrears of rent.		
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	One year ...	The date of the final decision or order in the case by a Court competent to determine it finally.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year ...	The date of the act or order.
15.—Against Government to sel aside any attachment, lease or transfer of immovable property by the revenue-authorities for	One year ...	When the attachment, leage or transfer is made.

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Description of suit	Period of limitation	Time from which period begins to runs
Part IV—One year—contd.		
arrears of Government revenue.		
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	One year ...	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.	One year ...	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	One year ...	The date of the refusal to complete.
19.—For compensation for false imprisonment.	One year ...	When the imprisonment ends.
20.—By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855.	One year ...	The date of the death of the person wronged.
21.—By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	One year ...	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	One year ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	One year ...	When the plaintiff is acquitted or the prosecution is otherwise terminated.
24.—For compensation for libel.	One year ...	When the libel is published.
25.—For compensation for slander.	One year ...	When the words are spoken, or if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year ...	When the loss occurs.

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Description of suit	Period of limitation	Time from which period begins to run
	Part IV—One year—contd.	
27.—For compensation for inducing a person to break a contract with the plaintiff.	One year ...	The date of the breach.
28.—For compensation for an illegal, irregular or excessive distress.	One year ...	The date of the distress.
29.—For compensation for wrongful seizure of movable property under legal process.	One year ...	The date of the seizure.
30.—Against a carrier for compensation for losing or injuring goods.	One year ...	When the loss or injury occurs.
31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	One year ...	When the goods ought to be delivered.
	Part V.—Two years.	
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years ...	When the perversion first becomes known to the person injured thereby.
33.—Under the Legal Representatives' Suits Act, 1855, against an executor.	Two years ...	When the wrong complained of is done.
34.—Under the same Act against an administrator.	Two years ...	Ditto.
35.—Under the same Act against any other representative.	Two years ...	Ditto.
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	Two years ...	When the malfeasance, misfeasance or nonfeasance takes place.
	Part VI.—Three years.	
37.—For compensation for obstructing a way or a watercourse.	Three years ...	The date of the obstruction.
38.—For compensation for diverting a watercourse.	Three years ...	The date of the diversion.

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Description of suit	Period of limitation	Time from which period begins to run
Part VI — Three years — contd.		
39. — For compensation for trespass upon immovable property.	Three years	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Three years	The date of the infringement.
41.—To restrain waste.	Three years	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Three years	When the injunction ceases.
43.—Under the Indian Succession Act, 1925, section 360 or section 361, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years	The date of the payment or distribution.
44.—By a ward who has attained majority, to set aside a transfer of property by his guardian.	Three years	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code:— The Bengal Land-revenue Settlement Regulation, 1822. The Bengal Land-revenue Settlement Regulation, 1825. The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.	Three years	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Three years	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Proce-	Three years	The date of the final order in the case.

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Description of suit	Period of limitation	Time from which period begins to run
Part VI—Three years—contd.		
dure, 1898, or the Mamlatdars' Courts Act, 1906, or by any one claiming under such person, to recover the property comprised in such order.		
48.—For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Three years ...	When the person having the right to the possession of the property first learns in whose possession it is.
48A.—To recover movable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	Three years ...	When the sale becomes known to the plaintiff.
48B.—To set aside sale of movable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years ...	When the sale becomes known to the plaintiff.
49.—For other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Three years ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats or household furniture.	Three years ...	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Three years ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Three years ...	The date of the delivery of the goods.

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Description of suit	Period of limitation	Time from which period begins to run
	Part VI — Three years — contd.	
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years ...	When the period of credit expires.
54.—For the price of goods sold and deliverd to be paid for by a bill of exchange, no such bill being given.	Three years ...	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years ...	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years ...	When the work is done.
57.—For money payable for money lent.	Three years ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Three years ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Three years ...	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Three years ...	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Three years ...	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years ...	When the money is received.

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Description of suits	Period of limitation	Time from which period begins to run
Part VI — Three years—contd.		
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Three years ...	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years ...	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years ...	When the time specified arrives, or the contingency happens.
66.—On a single bond, where a day is specified for payment.	Three years ...	The day so specified.
67.—On a single bond, where no such day is specified.	Three years ...	The date of executing the bond.
68.—On a bond subject to a condition.	Three years ...	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Three years ...	When the bill or note falls due.
70.—On a bill of exchange payable at a sight or after sight, but not at fixed time.	Three years ...	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Three years ...	When the bill is presented at the place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years ...	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any	Three years ...	The date of the bill or note.

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Description of suit	Period of limitation	Time from which period begins to run
Part VI—Three years—contd.		
writing restraining or postponing the right to sue.		
74.—On a promissory note or bond payable by instalments.	Three years ...	The expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due.	Three years ...	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years ...	The date of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given.	Three years ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Three years ...	The date of the refusal to accept.
79.—By the acceptor of an accommodation bill against the drawer.	Three years ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Three years ...	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	Three years ...	When the surety pays the creditor.
82.—By a surety against a co-surety.	Three years ...	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Three years ...	When the plaintiff is actually indemnified.
84.—By an attorney or vakil for his costs of a suit or a	Three years ...	The date of the termination of the suit or business, or

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Description of suit	Period of limitation	Time from which period begins to run
Part VI—Three years—contd.		
particular business, there being no express agreement as to the time when such costs are to be paid.		(where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years ...	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86.—*(a)* On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	Three years ...	*(a)* The date of the death of the deceased.
(b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.	Three years ...	*(b)* The date of the occurrence causing the loss.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Three years ...	When the insurers elect to avoid the policy.
88.—Against a factor on account.	Three years ...	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for movable property received by the latter and not accounted for.	Three years ...	Ditto.
90.—Other suits by principals against agents for neglect or misconduct.	Three years ...	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Three years ...	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Three years ...	When the issue or registration becomes known to the plaintiff.

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Description of suit	Period of limitation	Time from which period begins to run
Part VI—Three years—contd.		
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Three years ...	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Three years ...	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Three years ...	When the fraud becomes known to the party wronged.
96.—For relief on the ground or mistake.	Three years ...	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Three years ...	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years ...	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Three years ...	The date of the payment in excess of the plaintiff's own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years ...	When the right to contribution accrues.
101.—For a seaman's wages.	Three years ...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Three years ...	When the wages accrue due.
103.—By a Muhammadan for exigible dower (*mu'ajjal*).	Three years ...	When the dower is demanded and refused or (where, during the continuance of the marriage no such demand has

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Description of suit	Period of limitation	Time from which period begins to run
Part VI—Three years—contd.		
		been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower *(mu'wajjal)*.	Three years ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Three years ...	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Three years ...	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Three years ...	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Three years ...	When the trees are cut down.
109.—For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years ...	When the profits are received.
110.—For arrears of rent	Three years ...	When the arrears become due.
111.—By a vendor of immoveable property for personal payment of unpaid purchase-money.	Three years ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Three years ...	When the call is payable.
113.—For specific performance of a contract.	Three years ...	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Three years ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.

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Description of suit	Period of limitation	Time from which period begins to run
	Part VI—Three years—contd.	
115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Three years ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
	Part VII.—Six years.	
116.—For compensation for breach of a contract in writing registered.	Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure, 1908.	Six years ...	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Six years ...	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Six years ...	When the rights of the adopted son, as such, are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Six years ...	When the right to sue accrues.
	Part VIII.—Twelve years.	
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluq or other saleable tenure sold for arrears of rent.	Twelve years ...	When the sale becomes final and conclusive.
122.—Upon a judgment obtained in India, or a recognisance.	Twelve years ...	The date of the judgment or recognisance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Twelve years ...	When the legacy or share becomes payable or deliverable.

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Description of suit	Period of limitation	Time from which period begins to run
Part VIII — Twelve years — contd.		
124.—For possession of an hereditary office.	Twelve years ...	Where the defendant takes possession of the office adversely to the plaintiff. *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage.	Twelve years ...	The date of the alienation.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Twelve years ...	When the alienee takes possession of the property.
127.—By a person excluded from joint family property to enforce a right to share therein.	Twelve years ...	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	Twelve years ...	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Twelve years ...	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Twelve years ...	When the right to resume or assess the land first accrues.
131.—To establish a periodically recurring right.	Twelve years ...	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immovable property.	Twelve years ...	When the money sued for becomes due.

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Description of suit	Period of limitation	Time from which period begins to run
Part VIII—Twelve years—contd.		
Explanation. — For the purposes of this article — (*a*) the allowance and fees respectively called *malikana* and *haqqs*, and (*b*) the value of any agricultural or other produce the right to receive which is secured by a charge upon immovable property, and (*c*) advances secured by mortgage by deposit of title deed. shall be deemed to be money charged upon immovable property.		
133. *(Rep. by Act I of 1929, S. 3).*		
134.—To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	Twelve years ...	When the transfer becomes known to the plaintiff.
134A.—To set aside a transfer of immovable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years ...	When the transfer becomes known to the plaintiff.
134B.—By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years ...	The death, resignation or removal of the transferor.

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Description of suit	Period of limitation	Time from which period begins to run
Part VIII.—Twelve years—contd.		
134C.—By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of movable property comprised in the endowment which has been sold by a previous manager for valuable consideration.	Twelve years ...	The death, resignation or removal of the seller.
135.—Suit instituted in a Court not established by Royal Charter, by a mortgagee for possession of immovable property mortgaged.	Twelve years ...	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immovable property sold, when the vendor was out of possession at the date of the sale.	Twelve years ...	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Twelve years ...	When the judgment-debtor is first entitled to possession.
138.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	Twelve years ...	The date when the sale becomes absolute.
139.—By a landlord to recover possession from a tenant.	Twelve years ...	When the tenancy is determined.
140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immovable property.	Twelve years ...	When his estate falls into possession.
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.	Twelve years ...	When the female dies.

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Description of suit	Period of limitation	Time from which period begins to run
	Part VIII—Twelve years—contd.	
142.—For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years ...	The date of the dispossession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Twelve years ...	When the forfeiture is incurred or the condition is broken.
144.—For possession of immovable property or any interest therein not hereby otherwise specially provided for.	Twelve years ...	When the possession of the defendant becomes adverse to the plaintiff.
	Part IX—Thirty years.	
145.—Against a depository or pawnee to recover movable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged.	Thirty years ...	When any part of the principal or interest was last paid on account of the mortgage debt.
146A.—By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years ...	The date of the dispossession or discontinuance.
	Part X—Sixty years.	
147.—By a mortgagee for foreclosure or sale.	Sixty years ...	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immovable property mortgaged.	Sixty years ...	When the right to redeem or to recover possession accrues: Provided that all claims to redeem arising under instru.

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Description of suit	Period of limitation	Time from which period begins to run
Part X—Sixty years—contd.		
		ments of mortgage of immovable property situate in Lower Burma which had been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that State immediately before the same day.
149.—Any suit by or on behalf of the Central Government or any State Government except a suit before the Supreme Court in the exercise of its original jurisdiction.	Sixty years ...	When the period of limitation would begin to run under this Act against a like suit by a private person.
SECOND DIVISION: APPEALS		
Description of appeal	Period of limitation	Time from which period begins to run
150.—Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session or by a High Court in the exercise of its original criminal jurisdiction.	Seven days ...	The date of the sentence.
150A. *Rep. by Act XVII of 1949, S. 6.*		
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay, or of the High Court of Punjab in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
152.—Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed from.
153.—Under the same Court to a High Court from an order of a Subordinate Court refusing leave to appeal to the Supreme Court.	Thirty days ...	The date of the order.

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Description of appeal	Period of limitation	Time from which period begins to run
	Second Division : Appeals—contd.	
154.—Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.	Thirty days ...	The date of the sentence or order appealed from.
155.—Under the same Code to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days ...	Ditto.
156.—Under the Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days ...	The date of the decree or order appealed from.
157.—Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Three months ...	The date of the order appealed from.

THIRD DIVISION : APPLICATIONS

Description of application	Period of limitation	Time from which period begins to run
158.—Under the Arbitration Act, 1940, to set aside an award or to get an award remitted for reconsideration.	Thirty days ...	The date of service of the notice of filing of the award.
159.—For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (i) or under Order XXXVII of the Code of Civil Procedure, 1908.	Ten days ...	When the summons is served.
160.—For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days ...	When the application for review is rejected.
161.—For a review of judgment by a Court of Small Causes (other than a Presidency Small Cause Court) or by a	Fifteen days ...	The date of the decree or order.

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Description of application	Period of limitation	Time from which period begins to run.
Third Division : Applications—contd.		
Court invested with the jurisdiction of a Court of Small Causes when exercising that jurisdiction.		
162.—For a review of judgment by any of the following Courts, namely, the High Courts at Calcutta and Madras and the High Courts of Bombay, Madhya Pradesh and Punjab in the exercise of its original jurisdiction.	Twenty days ...	Ditto.
163.—By a plaintiff for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days ...	The date of the dismissal.
164.—By a defendant for an order to set aside a decree passed *ex parte*.	Thirty days ...	The date of the decree or, where the summon was not duly served, when the applicant has knowledge of the decree.
165.—Under the Code of Civil Procedure, 1908, by a person dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Thirty days ...	The date of the dispossession.
166.—Under the same Code to set aside a sale in execution of a decree including any such application by a judgment-debtor.	Thirty days ...	The date of the sale.
167.—Com[illegible]g of resistance n to delivery of immovadecreed or cution of a	Thirty days ...	The date of the resistance or obstruction.

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Description of application	Period of limitation	Time from which period begins to run.
Third Division : Applications—contd.		
168.—For the re-admission of an appeal dismissed for want of prosecution.	Thirty days ...	The date of the dismissal.
169.—For the re-hearing of an appeal heard *ex parte*.	Thirty days ...	The date of the decree in appeal, or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170.—For leave to appeal as a pauper.	Thirty days ...	The date of the decree appealed from.
171.—Under the Code of Civil Procedure, 1908, for an order to set aside an abatement.	Sixty days ...	The date of the abatement.
172.—Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Sixty days ...	The date of the order of dismissal.
173.—For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days ...	The date of the decree or order.
174.—For the issue of a notice, under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	Ninety days ...	When the payment or adjustment is made.
175.—For payment of the amount of a decree by instalments.	Six months ...	The date of the decree.
176.—Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Ninety days ...	The date of the death of the deceased plaintiff or appellant.
177.—Under the same Code to have the legal representative of a deceased de-	Ninety days ...	The date of the death of the deceased defendant or respondent.

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Description of application	Period of limitation	Time from which period begins to run
Third Division: Applications—contd.		
fendant or of a deceased respondent made a party.		
178.—Under the Arbitration Act, 1940, for the filing in Court of an award.	Ninety days ...	The date of service of the notice of the making of the award.
179.—By a person desiring to appeal under the Code of Civil Procedure, 1908 to the Supreme Court for leave to appeal.	Ninety days ...	The date of the decree appealed from.
180.—By a purchaser of immovable property at a sale in execution of a decree for delivery of possession.	Three years ...	When the sale becomes absolute.
181.—Application for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.	Three years ...	When the right to apply accrues.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.	Three years or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or 5. (where the application next hereinafter mentioned has been made) the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree ar order, or

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Description of application	Period of limitation	Time from which period begins to run
Third Division : Applications—contd.		
		6. (in respect of any amount, recovered by execution of the decree or order, which the decree holder has been directed to refund by a decree passed in a suit for such refund) the date of such last-mentioned decree or, in the case of an appeal therefrom, the date of the final decree of the Appellate Court or of the withdrawal of the appeal, or 7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date. *Explanation I.* — Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all. Where the decree or order has been passed severally against more person than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said

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Description of application	Period of limitation	Time from which period begins to run
Third Division : Applications—concld.		
		persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them or against his or their representatives, shall take effect against them all. *Explanation II.*—"Proper Court" means the Court whose duty it is to execute the decree or order.
183.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or on order of the Supreme Court.	Twelve years ...	When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right: Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be.

THE SECOND SCHEDULE.—[*Territories referred to in section 31.*] *Rep. by the Repealing and Amending Act, 1930 (8 of 1930), S. 3 and Sch. II.*

The THIRD SCHEDULE. — [*Enactments repealed.*] *Rep. by the Second Repealing and Amending Act, 1914 (17 of 1914), S. 3 and Sch. II.*

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Whereas it is expedient to provide for the better governance and administration of certain classes of waqfs and the supervision of mutawallis' management of them in accordance with the waqfs' directions, in the United Provinces of Agra and Oudh;

Preamble.

And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80-A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:

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STATEMENT OF OBJECTS AND REASONS.—This Bill is intended to secure better government and administration of certain classes of muslim waqfs and the supervision of mutawallis' management of them in accordance with the waqfs' directions in the United Provinces of Agra and Oudh. The management of some waqfs and misappropriation and waste of their funds is a matter of public notoriety. In pursuance of the recommendations of the United Provinces Legislative Council expressed in a resolution passed at a meeting of the Council held on June 29, 1927, the Governor acting with his Ministers announced in Government resolution no 37-A/IX—181, dated January 10, 1929, the appointment of a committee to advise what steps should be taken to provide for the better governance, administration and supervision of Muslim public and charitable waqfs. Among others the late Khan Bahadur Hafiz Hidayat Husain, C. I. E. was appointed as a member of this committee. This committee submitted its report on June 29, 1931. After a lapse of about three years the late Khan Bahadur Hafiz Hidayat Husain introduced a Bill in the Legislative Council known as the United Provinces of Agra and Oudh Waqfs Bill, 1933. This Bill was referred to a select committee which went into it very thoroughly and amended it in the manner least objectionable to the muslim public. Just after the deliberations of the select committee the sponser of the Bill died and it lapsed. As the reform embodied in the Bill is one universally wished for, I ventrue to adopt the Bill and reintroduce it in the Council so that the memorable work of Khan Bahadur Hafiz Hidayat Husain may not remain unfinished. The Bill as it emerged from the select committee is such as I hope will satisfy all sections of Muslim public opinion. I intend to introduce it just in the same form as the select committee gave to it. The author of the Bill unfortunately died when his work was nearing completion, it is therefore just and proper to name it after him in order to comm morate his authorship and valuable service to Muslim community. With this end in view the Bill has been named as "The United Provinces Hidayat Muslim Waqfs Bill.

This Bill differs from the Bill as introduced by the late Khan Bahadur in ways more than one. The original bill had no provision for Central Boards. It set up a central authority called the Protector of Waqfs. The present Bill has done away with this authority and subtituted for it the authority called as the Central Board—"Shia" and "Sunni"

As very few Shia opinions favoured the joint scheme of management as propounded in the original Bill the principles had to be adopted that the Shias and Sunnis should have separate institutions for the management of their respective waqfs. Another notable alteration made is that the present Bill excludes from its purview all waqfs in which 75 per cent. or more of the total income is earmarked for the maintenance of the waqfs or his family. This Bill provides also for the survey of muslim waqfs in the whole province as

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PRELIMINARY.

Short title, commencement and extent.

1. (1) This Act shall be called "The United Provinces Muslim Waqfs Act, 1936."

(2) This section and sections 2 to 4 shall come into force at once. The rest of the Act shall not come into force until such date as the Local Government may, by notification in the *Gazette*, appoint in this behalf.

(3) It shall extend to the whole of the United Provinces of Agra and Oudh.

Applicability of the Act.

2. (1) Save as herein otherwise specifically stated, this Act shall apply to all waqfs, whether created before or after this Act comes into force, any part of the property of which is situate in the United Provinces.

(2) This Act shall not apply to—

(i) a waqf created by a deed, if any, under the terms of which not less than 75 per cent. of the total income after deduction of land revenue and cesses payable to *Provincial* Government of the property covered by the deed of waqf, if any, is for the time being payable for the benefit of the waqif or his descendants or any member of his family.

(ii) a waqf created solely for either of the following purposes:

(*a*) the maintenance and support of any person other than the waqif or his descendants or any member of his family.

(*b*) the celebration of religious ceremonies connected with the death anniversaries of the waqif or of any member of his family or any of his ancestors.

(*c*) the maintenance of private imambaras, tombs and graveyards, or

(*d*) the maintenance and support of the waqif or for payment of his debts, when the waqif is a Hanafi Musalman; and

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preliminary measure of bringing the provisions of this Bill into play so that beforehand it may be ascertained what waqfs come within the Bill. Here and there one will come across some other changes also, but it is not necessary to mention them in this statement. This I must make clear that this Bill is not intended to deprive the mutawallis of any authority lawfully vested in them nor it aims at defining all the powers, duties and liabilities of the mutawallis in relation to their office. The Muslim law is full and explicit on these points and it is neither necessary nor desirable to legislate in matters of personal law. The aim of the Bill is to secure supervision for ensuring better administration by the mutawallis. The District Waqf Committee shall be the unit for such supervision and the Central Boards will serve as central authority invested with adequate and effective powers to effectuate the proposals of the committee and set the whole machinery of reform in motion.

As to finance it is desirable that the Department of Waqfs which will thus be created shall be self-supporting. The Bill therefore provides for a levy of a sort of tax on such waqfs as will come under the control of the Central Boards. The percentage of the contribution has been made variable.—Vide U. P. Gazette, 1935, Part Proceedings in Council, see Council Proceedings Vol. LXVI pp. 13 and 177-179.

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(iii) the waqfs mentioned in the Schedule:

Provided that if the mutawalli of a waqf to which this Act does not apply wrongfully sells or mortgages or suffers to be sold in execution of a decree against himself, or otherwise destroys the whole or any part of the waqf property, the Central Board may apply all or any of the provisions of this Act to such waqf for such time as it may think necessary.

Explanation.—A waqf which is originally exempt from the operation of this Act may, for any reason subsequently, become subject to such operation, for example, by reason of a higher percentage of its income becoming available under the terms of the deed for public charities.

LEG. CHANGES.—"Provincial" was added by Adaptation Order (Supplementary) 1937, Sch. V.

Interpretation clauses.

3. In this Act, unless there is anything repugnant in the subject or context—

(1) "Waqf" means the permanent dedication or grant of any property for any purposes recognized by the Musalman law as religious, pious or charitable and, where no deed of waqf is traceable, includes waqf by user, and a waqif means any person who makes such dedication or grant.

(2) "Beneficiary" means the person or object for whose benefit a waqf is created and includes religious, pious or charitable objects, and any other object of public utility established for the benefit of the Muslim community or any particular sect of the Muslim community.

"Mutawalli" means a manager of a waqf or endowment and includes an amin, a sajjadanashin, a khadim, naib-mutawalli and a committee of management, and, save as otherwise provided in this Act, any person who is for the time being in charge of or administering any endowment as such.

(4) "Family" includes—

(a) Parents and grand-parents.

(b) Wife or husband.

(c) Persons related through any ancestor, male or female.

(d) Persons who reside with, and are maintained by, the waqif, whether related to him or not.

(5) Property includes Government securities and bonds, shares in firms and companies stocks, debentures and other securities and instruments.

(6) "Prescribed" means prescribed by rules made under this Act.

(7) "Court" means unless otherwise stated either expressly or by implication, the court of the District Judge or any other court empowered by the Local Government to exercise jurisdiction under this Act.

(8) "Net income" means the total income minus the land revenue and other cesses payable to *Provincial* Government and to local bodies:

Provided that in the case of land paying land revenue the recorded income shall be deemed to be the total income.

LEG. CHANGES.—"Provincial" was added by the Adaptation Order (Supplementary) 1937, Sch. V.

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CHAPTER I.

SURVEY OF WAQFS AND CENTRAL BOARDS OF WAQFS.

Survey of waqfs.

4. (1) Within three months of the commencement of this Act the local Government shall by notification in the *Gazette* appoint for each district a gazetted officer, either by name or by official designation, for the purpose of making a survey of all waqfs in such district, whether subject to this Act or not. Such officer shall be called the "Commissioner of waqfs."

(2) The Local Government may, from time to time when necessary, cancel any appointment under sub-section (1) or make a new appointment.

(3) The "Commissioner of waqfs" shall, after making such inquiries as he may consider necessary, ascertain and determine—

(a) the number of all Shia and Sunni waqfs in the district;

(b) the nature of each waqf;

(c) the gross income of property comprised in the waqf;

(d) the amount of Government revenue, cesses and taxes payable in respect of waqf property;

(e) expenses incurred in the realization of the income and the pay of the mutawalli of each waqf if the waqf is not exempted under section 2; and

(f) whether the waqf is one of those exempted from the provisions of this Act under section 2;

Provided that where there is a dispute whether a particular waqf is a Shia waqf or Sunni waqf and there are clear indications as to the sect to which it pertains in the recitals of the deed of waqf, such dispute shall be decided on the basis of such recitals.

(4) In making such inquiries as aforesaid the Commissioner of waqfs shall exercise all the powers of a civil court for summoning and examining witnesses and documents, making local inspections, appointing commissioners for examination of witnesses, examining of accounts and making local investigations.

(5) The Commissioner of waqfs shall submit his report of inquiry to the Local Government.

(6) The total cost of carrying out the provisions of this section shall be borne by the mutawallis of all waqfs to which the Musalmans Waqfs Act, 1923, applies in proportion to the income of the property of such waqfs situated in the United Provinces.

(7) Notwithstanding anything in the deed or instrument creating any waqf, any mutawalli may pay from the income of the waqf property any sum due from him under sub-section (6).

(8) Any sum due from a mutawalli under sub-section (6) may, on a certificate issued by the Local Government, be recovered by the Collector in the manner provided by law for recovery of an arrear of land revenue.

4 A. (1) *In addition to the Commissioner of Waqfs appointed under section 4, the Provincial Government may, by notification in the* Gazette,

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appoint as many Provincial Commissioners of Waqfs to have jurisdiction in all districts of the Province as it may think necessary. The duties and powers of the Provincial Commissioners of Waqfs shall be the same as those of the Commissioners of Waqfs under section 4.

(2) One of such Provincial Commissioners of Waqfs shall be appointed the Chief Provincial Commissioner of Waqfs for the purpose of sub-section (3).

(3) The Chief Provincial Commissioner of Waqfs shall apportion the work of survey of Waqfs between the Commissioners of Waqfs and the Provincial Commissioners of Waqfs in such manner as he may think proper, and shall direct by whom report required by section 4 (5) shall be submitted and any inquiry made or report submitted by a Provincial Commissioner of Waqfs shall, for the purposes of this Act, be deemed to be the inquiry or report, as the case may be, of the Commissioner of Waqfs.

LOCAL CHANGES.—This section was added by the Amending Act II. of 1937, which came into force on 27th November 1937.

Commissioner's reports.

5. (1) The Local Government shall forward a copy of the Commissioner's report to each of the Central boards constituted under this Act. Each Central Board shall as soon as possible notify in the *Gazette* the waqfs relating to the particular sect to which, according to such report, the provisions of this Act apply.

(2) The mutawalli of a waqf or any person interested in a waqf or a Central Board may bring a suit in a Civil Court of competent jurisdiction for a declaration that any transaction held by the Commissioner of waqfs to be a waqf is not a waqf, or any transaction held or assumed by him not to be a waqf is a waqf, or that a waqf held by him to pertain to a particular sect does not belong to that sect, or that any waqf reported by such Commissioner as being subject to the provisions of this Act is exempted under section 2, or that any waqf held by him to be so exempted is subject to this Act:

Provided that no such suit shall be instituted by a Central Board after more than two years of the receipt of the report of the Commissioner of waqfs, and by a mutawalli or person interested in a waqf after more than one year of the notification referred to in sub-clause (1):

Provided also that no proceedings under this Act in respect of any waqf shall be stayed or suspended merely by reason of the pendency of any such suit or of any appeal arising out of any such suit.

(3) Subject to the final result of any suit instituted under sub-section (2) the report of the Commissioner of waqfs shall be final and conclusive.

(4) The Commissioner of waqfs shall not be made a defendant to any suit under sub-section (2) and no suit shall be instituted against him for anything done by him in good faith under colour of this Act.

Establishment of Central Boards

6. (1) There shall be established in the United Provinces two separate Boards to be called the "Shia Central Board" and the "Sunni Central Board" of waqfs.

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Each such Board shall be a body corporate and shall have perpetual succession and a common seal and shall by its said name sue or be sued.

(2) All members of the Sunni Central Board shall be Sunnis and all members of the Shia Central Board shall be Shias.

(3) The Shia Central Board shall deal with Shia waqfs and the Sunni Central Board with Sunni waqfs, and everything required or permitted by this Act to be done by the Central Board shall in case of Shia waqfs be done by the Shia Central Board and in case of Sunni waqfs by the Sunni Central Board.

7. The Sunni Central Board shall consists of—

Constitution of Sunni Central Board.

(i) five members to be elected in the manner prescribed by Sunni members of the local legislature;

(ii) four members to be elected in the manner prescribed by the District Waqf Committees.

(iii) three members to be co-opted by the above nine members from persons whom they regard as ulamas, and two members from among mutawallis, and

(iv) the President, if he is not one of the above fourteen members:

Provided that the first Sunni Central Board shall be established by the local Government within three months of the date on which this section comes into force and shall consist of—

(i) five members to be elected, in such manner as the local Government may direct, by the Sunni members of the local legislature;

(ii) two members to be elected, in such manner as the local Government may direct, by the Sunni members of Executive Committee of the Provincial Muslim Educational Conference;

(iii) three members to be co-opted by the above seven members from persons whom they regard as ulamas; and

(iv) three members to be co-opted by the above ten members.

8. (1) The Shia Central Board shall consist of—

Constitution of Shia Central Board.

(i) five members to be elected in the manner prescribed by the Shia members of the local legislature;

(ii) one member to be elected in the manner prescribed by the Executive Committee of the All-India Shia Conference;

(iii) one member to be elected in the manner prescribed by the Board of Trustees of the Shia College, Lucknow;

(iv) three members to be co-opted by the above seven members from persons whom they regard as ulamas; and

(v) the President, if he is not one of the above ten members.

(2) The first Shia Central Board shall be established by the local Government within three months of the date on which this section comes into force, and the election of members for such Board shall be held in such manner as the local Government may direct.

9. (1) If at any election of members of [illegible] Central Board the full

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number of five members is not elected by the local legislature, the deficiency shall be made up by election of the requiste number of members by the Provincial Muslim Educational Conference in the case of Sunni Central Board, and by the Executive Committee of the All-India Shia Conference in the case of Shia Central Board. In case of the failure of the Provincial Muslim Educational Conference or the All India Shia Conference to make up the deficiency, the same shall be made up by nomination by the local Gomernment.

(2) If the bodies referred to in clause (ii) of the proviso to section 7 and clauses (ii) and (iii) in section 8 fail to return the requisite number of members within such time as may be fixed, the deficiency shall be made up by nomination by the local Government.

10. The members of Central Board shall hold office for five years:—

Provided that an elected or co-opted member shall, notwithstanding the expiration of his term of office, continue to hold office until the vacancy caused by the expiration of the said term has been filled:

Provided also that the members of the first Sunni Central Board established by the Local Government shall vacate office as soon as new members are elected under section 11.

11. After three years of the establishment of the Sunni Board by the Local Government under the proviso to section 7, or, if no District Waqf Committees have been formed by the said Board within three years, then, as soon after the formation of any such District Waqf Committee as possible, a fresh election of members shall be held for the next Central Board according to the constitution laid down in section 7.

12. After the formation of legislative bodies under the Government of India Act, 1935, the five members of the local legislature referred to in sections 7 and 8 shall be elected as follows:

(i) four members by the Sunni or Shia members, at the case may be, of the provincial Legislative Assembly.

(ii) one member by the Sunni or Shia members, as the case may be, of the provincial Legislative Council.

13. The offices of the Central Boards shall be at Lucknow.

14. The quorum for a meeting of a Central Board shall be one half of the number of members of the Board.

15. The decision of the Central Board shall be by a majority of its members persent and voting. In case of equal division the President shall have a second or casting vote.

16. (1) Each Central Board shall have a President and a Secretary who shall be Muslims belonging to the Shia sect in the case of the Shia Central Board and to the Sunni sect in the case of the Sunni Central Board:

Provided that no mutawalli of a waqf which is not exempted from the operation of this Act or a Government Treasurer or a whole time servant of

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the Government or the servant of any waqf administration shall be elected as President.

(2) Immediately after formation of a Central Board and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise to appoint a President, the Central Board shall elect one of its members or any other person as President. The President shall be honorary and shall hold office for a term of five years, but if he is a member of the Central Board his term shall expire on the expiry of his term as a member, and in the case of the President of the first Sunni Central Board established by the local Government, his term shall expire on the formation of a new Sunni Central Board.

(3) The Central Board shall appoint a *gazetted officer of the Provincial Government* as its whole-time Secretary on such pay, allowances and terms and other conditions of service as may be prescribed, provided that if no gazetted officer is available, the Central Board may appoint another person.

LEG. CHANGES. The italicised words were substituted for the words 'Government gazetted officer' by the Adaptation Order (Supplementary) 1937, Sch. V.

17. (1) The Central Board may appoint such staff including superintendents of waqfs, inspectors, auditors, and other officers on such salaries, allowances, and other conditions of service as may be necessary for the purpose of carrying out the provisions of this Act and for such period as it thinks fit.

Staff of Central Board.

(2) All persons appointed under sub-section (1) and the Presidents and Secretaries of the Central Boards shall be deemed to be public servants within the meaning of the Indian Penal Code, 1860.

(3) The Central Board may fine, suspend, dismiss or remove any person appointed by it under sub-section (1) or a Secretary who is not a gazetted officer *of the provincial Government*.

LEG. CHANGES.—See "Leg. Changes," under Sec. 16.

18. (1) The general superintendence of all waqfs to which this Act applies shall vest in the Central Board. The Central Board shall do all things reasonable and necessary to ensure that waqfs or endowments under its superintendence are properly maintained, controlled and administered and duly appropriated to the purposes for which they were founded or for which they exist.

Function of the Central Board.

(2) Without prejudice to the generality of the provisions of sub-section (1) the powers and duties of the Central Board shall be—

(*a*) to complete and maintain an authentic record of rights containing information relating to the origin, income, object, and beneficiaries of every waqf in each district;

(*b*) to prepare and settle its own budget;

(*c*) to settle and pass budgets submitted by the mutawallis direct to the Board and any budget submitted to, but not approved by, a District

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Waqf Committee, provided that it is in accordance with the wishes of the waqif and the terms of the deed of waqf;

(*d*) to settle and pass the annual budgets of the District Waqf committees;

(*e*) to institute and defend suits and proceedings in a court of law relating to—

(i) administration of waqfs,

(ii) taking of accounts,

(iii) appointment and removal of mutawallis in accordance with the deed of waqf if it is traceable,

(iv) putting the mutawallis in possession or removing them from possession,

(v) settlement or modification of any scheme of management;

(*f*) to sanction the institution of suits under section 92 of the Code of Civil Procedure, 1908, relating to waqfs to which the Act applies;

(*g*) to take measures for the recovery of lost properties;

(*h*) to settle schemes of management and application of waqf funds in accordance with the doctrine of *cypres* in case of those waqfs, the objects of which are not evident from any written instrument or in cases in which the objects for which they were created have ceased to exist;

(*i*) to enter upon and inspect waqf properties;

(*j*) to investigate into the nature and extent of waqfs and waqf properties and call from time to time for accounts and other returns and information from the mutawallis and give directions for the proper administration of waqfs;

(*k*) to arrange for the auditing of accounts submitted by the mutwallis;

(*l*) to direct the deposit of surplus money in the hands of the mutwalli in any approved bank and to utilize it on the objects of waqf;

(*m*) to supervise and control the District Waqf Committees;

(*n*) to administer the waqf fund;

(*o*) to keep regular accounts of receipts and disbursement and submit the same in the manner prescribed;

(*p*) to institute when necessary an inquiry relating to the administration of waqf:

Provided that in the appointment of mutawallis or in making any other arrangement for the management of waqf property the Central Board shall be guided as far as possible by the directions of the wāqif, if any.

Delegation of powers.

19. The Central Board may delegate any of its duties under this Act to the President or Secretary and may likewise withdraw any such delegation.

Removal of members of Central Boards and their reappointment.

20. The Central Board may by notification in the *Gazette*, remove any members of the Board if he—

(a) refuses to act or becomes incapable of acting as a member of the Board, or

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(b) is declared insolvent, or

(c) after his election, co-option, or nomination as member, is convicted of any such offence or is subjected by a criminal court to any such order as, in the opinion of the Central Board, implies that he is unfit to continue to be a member of the Board, or

(d) without excuse, sufficient in the opinion of the Central Board, is absent without the consent of the Board from more than six consecutive meetings of the Board.

Resignation.

21. A member of the Board may resign his office by giving notice in writing to the President and on such resignation being accepted by the Central Board, shall be deemed to have vacated his office.

Casual vacancies.

22. When the place of a member becomes vacant by his removal, resignation or death, a new member shall be elected or co-opted as the case may be in the manner provided in section 6 and 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 :

Provided that no act or order of the Central Board or of its officers shall be deemed to be invalid by reason only that the number of members of the Central Board at the time of the performance of such act or the passing of such order was less than the number provided in sections 7 and 8.

Opinion of Central Board.

23. The mutawalli of any waqf governed by this Act may apply by petition to the Central Board for its opinion, advice or direction on any question affecting the management or administration of the property of such waqf and the Central Board shall give such opinion, advice or direction :

Provided that the Central Board shall not be bound to give such opinion, advice or direction on any question which is not in its opinion a fit question for summary disposal.

24. The Central Board may grant inspection and copies of its proceedings or other records in its custody on payment of such fees and subject to such conditions as may be prescribed by rules. All copies issued under this section shall be certified by the Secretary of the Central Board in the manner provided in section 76 of the Indian Evidence Act, 1872.

CHAPTER II.

SUNNI DISTRICT WAQF COMMITTEES AND SHIA SUB-COMMITTEES.

Establishment of District Waqf Committees.

25. (1) After the survey of waqfs provided for in the preceding chapter has been completed, the Sunni Central Board may, from time to time, determine the districts in which District Waqf Committees shall be established and shall direct the Collectors of such districts to form such committees :

Provided that the Central Board shall direct that committees shall be established in districts in which the total net income of properties of Sunni waqfs subject to this Act shall be one lakh of rupees or more.

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(2) Whenever the Sunni Central Board directs that in any district a District Waqf Committee shall be established, the Collector shall establish such committee to be called the Sunni District Waqf Committee.

Constitution of District Waqf Committees.

26. (1) The Sunni District Waqf Committees shall consist of—

(a) all members for the time being of the local and central legislatures for such district belonging to the Sunni sect;

(b) five members belonging to the Sunni sect, to be elected in such manner as may be prescribed, by an electoral college composed of all Sunni members of the District Board and the several municipal and cantonment boards, town areas and notified areas in the district;

(c) one member of the Sunni sect, to be co-opted by the remaining members of the committee from persons whom they regard as ulamas;

(d) one member to be co-opted by the members of the District Committee from amongst the mutawallis of the district; and

(e) the President, if he is not a member of the committee.

(2) The members of the Sunni District Waqf Committee shall hold office ordinarily for five years:

Provided that an elected or co-opted member of the Sunni District Waqf Committee shall, notwithstanding the expiration of his term of office continue to hold office until the vacancy caused by the expiration of the said term has been filled.

(3) A person ceasing to be member by reason of the expiration of his office shall be eligible for re-election or for being co-opted again.

President and Secretary.

27. (1) Every District Waqf Committee shall have a President and a Secretary, who shall be Muslims of the Sunni sect.

(2) Immediately on the establishment of a District Waqf Committee and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise, to appoint a President, the said Committee shall elect one of its member of any other person as President. The President shall be honorary and shall hold office for a term of five years but if he is a member of the committee his term as President shall expire on the expiration of his term as a member.

(3) The Secretary shall be a whole-time salaried officer appointed by the committee on such pay and allowances and on such terms as may be prescribed.

Staff of the District Waqf Committee.

28. (1) Each District Waqf Committee may, with the previous sanction of the Central Board, appoint such staff as may be necessary for carrying out its duties under this Act on such pay, allowances and conditions of service as may be approved by the Central Board.

(2) All persons appointed under sub-section (1) and the President and the Secretary of the District Waqf Committees shall be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

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29. A Sunni District Waqf Committee may fine, suspend, dismiss or remove the Secretary or any other officer or servant of the committee, provided that every such order, except an order of punishment of a menial servant, shall be subject to an appeal to the Central Board preferred by the officer concerned within 30 days of the communication to him of such order.

Meetings and decisions of District Waqf Committees.

30. (1) The Sunni District Waqf Committee shall meet at least once in three months.

(2) The quorum for the meetings of the Sunni District Waqf Committee shall be five if it consists of nine or more members, and of four if it consists of less than nine members.

(3) The President shall preside at every meeting of the Committee, provided that if he is absent, the members present may elect one of themselves as president for such meeting.

(4) The decisions of the Sunni District Waqf Committee shall be by majority of votes of the members present and voting, and in case of an equal division, the president of the meeting shall have a second or casting vote.

Functions of District Waqf Committees.

31. Subject to the control of the Central Board as hereinbefore provided, the functions of the Sunni District Waqf Committees shall be—

(a) to inquire into and report to the Central Board the manner in which any waqf in the district is administered;

(b) to receive and forward to the Central Board with its opinion—

(i) all applications for registration under section 38;

(ii) all accounts submitted by the mutawallis under section 57;

(c) to discuss and pass the budgets submitted by the mutawallis under section 57, or to reject or amend such budgets, and in such cases to report its action to the Central Board;

(d) to protect and supervise all Muslim religious and charitable buildings not in the charge of any mutawalli and get mutawallis of such waqfs appointed through court, if necessary;

(e) to trace out waqf properties illegally alienated and in the possession of trespassers and file suits for their recovery with the previous sanction of the Central Board;

(f) to make recommendations to the Central Board for the application of funds to such object or objects as it considers desirable in cases of waqfs for charitable or religious purposes in which the object for which the waqf was created is not specified or there is no evidence of user, or in cases in which the object for which the waqf was created has ceased to exist;

(g) to notify to the Central Board every change in the mutawallishship of the waqf property or its income or object or other particulars;

(h) generally to perform all such duties not inconsistent with this Act as may be entrusted to it by the Central Board;

(i) to depute in order to perform the above functions properly, one or more of its members to enter upon and inspect the local waqf properties.

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and to institute inquiries into the method of administration of the mutawallis.

Expenses and income

32. All expenses of the Sunni District Waqf Committees shall be met from the Sunni waqf fund, and income realized by such committees shall be credited to such fund.

Budget.

33. (1) Every Sunni District Waqf Committee shall, before the commencement of each financial year, prepare a budget of income and expenditure for such financial year and shall submit the same for approval to the Central Board.

(2) The Central Board shall pass and return the budget after making such modifications as it thinks fit.

(3) If a Sunni District Waqf Committee considers any expenditure not provided for in the budget to be necessary, it may submit a supplementary budget for the approval of the Central Board, but shall not incur any such expenditure without the sanction of the Central Board.

Removal of members of District Waqf Committees.

34. (1) A member of a Sunni District Waqf Committee shall be liable to removal by Sunni Central Board for gross dereliction of duty or for having in any manner so flagrantly abused his position as a member of such committee as to render his continuance as a member thereof detrimental to the public interest, or on the ground that he has become insolvent or insane or is convicted of an offence which in the opinion of the Central Board involves moral turpitude.

35. A member of a Sunni District Waqf Committee may resign his office by giving notice in writing to the Central Board and, on such resignation being accepted by the Central Board, shall be deemed to have vacated his office.

36. When the place of a member becomes vacant by reason of removal, resignation or death, a new member shall be elected or co-opted as the case may be in the manner provided for in section 26 and 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:

Provided that no act of the Sunni District Waqf Committee or its officers shall be deemed invalid by reason only that the number of the members of the committee at the time of the performance of such act was less than the number provided for in section 26.

Shia sub-committees.

37. The Shia Central Board may whenever it considers necessary establish in any district a sub-committee for the supervision of Shia Waqfs in any specified area. The constitution, functions and duties of such sub-committees shall be as determined from time to time by the Shia Central Board.

CHAPTER III

REGISTRATION OF WAQFS

38. (1) Every waqf whether subject to this Act or not and whether

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Registration of waqfs.

created before or after the commencement of this Act shall be registered at the office of the Central Board of the sect to which the waqf belongs.

(2) The mutawalli of every such waqf shall make an application for registration within three months of his entering into possession of the waqf property, or in the case of waqfs existing at the time of formation of the first Central Board within three months of the formation of such Central Board.

(3) Application for registration may also be made by a waqif or his descendants or a beneficiary of the waqf, or any Muslim belonging to the sect to which the waqf belongs.

(4) An application under this section shall be accompanied by a copy of the deed or deeds of waqf, together with a statement containing the following particulars so far as known to the applicant :

(a) a description of the waqf properties sufficient for the identification thereof ;

(b) the gross annual income from such properties ;

(c) the amount of Government revenue and cesses and of all rents and taxes payable in respect of the waqf properties ;

(d) an estimate of the expenses annually incurred in the realization of the income of the waqf properties ;

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

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

(ii) purely religious purposes,

(iii) charitable purposes, and

(f) any other particulars which may be prescribed.

(5) The Central Board may require the applicant to supply any further particulars or information that it may consider necessary.

(6) On receipt of an application for registration the Central Board may before registering the waqf make such inquiries as it thinks fit in respect of its genuineness and validity and the correctness of any particulars in the statement filed with the application and when the application is made by any person other than the person holding possession of any property or properties belonging to the waqf, the Central Board shall give notice of the application to the person in possession and hear him, if he desires to be heard, before passing final orders.

(7) An application for registration may be presented either at the office of the Central Board or at the office of the District Waqf Committee of the district in which any part of the waqf property is situated or may be sent by registered post to the office of the Central Board. If the application is presented at the office of the District Waqf Committee, the committee shall forward it with all annexures to the office of the Central Board.

Register of waqfs.

39 The Central Board shall maintain a register of waqfs which shall contain the following particulars in respect of each waqf and shall also contain a copy or copies of the deed or deeds creating

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the waqf when available:

(a) The names of trustees, mutawallis and other persons connected with the administration of the waqf:

(b) The rule of succession to the office of the trustee (if any) or mutawallis under the deed of waqf or by custom or by usage;

(c) Particulars of the scheme of administration and the scale of expenditure at the time of registration;

(d) Particulars of all property relating to the waqfs and all title deeds and documents relating thereto; and

(e) Such other particulars as may be prescribed.

40. The Central Board may direct a mutawalli to apply for the registration of a waqf, or to supply any information regarding a waqf or may itself collect such information and may cause the waqf to be registered may at any time amend the register of waqfs.

CHAPTER IV.

AUDIT OF ACCOUNTS.

Audit and report.

41. (1) The accounts kept by the Central Board and the accounts submitted by mutawallis under section 57 shall be audited annually or at such other intervals as may be determined by the Central Board, by the auditors appointed under section 17.

(2) The auditors shall submit their report—

(a) to the Local Government, in the case of the accounts of the Central Board; and

(b) to the Central Board, in the case of the accounts of a waqf.

(3) The audit report of the auditors shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property or of loss or waste of money or other property caused by neglect or misconduct of the mutawalli.

Consideration of auditors' report.

42. The Central Board shall examine the auditors' report and after calling for the explanation of any person in regard to any matter mentioned therein shall pass such orders on the report as it thinks fit.

Recovery of money due under auditor's report.

43. Every sum certified to be due from any person by an auditor in his report under section 41, unless such certificate is modified or cancelled by the Central Board by an order made under section 42, and every sum due on a modified certificate shall be recoverable from such person by the Central Board.

CHAPTER V.

INQUIRY AND SUPERVISION.

Inquiries by Central Board.

44. For the purpose of verifying the particulars contained in the statement filed under section 38 or acting on the report of the auditor submitted under section 41, the

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Central Board may inquire into any matter either through any of its officers or any District Waqf Committee.

Application for inquiry.

45. Any member of the community to which the waqf belongs may by an application, supported by an affidavit, apply to the Central Board to institute an inquiry relating to administration of a waqf, and the Central Board may take such action as it may think fit.

Powers of inquiring officer.

46. For the purposes of an inquiry under this chapter the inquiring officer or committee shall have the same power of enforcing the attendance of witnesses and production of documents as the civil court has under the Code of Civil Procedure, 1908.

CHAPTER VI

LEGAL PROCEEDINGS

Suits for directions.

47. (1) Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908, or any other law for the time being in force, the Central Board may apply to the court for direction in all cases of undisposed waqf funds or where the directions in the deed of waqf are no longer sufficient to carry out the intention of the waqif or where any case for the application of the doctrine of *cypres* arises, and the court may direct that the real intention of the waqif be carried out by such means as in the existing circumstances appear to the court to be most appropriate.

(2) The order of the court giving directions under sub-section (1) shall be applicable to the High Court or the Chief Court, as the case may be.

(3) Subject to an appeal under sub-section (2), the directions of the court issued under sub-section (1) shall not be questioned in any civil court and shall in all respects be final and conclusive.

Civil suits relating to waqfs.

48. Notwithstanding anything in the Code of Civil Procedure, 1908, to the contrary, a suit to obtain any of the reliefs mentioned in section 92 of the said Code relating to any waqf to which this Act applies may be instituted by the Central Board without obtaining the consent referred to in that section, or by any person interested in the waqf with the previous sanction in writing of the Central Board and without obtaining the consent referred to in that section, provided that if in such suit the validity or propriety of any order or direction passed or made by the Central Board is challenged, a suit may be instituted without previous sanction after giving two months' notice to the Central Board as provided in clause 53.

Suits under Religious Endowments Act.

49. A suit under section 14 of the Religious Endowments Act, 1863, concerning a waqf to which this Act applies may, notwithstanding anything to the contrary contained in that Act, be instituted by the Central Board without obtaining the leave referred to in section 18 of that Act, and no such suit shall be instituted by any person without the consent in writing of the Central Board

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2. Wazir Begam Trust, Lucknow.
3. Agha Abbu Sahib Trust, Lucknow.
4. Shah Najaf Trust, King's side, Lucknow, and Queen's side, Lucknow.
5. Kazmain Trust, Lucknow.

THE NAIK GIRLS' PROTECTION ACT II OF 1929.*

[As amended by Adaptation order 1937.]

Received the assent of the Governor of the United Provinces of Agra and Oudh on February 12, 1929, and of the Governor-General on March 11, 1929, and was published under section 81 of the Government of India Act on March 30, 1929.

WHEREAS it is expedient to terminate the custom whereby minor girls of the Naik caste in the United Provinces are trained for prostitution, and whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80-A of the Government of India Act to the passing of this Act; It is hereby enacted as follows:—

Short title and extent.

1. (*a*) This Act may be called the Naik Girls Protection Act, 1929.

(*b*) It extends to the whole of the United Provinces.

Power of the district magistrate to demand information.

2. The district magistrate may from time to time by general or special order which shall be published in the prescribed manner require any member or members of the Naik caste for the time being present within the local limits of his jurisdiction to appear before him and furnish him with such information as may be prescribed for the purposes of this Act.

RULES.—For rules *see* rules 1 to 6 printed in Appendix A.

3. The district magistrate may from time to time by order in writing

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NOTES

*STATEMENT OF OBJECTS AND REASONS.—On September 11, 1924, the Legislative Council adopted a resolution recommending that the Government should take steps to put a stop to the selling, buying, and bringing up of minor girls for immoral purposes with special reference to the districts of Naini Tal, Almora, and Garhwal. The Government appointed a committee to consider the question, and the committee is of opinion that legislation ought to be undertaken. The problem is most acute in the case of the Naik community of Kumaun, whose members are, with some exceptions, in the habit of bringing up all their girls to a life of prostitution. It is proposed to check this immoral practice by legislation to effect the registration of and restriction of the movements of minor girls of that community, and the separation, where necessary, of such girls from their parents and guardians.—*Vide* U. P. Gazette dated 6th August, 1927, Pt. VIII, p. 233.

For the Report of the Select Committee *see* U. P. Gazette dated 20th October, 1928, Pt. VIII, pp. 551-553.

For the proceedings in Council *see* Council Proceedings Vol. XL, pp. 568—572; Vol. XLI, pp. 387—431, 481—495; and Vol. XLII, p. 1447.

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Protection of the Board and Committees and their staff.

50. (1) Save as otherwise provided in this Act, no act done or direction issued by the Central Board, except an order settling the scheme of management of a waqf, shall be questioned in any court.

(2) No suit shall be instituted against the Central Board or any of its members or servants or against any member or servant of a District Waqf Committee for anything done by it or him in good faith under colour of this Act.

Compromise of suit by or against mutawallis.

51. No suit or proceedings in any court by or against a mutawalli of a waqf to which this Act applies, and relating to title to waqf property or to the rights of the mutawalli shall be compromised without the sanction of the Central Board.

Notice of suits by mutawallis.

52. When any suit relating to title to any waqf property or to the rights of a mutawalli is instituted in any civil court, such court shall give notice of such suit to the Central Board at the cost of the plaintiff.

53. No suit shall be instituted against a Central Board in respect of any act purporting to be done by such Central Board under colour of this Act or for any relief in respect of any waqf, until the expiration of two months next after notice in writing has been delivered to the Secretary, or left at the office of such Central 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.

CHAPTER VII.

ADMINISTRATION CHARGES.

Contributions by waqfs.

54. (1) Every waqf to which this Act applies shall contribute annually for meeting the expenses incurred in the administration of this Act such sum not exceeding 5 per cent. of the net annual income of such of its property as is situate in the United Provinces as the Central Board, subject to the sanction of the Local Government, may determine:

Provided that in cases of waqfs, part of the income of which is applied for the benefit of the waqif or his descendants or family or any other private purpose, the aforesaid percentage shall not be levied on such part of the income.

(2) Contributions under this section shall be payable with effect from the date on which this section comes into force.

(3) The Central Board may, in the case of any particular waqf or waqfs, reduce or remit such contributions as it thinks fit.

(4) Such contribution shall, subject to the prior payment of any dues to the Crown and any other statutory charge on the waqf property or the income thereof, be a first charge on the income of the waqf.

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(5) If a mutawalli or a person in charge of the management or administration of the waqf realizes the income of the waqf and neglects or refuses to pay such contribution he shall also be personally liable for such contribution to the extent of the balance of realizations remaining in his hands after payment of land revenue, cesses and taxes due to *the Crown* and local bodies, and this liability may be enforced in the manner aforesaid.

LEG. CHANGES.—The words italicised were substituted for "Government" by Adaptation Order (Supplementary) 1937, Sch. V.

Central Board's power to borrow.

55. The Central Board shall have power, with the previous sanction of the Local Government, to borrow for the purpose of giving effect to the provisions of the Act such amount and on such conditions as the Local Government may determine.

CHAPTER VIII

MUTAWALLIS

Appointment of mutawalli.

56. When there is vacancy in the office of mutawalli of a waqf and there is no one competent to be appointed under the terms of the deed of waqf, or where the right of any person to act as mutawalli is disputed, the Central Board may appoint any person to act as a mutawalli for such period and on such conditions as it may think fit.

Duties of mutawallis.

57. (1) Every mutawalli shall carry out all directions consistent with the provisions of this Act issued to him by the District Waqf Committee or the Central Board for the proper administration of waqfs.

In particular he shall—

(a) supply the details of the waqfs in his charge,

(b) submit within one month after the 31st day of March next following the date on which the waqf has been registered under section 21 and thereafter within 30 days of the 31st day of March in every year, a full and true statement of accounts in such form and containing such particulars as may be prescribed by the Central Board and verified in manner prescribed by the Code of Civil Procedure, 1908, for verifications of pleadings, of all moneys received or expended by him on behalf of the waqf of which he is the mutawalli in respect of that portion of the waqf property which is situate in the United Provinces during the period of 12 months ending on the 31st day of March preceding the submission of such statement or during that portion of the said period during which the provisions of this Act have been applicable to the waqf.

(2) All the details, accounts and statements mentioned in sub-section (1) shall be submitted to the District Waqf Committee and in districts where there is no such committee, direct to the Central Board. The mutawalli shall if and when required, further be bound by himself or by his agent to attend at the audit of his accounts and to give all information required relating to his accounts.

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58. The Central Board may remove a mutawalli from his office if—

Removal of mutawallis by Central Board.

(i) such mutawalli after having once been convicted of an offence punishable under section 60 is again convicted of any such offence, or

(ii) such mutawalli is convicted of an offence relating to the waqf property or money which in the opinion of the Central Board renders him unfit to continue to be a mutawalli.

59. (1) Whenever the supervision of a waqf is vested in any existing committee appointed by the waqif or any competent court or authority such committee shall, notwithstanding anything in the Act, continue to function until superseded by the Central Board under sub-section (2). Provided that such committee shall be under the control of the Central Board and shall abide by such directions of the Central Board as are not inconsistent with any directions of the waqif or of the court or authority appointing such committee.

Committees of supervision.

(2) The Central Board may supersede any such committee as aforesaid if it does not in its opinion function properly and satisfactorily, and on such supersession any decree or order of a court or competent authority under which such committee has been constituted shall cease to have any force.

(3) An order passed by a Central Board under sub-section (2) shall be final and shall not be questioned in any court of law.

60. (1) If a mutawalli fails without reasonable cause or excuse the burden of proving which shall be upon him—

Penalties.

(a) to apply for registration of a waqf as provided in section 38, or

(b) to submit statements of particulars or of accounts and returns as required by this Act, or

(c) to supply information or particulars required by the Central Board of the District Waqf Committee, or

(d) to allow inspection under the provisions of this Act of waqf properties and deeds and documents relating thereto, or

(e) to give assistance in inquiries and investigations when called upon to do so by the Central Board or by a District Waqf Committee, a Shia sub-committee or by superintendents or auditors working under the orders of the Central Board, or

(f) to deliver possession of any waqf property if ordered to do so by the Central Board, or

(g) to deposit any surplus income in his hands in any recognized Bank when directed to do so by the Central Board, he will, on conviction before a magistrate of the first or second class, be punishable with fine which may extent to Rs. 250 for the first offence, and to Rs. 1,000 for every subsequent offence.

(2) No magistrate shall take cognizance of an offence under sub-section (1) otherwise than on a complaint made by any person duly authorized by the Central Board in this behalf,

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CHAPTER IX

MISCELLANEOUS.

Rules.

61. (1) The Central Board may, subject to the appr Government, make rules consistent wi the purpose of the carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Board shall, with the approval of the Local Government, have power to make rules with reference to the following matters :

(a) All matters expressly required or allowed by this Act to be prescribed or done by the Central Board or District Waqf Committee ;

(b) The conduct of business by the Central Board ;

(c) The grant of travelling allowance to the members of the Central Board ;

(d) The custody and investment of the waqf fund ;

(e) The books and accounts to be kept at the office of the Central Board and the District Waqf Committee ;

(f) The manner in which the accounts of waqfs shall be audited and published, the time or place of such audit, the form and content of the auditor's reports and the scale of remuneration to be paid to the auditors ;

(g) The method of calculating the income of a waqf for the purpose of levying contribution under this Act ; and

(h) The fee to be levied on applications before the Central Board, Sunni District Waqf Committees and Shia sub-committees under this Act, or on applications for copies of proceedings or other records of the Central Board or District Waqf Committees ;

(i) The method of election of members and Presidents of the Central Boards and Sunni District Waqf Committees.

(3) All rules framed under this section shall be published in the *Gazette* and shall thereafter have the force of law.

Names of members and Presidents to be notified.

62. The names of the members and Presidents of the Central Boards and District Waqf Committees shall be published in the *Gazette* as soon as possible after their election or co-option as the case may be.

Budgets of Central Boards and District Waqf Committees.

63. A copy of the budget of the Central Boards shall be submitted to the local Government for information. The Central Board shall also give such information and submit such reports, returns and statement as may be called for by the local Government.

Extension of time.

64. The Central Board may, if it is satisfied that there is sufficient cause for so doing, extend time within which any act is required or ordered to become under this Act.

Waqf fund.

65. All moneys realized under section 54 and all moneys realized from fees in respect of proceedings before the Central Board or District Waqf Committees and all other moneys realized under

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A. I. R. MANUAL

UNREPEALED CENTRAL ACTS

(CIVIL & CRIMINAL)

VOLUME XXXV

[THE] WAKF ACT, 1954

(ACT 29 OF 1954)

[The text of the Act printed here is as on 30-4-1985.]

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STATEMENT OF OBJECTS AND REASONS

"The management of Wakfs, though it vests immediately in a mutawalli is a subject which requires the supervision of the State. The need for supervision has been felt, and in addition to various enactments dealing with the subject of the charitable endowments, the Mussalman Wakf Act, 1923 (No. 42 of 1923), was enacted for the whole of India. This Act merely provides for the submission of audited accounts by the Mutawallis, to the District Judges. This Act did not prove of much practical value. The Mussalman Wakf (Bombay Amendment) Act, 1935 (XVIII of 1935) amended the Mussalman Wakf Act, 1923 (42 of 1923). The Bengal Wakf Act, 1934 (XIII of 1934) was enacted to create a machinery for the supervision of wakfs in Bengal. The U. P. followed suit and the United Provinces Muslim Wakfs Act, 1936 (XIII of 1936) was passed creating a Central Wakf Board. Similarly Bihar also passed a legislation almost on the same lines. The working of these Acts has brought out the necessity of some amendments. Further many of the States have got no Act for the purpose. It is, therefore, necessary that one uniform and consolidated legislation may be passed by the Centre, which may be adopted as a model Act by the various States. It is with this view that the present Bill is introduced."—Gaz. of Ind., 1952, Pt. II-Sec. 2, page 285.

Amending Act 30 of 1959.— Prior to the reorganisation of States on the 1st November, 1956, the Wakf Act, 1954 was brought into force in certain States only and Boards of Wakfs had also been set up for some of them. The Act was not, however, brought into force in all the States. On account of the reorganisation of States, certain difficulties have arisen in the working of this Act. Some of the Boards established under the Act have, since 1st November, 1956, been functioning in respect of two or more States, while in some other cases there is more than one Board functioning in the same State. This is not a satisfactory arrangement. It is, therefore, necessary to reconstitute such Boards as intra-State bodies. It is accordingly proposed to empower the Central Government to make, wherever necessary, suitable orders for the reconstitution of these Boards and for division of their assets and liabilities. In regard to the composition of the Boards, the Act makes a distinction between Part A States, Part B States and Part C States. This distinction no longer holds good. It is, therefore, proposed to provide that each Board, when it is constituted for any of the States or the Union Territory of Delhi, should have eleven members while the Board for any other Union Territory, should have five members only.

2. In some of the States, the Act is in force in certain parts only and it is proposed to empower the Central Government to bring the Act into force in the remaining part of such States. If, however, for any reason it is not found feasible to bring the Act into force in the remaining part of any such State and establish a Board for the whole of the State, it would at least be desirable to have a Board for such part or parts of the State where the Act is already in force. Under the Act, as it stands at present, it is not permissible for a State Government to form a Board for a part of a State only. It is, therefore, proposed to empower a State Government to establish a Board for a part of a State also in such cases.

3. The present Bill seeks to achieve these objects.—Gaz. of Ind., 3-8-1959, Pt. II, S. 2, Ext., P. 579.

Amending Act 34 of 1964.— The Wakf Act, 1954 was enacted to provide for the better administration and supervision of wakfs. The Act was amended in 1959 for the limited purpose of removing certain difficulties arising out of reorganisation of States. Experience of the working of the Act over the last ten years has revealed certain difficulties. It is, therefore, proposed to amend the Act to remove these difficulties and to ensure better administration of wakfs by mutawallis.

2. The main features of the Bill are:

(i) The definition of beneficiary in regard to objects of public utility is being broadened to cover all objects obtained by Muslim law. Endowments made by non-Muslims for support of certain Muslim religious and pious institutions will also come under the purview of the Act.

(ii) A Central Wakf Council is proposed to be established.

(iii) A provision is being made to enable the establishment of separate Sunni and Shia Boards in any State in which the Shia Wakfs constitute in number more than fifteen per cent. of the total number of wakfs in that State or the income of the property of Shia wakfs in that State or the income of the property of Shia wakfs constitutes more than fifteen per cent. of the income of all the wakfs in the State.

(iv) To check mutawallis from alienating wakf properties, a specific provision is being made to clarify that alienations without the sanction of the Board will be invalid. As a further step in this direction, it is also being provided that where mutawallis illegally alienate properties already determined as wakf properties, the Board can recover posses-

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sion by issuing certificates to Collector. A right of appeal to the district Court against the order of the Collector is also being provided for.

(v) Authority is being conferred on the Board to remove mutawallis on some additional grounds not mentioned in section 43 and to assume direct management of wakfs for a period not exceeding five years in cases where no suitable mutawallis are available.

3. The notes on clauses explain in detail the various changes proposed to be made.—Gaz. of Ind., D/- 22-4-1964, Pt. II, S. 2, Ext., P. 317.

Amending Act 38 of 1969.— Chapter II of the Wakfs Act, 1954, provides for the survey of wakf properties existing in a State at the date of the commencement of the Act. The survey of all wakfs existing in a State takes quite a long time with the result that the finalisation of the list of all wakfs in a State takes several years. The whole object of the said chapter is to provide for an authoritative list of wakfs in a State and to provide for speedy and final disposal of all disputes relating to the character of such wakfs or to the property of such wakfs. On a strict reading of the provisions of Chapter II of the Wakf Act, 1954, it would however appear that the provisions of the Chapter do not permit the publication of more than one list of wakfs in respect of a State. This would mean that where two or more lists are published in a State, such lists are invalid in law. Unless, therefore, such lists are validated, the entire survey work accomplished in the State concerned may become infructuous. It is, therefore, proposed to amend the Act to permit the publication of different lists of wakfs in respect of different parts of a State and to validate all previous cases of publication of different lists of wakfs in respect of different parts of a State. At the same time, in order to ensure that such validation does not prejudicially affect any person, it is proposed to confer on the persons concerned a right to institute within a period of one year from the date of commencement of the proposed legislation, suits for modification of the lists so validated.

2. It is proposed to avail of the present opportunity to give effect to certain amendments which were sought to be made in the Act by the Wakf (Amendment) Bill, 1965, which was passed by the Rajya Sabha in 1966, but which lapsed on the dissolution of the Third Lok Sabha. These are explained below :—

(i) Under the Wakf Act, 1954, the contribution payable by Mutawallis and others to the State Board of Wakfs has to be calculated with reference to the net annual income of the wakfs. Section 3 (9) of the Act provides that net income means "the total income less any revenue, cess, rates and taxes payable to the Government or any local authority." The intention has always been that in computing net annual income, no deductions other than those expressly provided for in the definition of net income should be permitted. But a contrary view was taken by the Kerala High Court. Further doubts have been expressed as to whether donations and offerings made to a wakf form part of its income. It has thus become necessary to make the position clear and to validate the contribution already realised. Accordingly, it is proposed to substitute a new definition of "net annual income" for the definition of "net income" contained in the said Section 3 (9).

(ii) Wakfs whose annual income does not exceed Rs. 100 are, under section 46 of the Act, exempt from the liability to pay any contribution to the State Board of Wakfs. It is proposed to amend section 7 of the Act suitably to exempt such wakfs from the liability to share the cost of survey of wakfs, also.

3. The Bill seeks to achieve the above objects.—Gaz. of Ind., 17-5-1969, Pt. II, S. 2, Ext., P. 492.

Amending Act 69 of 1984:— The Wakf Act, 1954 (29 of 1954) provides for the better administration and supervision of wakfs. The working of the Wakf Boards established under the Wakf Act is, however, not satisfactory and in most cases these Boards have failed to achieve the very purpose for which they have been established. Further, the financial position of most of these Boards is also not happy. The question of toning up the administration of wakfs so as to protect and properly manage wakf properties by taking necessary measures including legislation, has been engaging the attention of the Central Government. A Committee known as the Wakf Inquiry Committee was accordingly constituted by the Central Government for the purpose of evaluating the working of the Wakf Act and for making an inquiry into the administration of wakfs at all levels in respect of States to which the provisions of the Wakf Act are applicable.

2. The Wakf Inquiry Committee made a large number of recommendations which envisage a thorough restructuring of wakf administration designed to improve the financial position of the wakf institutions and to plug the loopholes noticed in the working of the Wakf Act. The Report of the Wakf Inquiry Committee was examined by the Central Wakf Council, Chairman of the Wakf Boards, Muslim M.Ps. and Minorities Commission. Various views and different shades of opinion on the subject were expressed at different forums. The Bill, which is mainly based on the recommendations of the Wakf Inquiry Committee, takes into consideration the various views expressed in this behalf.

3. The Bill seeks to make, inter alia, amendments to the Wakf Act 1954, in relation to the following matters, namely:—

(i) to ensure uniformity of the wakf legislation throughout India and in particular, in the State or part of the State

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in which the Act is not in force;

(ii) The Wakf Board shall consist of eleven members, of which two shall be members of Parliament to be elected from amongst themselves by the Muslim members elected to Parliament from that State, two shall be elected by the Muslim members of the State Legislature from amongst themselves, the Wakf Commissioner, who shall be the ex officio Member Secretary, and six other Muslim members to be nominated by the State Government from amongst the different categories of persons specified in section 10. The Chairman of the Wakf Board shall be elected by the members thereof from amongst themselves. The Wakf Commissioner shall not, however, be elected as the Chairman;

(iii) to provide for the appointment of Wakf Commissioners in the States from amongst persons professing Islam, who are holding any post in the Government of the concerned State in the senior scale of the Judicial Service of the State or any post in the senior scale of any Administrative Service in the State.

(iv) to enlarge the powers of the State Government with regard to the control and supervision of Wakfs;

(v) to strengthen the provisions of accounting and audit of the accounts of the mutawallis and to make it obligatory for the Wakf Commissioner to carry out at least once in two years a detailed inspection of the wakfs in the State having an annual income of not less than twelve thousand rupees;

(vi) to impose restrictions with regard to the alienation of wakf property;

(vii) to provide for the appointment of Tribunals for the speedy determination of the disputes, question or other matters relating to wakfs; every such Tribunal is to consist of one person who shall be a member of the State Judicial Service holding a rank not below that of a District Judge or of a Civil Judge, First Class;

(viii) to bring all wakfs alal-aulad within the purview of the Act, and to provide that a wakf by user shall not cease to be a wakf by reason of non-user for any length of time;

(ix) imposing restriction on the powers of mutawallis to grant leases of immovable properties of the wakf. It has been provided that no lease or sub-lease of any immovable property for any period exceeding three years shall be made and that lease or sub-lease exceeding a period of one year but not exceeding a period of three years shall be void unless it is made with the previous sanction of the Board;

(x) Wakf Commissioner shall be empowered to frame schemes for the proper administration of Wakfs and to take over, in certain cases, the direct management of wakfs;

(xi) The Central Government is also being empowered—

(a) to lay down general principles and policies of wakf administration in 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 Boards, in so far as they relate to their secular functions of the wakf;

(c) to review administration of the secular activities of the wakfs generally and to suggest improvements, if any;

The other amendments proposed in the Bill are of a minor, incidental and consequential nature.

4. The Notes on clauses appended to the Bill explain in detail the various amendments proposed therein and the background under which those amendments have been proposed.—Gaz. of India, 10-5-1984, Pt. II, S. 2, Ext., P. 62 (No. 34).

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts 30 of 1959; 34 of 1961; 38 of 1969; 69 of 1984

—Amended by Bihar Act 7 of 1977.

—Amended by Karnataka Act, 52 of 1976.

—Amended in Maharashtra by Mahn. Act 43 of 1963.

—Amended by Tamil Nadu Act, 34 of 1962.

—Extended by Act 26 of 1968; Regn. 6 of 1963.

—Supplemented by T. N. Act 19 of 1961.

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[THE] WAKF ACT, 1954

(ACT 29 OF 1954)[a]

[21st May, 1954.]

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:—

[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1952, Pt. II, Sec. 2, page 235; and for Select Committee Report, see ibid, 1954, Extra, Pt II, Sec. 2, page 51.

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[a] in the Official Gazette, appoint in this behalf for that State; and different dates may be appointed for different States:

[b]["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;"]

Preamble

A donation to a Takia, which is only an object of a religious Muslim, may not be Wakf. But under the Muslim Wakf Act, 1954, Wakf includes a Wakf user also. From the fact that some preference was shown to the desire of the founder, it could not be said that the endowments ceased to be a wakf. A 1966 Mad 439 (441) : (1966) 1 MLJ 17.

Creation of wakf — No essential formality or use of specified phrase or term necessary — Expression whether orally or in writing of intention of effective dedication is sufficient. (1963) 1 MLJ 425 (428) (DB).

Creation of wakf — Express dedication required — Even in absence of express wakf may be presumed from user immemorial — No proof of actual wakf, necessary. (1967) 1 MLJ (DB).

Created before Act — Scheme framed by Court in force — Wakf Board has power to direct Mutavalli to get properties registered under the Act and to submit accounts etc. to it — Mutavalli need not file any return to civil Court under the scheme. A 1969 Mad 350 (351) : (1968) 2 Mad LJ 365.

(5) The coming into force of Act. XXXIV of 1964 amending the Wakf Act of 1954, pending the Second Appeal, will have to be taken into account and the donation of an immovable property, even though by a person not professing Islam, would be a wakf, if the other conditions are fulfilled. A 1966 Mad 439(441) : (1966) 1 MLJ 17.

Section 1

(1) No Wakf Board functioning in the State of Travancore-Cochin on 1st November, 1956 when the district of Kanyakumari was transferred to Madras State — Act was in force in that State by then — Madras State must be held to have validly constituted a Wakf Board for the entire State — Jurisdiction of Wakf Board thus constituted under Section 9 of the Act was held not affected by Section 109 of

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[c][Provided further that where on account of the territorial changes brought about by the States Reorganisation Act, 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.]

[a] The following are the different dates appointed for different States by the Central Government, namely:—

States	Dates	Notification published in
Ajmer (Now in Rajasthan) Andaman and Nicobar Islands Coorg (Now in Karnataka) Hyderabad (Now in A. P.) Kutch (Gujarat) Madhya Bharat (Now in M. P.) Madras (Tamil Nadu) Mysore (Karnataka) Patiala and East Punjab States Union (Now in Punjab) Tripura Vindhya Pradesh (Now in M. P.)	15th Jan. 1955 ...	S. R. O. 53 dated 4-1-1955, Gaz., Ind. 1955, Extra., Pt. II-Sec. 3 page 7.
Assam ... Travancore-Cochin (Kerala) ...	1st Feb. 1955 ...	S. R. O. 282 dated 22-1-1955, ibid, page 199.
Andhra ... Rajasthan ...	1st Apr. 1955 ...	
Bhopal (now in M. P.) ...	20th Dec. 1955 ...	S. R. O. 3000 dated 20-12-1955, ibid, page 2501.
Orissa	1st June 1958 ...	G. S. R. 428 dated 23-5-1958, ibid, 1958, Pt. II-Sec. 3 (i), page 819.
Punjab, in that part in which it was not already in force	10th Oct. 1959 ...	G. S. R. 1126 dated 1-10-1959, ibid, 1959, Pt. II Sec. 3 (i), page 1401.
Rajasthan, in that part in which it was not already in force	1st Nov. 1959. ...	G. S. R. 1204 dated 26-10-1959 ibid, page 1500.
Madhya Pradesh, in that part in which it was not already in force	9th Jan. 1960 ...	G. S. R. 40, Gaz., Ind., 1960, Pt. II, Sec. 3 (i), page 146.
Mysore, (Karnataka) in that part in which it was not already in force	1st Dec. 1961 ..	Gaz., Ind., 1961, Pt. II-Sec. 3 (i), page 176.
Union Territory of Delhi ...	1st Oct. 1962, ...	Gaz., Ind., 1962, Pt. II-Sec. 3 (i), page 1464.
Bihar	12th Apr. 1973 ...	Gaz., Ind., 1973, Pt. II-Sec. 3 (i), Ext., page 570.

The Act has been extended to the Union territory of Dadra and Nagar Haveli by Regn. 6 of 1963 w. e. f. 1-7-1965 (see S. O. 1160, Gaz., Ind., 1965 Pt. II, S. 3 (ii) p. 2197) and to the Union territory of Pondicherry by Act 20 of 1963 w. e. f. 1-12-1963, (see Pondi. Gaz. 26-11-1963, Ext.)

[b] Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984) S. 2 (not yet enforced).

[c] Inserted, ibid.

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

Section 1 (contd.)

the States Reorganisation Act, (1968) 2 Mad LJ 144 (149, 150).

(2) New Act coming into force pending second appeal — Change has to be taken into consideration. A 1966 Mad 439(441) : (1966) 1 Mad LJ 17.

(3) Act made applicable to Bihar since 12-4-1973 — Title suit against Wakf Board decreed — Dismissal of appeal and second appeal after coming into effect of the Act — Application under Section 57 (3) challenging the decree would lie before the High Court. A 1980 Pat 141 (143) : 1980 BLJR 55.

Section 2

(1) For proving 'wakf' it should be established that wakf property was dedicated for any purpose recognised by Muslim law as pious, religious or charitable — If dedication cannot be proved, property alleged to be wakf property cannot be held to be so. 1973 Rev LR 467(469) (Punj).

(2) Wakf created before Act — Scheme framed by civil Court in force — Wakf Board has power to direct mutavalli to get properties registered under Act and to submit accounts etc., to it — Mutavalli need not file any return

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Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer, to which the Durgah Khawaja Saheb Act, 1936 and [b][the Durgah Khawaja Saheb Act, 1955, applies.]

[a] For the saving of application of this Act, see the Bombay Public (Trusts Unification and Amendment) Act, 1959 (Bom. 6 of 1960), S. 67 and Rajasthan Public Trusts Act, 1959 (Raj. 42 of 1959), S. 80 and the M. P. Public Trusts Act, 1951, S. 36.

[b] Substituted for the Durgah Khwaja Saheb (Emergency Provisions) Act, 1950, by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 2 (2-12-1969).

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 [a][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 [b][sub-section (1), or as the case may be, sub-section (1A) of section 9];

[c][(d) ** ** ** * **;]

Section 2 (contd.)

Civil Court under the Scheme. A 1969 Mad 350 (351) : (1968) 2 MLJ 365.

(3) Act not confined to public wakfs — Provisions applicable to private wakfs as well — Gift ultimate or concurrent gift to religious or charitable purposes is necessary. (1968) 2 Mad LJ 144 (146 to 149).

(4) Act applies to all wakfs created before or after it — Whether wakf is registered under Act or not is not material. A 1985 Andh Pra 127 : 1984 (2) APLJ (HC) 259 (DB).

SECTION 3 — SYNOPSIS

1. Beneficiary — Clause (a).
2. Member — Clause (e).
3. Mutawalli — Clause (f).
4. Net income — Clause (g).
5. Person interested in wakf.
6. Wakf — Clause (i).

1. Beneficiary — Clause (a).

(1) Beneficiary — In case of public utility wakf should be intended exclusively for Muslim community. A 1964 Mad 18 (22, 23) (DB).

(2) Wakf created for object of public utility — When it is not for benefit of Muslim community exclusively it is excluded from operation of Act. A 1964 Mad 18 (23) (DB).

2. Member — Clause (e).

(1) It is no doubt true that in view of the provisions of Section 3 (e), wherever the word 'member" of the Board exists, it includes the Chairman. This is so unless the context otherwise requires. A 1980 Punj 306 (310) (DB).

(2) The general superintendence of all wakfs in the State vests in the Wakf Board established for the State irrespective of the question whether it is registered or not. A 1985 Andh Pra 127 : 1984 (2) APLJ (HC) 259 (DB).

3. Mutawalli — Clause (f).

(1) 'Mutavalli' includes a person who for the time being manages or administers the wakf property as such. That the person has not admitted the wakf nature of the properties will other steps to be taken under the Act. But that will not be a ground under which he can challenge the demand for contribution made against him. A 1969 Mad 66 (69) : (1968) 1 Mad LJ 19.

[See ILR (1985) Kant 1614 (1619)]

(2) Mutavalli appointing his son to perform duties of Mutavalli — Son is Mutavalli. A 1978 (NOC) 221 : (1977) 1 Mad LJ 230.

4. Net income — Clause (g).

(1) "Net income" calculation of — Expenses of cultivation to be deducted. A 1964 Ker 310 (311) : 1964 Ker LT 367 (DB).

(2) Uniform annual contribution to be made to the Wakf Board does not amount to hostile discrimination within Art. 14 of the Constitution. ILR (1974) 2 Ker 316.

5. Person interested in wakf.

(1) Where the mutawallis of wakf properties initially created usufructuary mortgages in respect of certain wakf properties (before 1947) and sold them only after 1947 the suits for recovery of possession by Wakf Board would be saved from the bar of limitation in view of S. 3, Public Wakf (Extension of Limitation) Act, in view of Section 3, Public Wakfs as the dispossession of wakf in relation to properties in question could be said to have occurred only when sales were effected and not when usufructuary mortgages were effected. A 1982 Mad 376(380) : ILR (1976) 2 Mad 343. Reversed.)

(2) The expression "person who is entitled to receive other benefits from the wakf" is of the widest connotation and its scope cannot be restricted to only certain types of benefits analogous to pecuniary benefits. (1981) 1 Mad LJ 332(335) (DB).

(3) Whenever a benefit is reserved for the public in general without restricting the persons who will be entitled to participate therein either with reference to religion or with reference to age or with reference to social status, any person who will fall within the particular category of persons for whom the benefit is reserved will be a person entitled to receive that benefit as of right i.e. he will be a 'person interested in the wakf'. (1981) 1 Mad LJ 3[illegible]

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[d][(dd) "Council" means the Central Wakf Council established under section 8A;]

(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 [e][person who is a mutawalli of a wakf by virtue of any custom or who is a] naib-mutawalli, khadim, mejawar, sajjadanishin, amin, or other person appointed by a mutawalli to perform the duties of a mutawalli and, save as otherwise provided in this Act, [f]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;]

[g][(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, khanqah, maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institutions under the wakf;

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

(i) "prescribed", [h]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;

[i][(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 [or any other person] of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes—

Section 3 — Note 5 (contd.)

(4) A person who has a right to worship or perform any religious rites in any institution maintained by a wakf is a person interested in wakf within Section 3 (h) of Wakf Act and has a locus standi to challenge the orders made by the Wakf Board. ILR (1982) 2 Kant 1172 (1176).

(5) Expression 'person interested in a wakf' will have to be understood in the light of Section 44, which is meant for better administration and management of the wakf as such. So understood any person who will be entitled to derive a benefit from the wakf will be a 'person interested in the wakf' being clothed with a right to invoke the jurisdiction of Wakf Board under Section 44. (1981) 1 Mad LJ 332(335).

[See also (1976) 89 Mad LW 672(676). (Where persons claimed to be entitled to the benefits from the Wakf merely because they were residents of the village where the Madrasa has been established, the fact that the residents could send their children to the Madrasa if a Madrasa was being run in pursuance of the wakf deed would not entitle them to claim that facility as of right under the wakf deed.)]

(6) The definition of 'a person interested in the wakf' as given in Section 3 (h) is not restrictive in nature rather it is expensive. (1981) 1 Mad LJ 332(337).

(7) Where family of a non-muslim had been participating in the religious rite of celebrating the Moharam by keeping the Peerlu in the Bada Ashurkhana non-muslim would be a "person interested" under Section 3 (h).

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(i) a wakf user [k][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;]

[l][(ii) grants (including mashrut-ul-khidmat [m][muafies, khairati, qazi services, madad-mash]) for any purpose recognised by Muslim Law as pious, religious or charitable; and]

[n]["(iii) a wakf-alal-aulad;";]

[o]["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;";]

[p]["(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.

[a] Substituted for the words "established for the benefit of Muslim Community" by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 2 (10-10-1964).

[b] Substituted for the word "Section 9", ibid.

[c] Omitted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (i) (Not yet enforced).

[d] Inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 9 (10-10-1964).

[e] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (ii) (a).

[f] Inserted ibid S. 3 (ii) (b).

[g] Substituted ibid, S. 3 (iii).

[h] Inserted by Wakf (Amendment) Act, 1964, S. 2 (10-10-1964).

[i] Inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (iv) (Not yet enforced).

[j] Inserted ibid, S. 3 (v) (a).

[k] Inserted ibid, S. 3 (v) (b).

[l] Substituted for the word "mashrut-ul khidmat" by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 2 (10-10-1964).

[m] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (v) (c) (Not yet enforced).

[n] Substituted ibid, S. 3 (v) (d).

[o] Proviso added ibid, S. 3 (v) (e).

[p] Inserted ibid, S. 3 (vi).

Section 3 (contd.)

6. Wakf — Clause (1).

(1) The inclusive definition contained in the latter part of the definition cannot go beyond the terms of first part. The dedication should be by a person professing Islam and it should be for any purpose recognised by the Muslim as pious, religious or charitable. Items (i) (iii) in the latter part of the section should come within the general clause in first part. A 1974 Mad 225 (227, 228) : (1974) 1 Mad LJ 253 (DB).

(2) Definition of term in Act — It has to be read with due regard to scheme of Act. A 1964 Mad 18(22) : (1963) 2 Mad LJ 346 (DB).

(3) After the amendment of the Act in 1964, even properties donated by persons not professing Islam would be part of the Wakf property if they are given for the support of a wakf in the nature of a mosque, graveyard, choultry, etc. 'Thaikals' in Tanjore District prima facie mean Muslim graveyards. (1966) 2 MLJ 104 (107 to 110) (DB).

(4) There can be no valid wakf under the rent or at least in the ultimate for purposes recognised by the Muslim law, as pious, religious or charitable. (1968) 2 Mad LJ 144 (146).

(5) Presumption as to creation of wakf can be drawn even in absence of dedication and delivery of possession — Land with grave Grave existing for a long time Land can be treated as wakf. 1981 All LJ 669 (672).

(6) Where Section 66-C is applicable Section 3 (1) (i) is not invoked. (Obiter). (1966) 2 Mad LJ 104 (105, 106).

[See also A 1983 Mad 297 (300) : (1983) 1 Mad LJ 299 (DB). (The fact that Section 66-C deals with certain donations made by non-Muslims, as a 'deemed wakf' will clearly indicate that the dedication made by non-Muslim will not come within the definition of wakf occurring in Section 3 (1).)]

(7) Under Section 3 (1) read with Section 66-C (as introduced by 1964 amendment) a non-muslim can create a wakf for any of the purposes mentioned in Section 66-C. A 1978 Andh Pra 156 (158).

(8) For the applicability of Section 66-C there

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STATE AMENDMENTS

Karnataka :

In its application to Karnataka, in S. 2 (g)—

"(a) in sub cl. (i) omit the word "and";

(b) after sub cl. (ii) and proviso, insert—

"(iii) income accruing from Sadanath, Zakath and khirat given by the public in kind or in cash for the purposes of maintenance of orphanages or inmates thereof and for madarassas, schools and colleges;

(iv) grants received from the Government for orphanages, homes for the aged and destitutes, poor-houses, madrassas, schools, colleges and hostels."—Krna. Act 52 of 1976, S. 2 (6-8-1976).

Kerala :

In its application to Kerala, in S. 3, in clause (g),—

(i) in sub-clause (i), word 'and' at the end shall be omitted;

(ii) after sub-clause (ii) and the proviso thereto insert the following:—

"(iii) income accruing to the wakf from pidiyari, kettuthengu and similar other voluntary contributions in kind or in cash;

(iv) grants received from the State Government for the purpose of institutions such as mosques, orphanages, madrassas, schools and colleges; and

(v) donations given by the public for the purpose of maintenance of orphanages or inmates thereof and Madrassas and Arabic Colleges.—Ker. Act 18 of 1972, S. 2 (2-11-1972).

Section 3 — Note 6 (contd.)

wakf for any of the objects specified in S. 66-C a person not professing Islam gifts property then such property shall be deemed to be comprised in that wakf and dealt with in the same manner as the wakf in which it is so comprised. Thus the limitation that the creator of a wakf must be a person professing Islam faith is removed only to a restricted extent under Section 66-C of the Act. (1967) 1 Mad LJ 425 (429 to 431).

(9) Inam granted to individuals for service at Dargah — Grant resumable on failure to render service — Inam constitutes Wakf property — Whether grantor was muslim or professed other religion is immaterial. A 1985 Andh Pra 127 : 1984 (2) APLJ (HC) 259 (DB).

(10) There is no essential formality or the need for use of any specified phrase or term prescribed for the constitution of a wakf. Where an effective dedication is intended, the law will give effect to it in whatever language it may be expressed or in whatever term the wish may be expressed or formulated. A wakf may be made orally or by writing. If land has been used from time immemorial for a religious purpose, then the land is by user of wakf, although there is no evidence of express dedication. (1967) 1 Mad LJ 425 (429 to 431) (DB).

(11) Grantor need not name objects and specify sum to be spent on any particular object. (1967) 1 Mad LJ 425 (430) (DB).

(12) Where the purpose of a 'public trust' was merely charitable, dedication cannot be said to be for a religious purpose so as to constitute a wakf. (1979) 1 Mad LJ 366 (369) : 92 Mad LW 467.

(13) Distinction between wakfs recognised by Muslim law and religious endowments recognised by Hindu law on the one hand and public charitable trusts as contemplated by English law on the other — Trust executed by Nizam of Hyderabad on 14th June 1954 — Construction — Trust held not a wakf and did not fall within provisions of Act. A 1963 SC 985 (988, 989, 992).

(14) Where the dedication by a Hindu Ruler has been made to the Fakkirs visiting the Mosque and not to the Mosque, the dedication does not constitute a wakf within meaning of Section 3 (i). A 1983 Mad 297 (302).

(15) Grant of land as Kyrati inam — Kyrati zamin means land given in charity — Such grant amounts to a personal grant — Property cannot be called wakf property. (1977) 1 Mad LJ 324 (325) : 90 Mad LW 351.

(16) The mere fact that there used to be prayers where the ancestors of the plaintiff's family had been burried does not render the place of burial a wakf unless the user by the public is as of right and is also immemorial. 1985 Ker LJ 61(68).

(17) Wakf-alal-aulad of Talukdari property by Muhammadan talukdar — Wakf for benefit of wakif, his family and descendants, generation after generation — Validity — Wakf violates rules against perpetuity in S. 12 and is invalid. A 1962 SC 1722 (1727 to 1729).

(18) A wakf-alal-aulad may be a wakf generally under Muslim law, but it is not so within definition of wakf in the Act except to the extent it relates to property dedicated for purposes recognised by Muslim law as pious, religious or charitable. (1971) 84 MLW 261(262) (DB).

(19) Where under the terms of the wakf deed there was no provision for distributing any part of the income in praesenti to any person other than the members of the family and only in the event of entire line in the family becoming extinct the poor persons could have the chance of coming and taking the benefit under the wakf deed such wakf would be a wakf-alal-aulad simpliciter and consequently outside the scope of Act. (1979) 1 Mad LJ 189(193).

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Section 3 — Note 6 (contd.)

(20) If any part of dedication is not within the ambit of Section 3 of Act VI of 1913 or if it fails because the section will not be applicable to it, it would not follow that to the extent of such failure, there would be a proportionate augmentation of the dedication for the religious and charitable purposes specified. Neither the two enactments nor the principles of Muslim law would enable court to add to dedication which must depend on intention, express or implied of the donor. (1971) 84 Mad LW 261 (263) (DB).

(21) The words "his family" in clause (a) of Section 3 of 1913 Act, will cover dedication in favour of donor's brother's son and his descendants or her brother's daughter and her descendants. If there is an immediate benefit under the dedication to a charitable or religious purpose of a permanent character, it may well be regarded as the ultimate benefit as well. (1971) 84 Mad LW 261(264) (DB)

(22) When land described as gher mumkin kabrasthan' (graveyard) was recorded as Shamlat Deh in the jamabandis for the years 1909-10 and 1945-46, it follows that the land had been left to be used as a kabrastan (graveyard) by the proprietors of the village. The dedication by anybody is not proved. For presumption of dedication from long user it has to be pleaded and proved by evidence. **Held**, that there was no evidence of intention to create a wakf by anybody whatsoever. AIR 1969 Punj 344 (347, 349, 350) : 71 Punj LR 1081.

(23) In order to hold that the property had become Wakf by user by applying the principle of lost grant, there must be satisfactory evidence to show that the grant itself was lost in antiquity and the evidence about it was not available and further that the property was being used as wakf property for a long time without interference. Mere presence of 2 or 3 graves on a piece of land where urs was held for sometime is not sufficient without proof of dedication of the same for religious purpose. A 1974 Kant 28 (30, 31) : (1973) 2 Mys LJ 316. (A 1924 Lah 58; A 1934 Oudh 263, Rel. on.; ILR 40 Cal 297 (PC), Dist.)

(24) Wakf by user — Indifferent evidence of a stray burial or two cannot establish wakf by user in absence of evidence of any express dedication. A 1971 Punj 482(485) : 73 Pun LR 224 (DB).

(25) A property dedicated by a non-muslim even if it is claimed to have been used for the purpose of wakf, cannot constitute a wakf under Section 3 (1). (1973) 1 Cut WR 216(221).

[See also A 1980 Andh Pra 199 (200, 202) ; (1980) 1 Andh LT 477. (Property dedicated to a Muslim shrine by non-muslim cannot be wakf.)]

(26) To create a valid wakf, the wakif has to divest himself of the property given in wakf. Very often possession of the property is delivered to the mutawalli or conveyed to him by the wakf. ILR (1968) 1 Cal 320 (330 to 332) (DB).

(27) Suit against Wakf Board for declaration of plaintiff's title and for injunction — Onus of proof — Burden initially lies on Wakf Board to prove that the grant was made by a Muslim if it wants to support its case that property is wakf. A 1974 Mad 225 (227, 228)) : (1974) 1 Mad LJ 253 (DB)

(28) Mutawalli — Vesting of power of alienation of wakf property in — Not inconsistent with wakf under Mahomedan Law. AIR 1964 Mad 18(21) (DB).

(29) Wakf — Muslim religion does not prohibit charity whereunder non-Muslim is likely to be beneficiary. A 1964 Mad 18 (21) (DB).

(30) Under Mohammadan law, wakf means permanent dedication of properties for any purpose recognised by law as religious, pious or charitable. It can be created by adopting his favourite mode of creating wakf or by endowing properties conforming to the law of trusts. A 1964 Mad 18(20) (DB).

(31) Under the Muslim Wakf Act, 1954 wakf includes a wakf by user also. In the scheme framed for the administration of the trust it was provided that the properties shall be held by the trustee. Object of the Trust was stated to be celebration of the Kandri of Hazrath Syed Sha Ghulam Mohideen Shuttari who was entombed in the durga etc. It could be said that by the time the scheme was framed, by long user of the property comprised of a durga, a mosque, a mazalarkhana and other religious institutions of Muslims and the entire income from the property was devoted to the religious purposes of Muslims. From the fact that some preference was shown to the descendants of the founder, it could not be said that the endowments ceased to be a wakf. A 1966 Mad 439 (441) : (1966) 1 Mad LJ 17.

(32) Dedication of properties for charity by testator — Document also creating charge in favour of his two relations on a small extent of income for duration of their lives — Held, that the Wakf Board had jurisdiction to treat the wakf as one coming under the Act. A 1965 Mad 121(122) (DB).

(33) Wakf deed providing that income from certain buildings shall be utilised for (a) lighting of a mosque, (b) payment for Pesh Imam of the mosque and reading of Koran, (c) performance of Gurubali with sacrifice of a goat in month of Bakrid in name of the lady executing the wakf and her husband and (d) feeding of poor once a year — **Held** objects mentioned in the wakf deed were recognised by Muslim law as pious, religious and charitable. A 1968 Mad 243(245) : (1967) 1 Mad LJ 65.

(34) Where the deed to wakf executed by a Muslim woman provided that she will be entitled to enjoy the income of certain properties and after her lifetime, son of her brother was to receive and enjoy the income, and was to perform in accordance with the family custom a barasia and fathia of her father, and was also to feed a traveller every day it was held that the deed was a valid wakf-alal-aulad. The performance of the annual barasia and fathia for the father and the feeding of a traveller were valid objects of wakf. AIR 1968 Mad 243 (246, 247) : (1967) 1 Mad LJ 65.

(35) Land used for Masjid and for Mohram festival from time immemorial — Land is wakf — Evidence of express dedication not necessary. AIR 1962 Orissa 95 (96, 97).

(36) A grant for kazi-service (Mushrut-at-khidmat) though falling in the purposes mentioned in Section 3 (1) cannot be a wakf if the donor is not a Muslim. A 1974 Mad 225 (228) (1966) 1 Mad LJ 379, **Overruled.)**

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Section 3 — Note 6 (contd.)

[See however AIR 1983 Andh Pra 57 (61) : (1982) 2 Andh LT 313 (DB).

(37) A dedication of property, the income of which is to be devoted not merely for the reading of Koran but also the performance of Fateha ceremonies and poor feeding on certain occasion at the tomb of a person who took the name of Gnaniar and commanded a large number of disciples and the tomb was also being held in great veneration, was a wakf within Section 3 (1). (1968) 2 Mad LJ 144 (149): (18 Mad 201, held not good law.)

(38) Land assigned to Muslim for purpose of juma festival — Held, wakf property. (1976) 89 Mad LW 543 : (1976) 2 Mad LJ 314 (320) (DB).

(39) A mosque built for public access — Access given to public in a thoroughfare intended to be used by public — It is a wakf property being dedicated to public use. 1981 Cur LJ (Civil) 401(404) ; 1981 Pun LJ 572 (DB).

(40) Paristashgah (a place of worship) meant for both followers of Hinduism and of Islam does not fall within the definition of wakf — To constitute a valid wakf the trust must be only for the benefit of Muslim community. ILR (1973) Him Pra 860(868).

(41) Part of Wakf income utilized for maintenance and education of poor and needy descendants of testator — Does not cease to be charitable and religious purpose — An essential condition for creation of wakf. Section 46 applies. ILR (1980) 1 Ker 545 : 1980 Ker LT 497 (498).

(42) Absence of evidence that certain Muslim evacuee property was ever used as wakf property — No dedication of the property to be wakf property — No evidence that the property was determined to be wakf property by the Custodian — Held, there could never be a wakf attaching to such property. A 1975 SC 1891 (1892).

(43) Governor's notification under S. 55 (2) of Administration of Evacuee Property Act delegating powers of Government under Section 54 (1) thereof to Wakf Board in respect of Muslim evacuee property of religious nature — Absence of any indication in notification that certain open land (a Muslim evacuee property) was wakf property — Mere exercise of powers by Board under Wakf Act in respect of the said property would not establish that the property was wakf property. A 1975 SC 1891 (1892).

(44) Suit property described as "Idgah" in "Rent Demand and Collection Register" — Register neither in Form 10 nor under R. 33 of Administration of Evacuee Property (Central) Rules — Suit property cannot become wakf property by mere use of word "Idgah" in the Register. A 1975 SC 1891(1892).

(45) Where there was nothing on the record to show that a tree standing on wakf land had been dedicated to wakf no presumption as to creation of wakf with respect to tree would be drawn. 1981 All LJ 669(672).

(46) When inam is resumed and regranted it does not mean that there is revocation of service — Once wakf is created it continues to be a wakf. (1978) 2 APLJ 399 : (1979) 1 Andh WR 445 (447).

(47) Since celebration of Muharram festival and providing food and resting place for itinerant Fakirs are religious and charitable objects, and since those objects are 'beneficiaries' within the meaning of Clause (a) of the section, for whose benefit the wakf was created all the requirements of wakf as defined would be satisfied and Inam property in question would be deemed to be wakf property. (1978) 2 APLJ (HC) 399 : (1979) 1 Andh WR 445 (447).

(48) A grant of inalienable inam with both melavaram and keduvaram rights not to an individual but to the office of Kazi for the purpose of his performing religious and charitable duties must be treated as wakf even in absence of the use of the term 'wakf' in the grant. (1972) 2 Andh WR 327(341) (DB).

(49) When once the property was held to be wakf it would always retain its character as a wakf and the grant of a patta in favour of the Mokhasadars in possession of the property does not in any manner detract from the earlier dedication made of the property constituting the same as wakf. (1984) 2 APLJ 259(267) (DB).

(50) After the amendment of Act by Amendment Act of 1964, all service grants made for any purpose recognised by Muslim law as pious, religious or charitable have the effect of constituting the property subject matter of the grant to be wakf. (1984) 2 APLJ 259(264) (DB).

(51) Where a property was dedicated for the use of all travellers irrespective of their caste, creed or religion and whether they were rich or poor the dedication was not a wakf. A 1982 Kant 309 (312, 313) : (1982) 2 Kant LJ 176 (DB).

(52) When there is no separate dedication for pious, religious and charitable purposes and for purposes of the maintenance of the members of the family the entire document has to be taken as creating wakf (wakf-alal-aulad) and properties would come within the purview of the Act. A 1982 Mad 293 (296) : (1981) 2 Mad LJ 176.

(53) Where under a wakf-alal-aulad in praesenti there was no dedication for pious, religious or charitable purpose recognised by Muslim law, wakf would be outside the scope of Act. A 1979 Mad 231(233) : (1979) 1 Mad LJ 189 (DB).

(54) Only such wakf-alal-aulad in which simultaneously with the making provision for family members and descendants some property is dedicated for any purpose which is recognised as pious, religious or charitable by Muslim law will be covered by the definition of 'wakf' under Section 3 (i) (iii). A 1975 Pat 48(56) ; 1974 BLJR 661 (DB).

(55) Wakf deed providing every heir of settlor as beneficiary and also heirs of descendants. Income was to be distributed according to Shariat — One son dying before settlor — That the shares were to be divided according to the shariat did not mean that the person who was mentioned in deed as beneficiary his heirs would be deprived of the share belonging to him. The rights in the deceased could not be taken back till his branch was extinguished. A 1982 All 511(513) [illegible]

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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 [a][Survey Commissioner] of Wakfs and as many additional or assistant [b][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 [b][Survey Commissioners] of wakfs shall perform their functions under this Act under the general supervision and control of the [a][Survey Commissioner] of Wakfs.

(3) The [a][Survey Commissioner] shall, after making such inquiry as he may consider necessary, submit his report [c][in respect of wakfs existing at the date of 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 [d][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 [a][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 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.

[c][(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).]

[a] Substituted for the word "Commissioner" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 4 (is not yet enforced).

[b] Substituted for the word "Commissioners" ibid, S. 4 (ii).

Section 4

(1) Commissioner empowered to list out wakf properties but has no power to decide title disputes. A 1973 Mys 189(190): (1973) 1 Mys LJ 103 (DB).

(2) Power of Wakf Commissioner to make survey of wakf properties — Power includes an enquiry whether certain property is wakf property or not. **A 1979 SC 289(296).** (A 1967 Raj 1 Reversed).

[See also A 1932 Oudh 210 (FB).]

(3) Till the preliminary survey made by the Commissioner appointed under the Act and the property included in the wakfs and list is published the management and superintendence of wakf property does not vest in the Board. 1982 Pun LJ 104 (105).

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[c] Inserted and deemed to have always been so by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 4.

[d] Substituted and deemed always to have been so, for the words 'in the State', ibid.

[e] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 4 (iii) (Not yet enforced).

5. Publication 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 [a][b][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.

[a] Substituted for the words 'existing in the State' by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 5 with retrospective effect.

[b] Substituted for the words, "existing in the State, or as the case may be, the part of the State" by the Wakf (Amendment) Act, 1984 (69 of 1984), Section 5 (Not yet enforced).

Section 5

(1) Under the Act there is no provision for Wakf Board to make any enquiry regarding character of property. Commissioner makes only a preliminary inquiry regarding wakfs and a publication of list of wakfs is made under Section 5. This is only an administrative act and not a quasi-judicial act. (1974) 1 Mad LJ 253(256) (DB).

(2) Till the preliminary survey has been made by the Commissioner appointed under the Act and the property is included in the wakf and list is published the management and superintendance of the wakf property does not vest in the Board. 1982 Pun LJ 104 (105) : 1982 Land LR 526.

(3) It is clear from Sections 5 and 6 when read together that the list of Wakfs published in the Gazette shall be final and conclusive qua the Board, the mutawallis of the Wakfs or any person interested therein. It cannot be said that the third persons are also bound by the aforesaid notification. In case any dispute arises between the Board and the third persons the notification will not be binding on them (third persons). The question of title arises between such parties and that can be got resolved by instituting a suit in the Civil Court. 1973 Rev LR 467 (472) (Punj).

[See also AIR 1981 Raj 98(104) : 1980 WLN 343 (DB) •• A 1978 Andh Pra 34(36) (DB).

(4) Court coming to conclusion that suit property was not wakf property and that it belongs to plaintiff — Court should issue direction to Board of Waks to delete it from list of Wakf properties and to publish Corrigendum in Gazette to that effect, if necessary. A 1974 Kant 28(31) : (1973) 2 Mys LJ 316 (319, 320) (DB).

(5) What is final under Section 6 (4) is the list of wakf published under Section 5 (2). A 1969 Raj 1 (7) : 1969 Raj LW 77 (DB).

(6) Dedication of properties for charity by testator — Document also creating charge in favour of his two relations on a small extent of income for duration for their lives coming under the Act — Held that though the wakf deed mentioned charitable and secular objects, an allocation of income from the wakf properties between the two objects was not necessary before the Wakf Board made a notification under Section 5 (2). A 1965 Mad 121 (122) (DB).

(7) Act not confined to public wakfs — But ultimate or concurrent gift to religious or charitable purposes is necessary. (1968) 2 Mad LJ 144 (145, 146).

(8) The Wakf Board has to examine the report forwarded to it and publish in the official Gazette, a list of wakfs existing in the State, that means still existing and not of those which have already become extinct. A 1967 Raj 1 (5) (DB).

(9) Suit against Board for declaration that suit property mentioned in list is not wakf property — Suit without notice under Section 56 — Contention that Section 56 is not applicable as no grievance is made against act of Board and that suit being for relief of particular nature, Section 56 is not attracted because it makes no provision for relief. (1966) 2 Mad LJ 104 (108 to 110) (DB).

(10) Where there is no evidence that the suit property was dedicated for public wakf and the defendant denies the property being wakf it is obligatory on the part of the plaintiff to prove that the property was wakf property or the property vested in the plaintiff by virtue of Section 5 and Section 6 of the Wakf Act it has to claim the benefit of extended period of limitation under Public Wakfs (Extension of Limitations) Act (29 of 1959). 1982 Rev LR 159(161) (DB).

(11) Publication in gazette that a particular property is wakf property without giving notice to persons affected is improper. It offends principles of natural justice. A 1972 Mad 8(9) : (1971) 2 Mad LJ 218.

(12) Notification under Section 5 (2) that property was wakf — Alience of property not having a notice of the notification is not bound by the notification. [illegible]

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6. Disputes regarding wakfs.— (1) If any question arises [a][whether a particular property specified as a wakf property in a list of wakfs published under sub-section (2) of section 5 is a 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.

[b][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.]

[c][Explanation.— For the purposes of this section and section 6A, the expression "any person interested therein", occurring in sub-section (1) of this section and in sub-section (1) of section 6A, 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 [d][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.

Section 5 (contd.)

[Reversed on another point in A 1982 Mad 376].

(13) Civil suit by State Wakf Board for recovery of possession of properties being minor inams and past and future mesne profits. Though civil Court cannot go into the question of title to the properties if does not mean that the civil court has no jurisdiction to go into the question whether it is or it is not open to the Board to seek to recover possession of the properties. (1978) 1 Mad LJ 542(550).

Section 6

(1) Section 6 which refers to filing of civil suits makes it clear that the decision of civil court shall be final. It is nowhere stated that any decision of either the Commissioner or Wakf Board shall be final subject to decision by a civil Court for the simple reason that neither the Commissioner nor the Wakf Board makes any decision after an enquiry regarding character of property. (1974) 1 Mad LJ 253(256) (DB).

(2) Where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list published under sub-section (2) of Section 5 of the Act. The failure of such a person to institute a suit in a civil court of competent jurisdiction for decision of such question within a period of one year, as provided for under sub-section (1) of Section 6 does not make the inclusion of such property in the list of wakfs published by the Board final and conclusive under sub-section (4) of Section 6. **AIR 1979 SC 289(299).**

(3) Suit by Wakf Board for possession and past future mesne profits of suit properties on the ground that they were wakf properties. They were minor inams before their abolition. It was contended that the suit was not entertainable by civil Court and would be entertained only by authorities established under Inam Abolition Act - Held that though it was open to the defendant to raise a contention that the question of title could not be gone into by civil Court that did not mean that the Civil Court had no jurisdiction to go into the question whether it was not open to the Board to seek to recover possession of the properties. (1978) 1 Mad LJ 542 (550) : ILR (1978) 2 Mad 436.

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[a][(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).].

[a] Substituted for certain words and deemed always to have been so by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 6.

[b] Inserted, ibid.

Section 6 (contd.)

(4) It is clear from Sections 6 and 5 when read together that the list of Wakfs published in the Gazette shall be final and conclusive qua the Board, the mutawallis of the Wakfs or any person interested therein. It cannot be said that the third persons are also bound by the aforesaid notification. In case any dispute arises between the Board and the third persons, the notification will not be binding on the third persons. If a question of title arises between such parties, that can be got resolved by instituting a suit in the Civil Court. 1973 Rev LR 467(472) (Punj).

[See also A 1978 Andh Pra 34(36) (DB).]

(5) Section 27 is comprehensive and is not to be read subject to Section 6. A 1969 Raj 1(5) 1968 Raj LW 345 (DB).

(6) Section 6 (1) did not invest Wakf Board with authority to decide questions whether a particular property belonged to Wakf or not and certainly so where the person claiming title is a stranger to Wakf. A 1973 Mys 189(190) : (1973) 1 Mys LJ 103 ** (1969) 2 Andh WR 265(266). (The entire scheme of the Act indicates that Wakf Board's jurisdiction is confined to matters of administration of the wakfs and not to adjudication of questions of title.)

(7) Grant made for purpose of pesh imam service in mosque and to continue till service was performed - **Held**, grant was to mosque and hence wakf property. (1977) Andh LT 463 (467) (DB).

(8) The object is to narrow down the dispute between the Board of Wakf, the Mutavali and the person interested in Wakf. It does not concern a dispute if it is raised by a person who is an utter stranger to the wakf. The list cannot be final and conclusive against a non-Muslim who is not covered by Section 6 (1). The words 'any person interested therein' appearing in Section 6 (1) mean no more than a person interested in a wakf as defined in Section 3 (h). A 1967 Raj 1 (5 to 9) (DB).

(9) Expression "person interested in a wakf" covers a non-Muslim who performs religious rites or participates in religious institutions connected with the wakf. A 1978 Andh Pra 156 (158) : ILR (1977) AP 1201.

(10) What is final under Section 6 (1) is only an issue as to whether Wakf is a Shia Wakf or Sunni Wakf or whether particular property is Wakf property or not — It is only in respect of matters which are comprised within scope of a statutory suit that the bar of limitation in proviso to Section 6 (1) of the Act will be attracted — But when the question is whether a subsequent trustee or Mutawalli can alter the terms of dedication of earlier founder, it is outside scope of statutory suit and bar of limitation in Section 6 (1) will not apply to it. (1971) 1 Mad LJ 79 (DB).

(11) Expression 'any person interested therein' has reference only to persons interested in the wakfs. Limitation for suit by person only interested in the lands and not in the wakfs which are now listed in the impugned notification under S. 5 (2) as properties belonging to the wakf is governed by Article 120 of the Limitation Act (1908), and hence Article 14 of the Limitation Act, 1908, is not applicable. (1969) 1 Andh LT 127 (132, 133).

(12) Suit for declaration that an earlier decree inter partes did not create a valid wakf - Filed one year after the publication of list of Wakfs by the Board — Is time barred. A 1973 Mad 191 (197) : 85 Mad LW 633 (DB).

(13) Civil suit for declaration that plaintiff is a mutawali or co-mutawalli — Suit barred by Section 6 — Suit not maintainable. 1974 Rajdhani LR 70 (78, 79).

(14) List of wakfs published — Wakf Board is not divested of its jurisdiction to enquire into disputed wakfs. A 1969 Raj 1 (7) : 1969 Raj LW 77 (DB).

(15) Mere existence of two or three graves on or near suit land or the circumstance that urs was being carried on there for some time is not sufficient to hold that it is wakf property without proof of dedication of same for religious purpose. A 1974 Kant 28 (30) : (1973) 2 Mys LJ 316 (319) (DB).

(16) A stranger non-Muslim who is in possession of property and which is included in list published under Section 5 (2) is not required to file a suit for declaration of his title within a period of one year. The special rule of limitation laid down in proviso to sub-section (1) of Section 6 is not applicable to him. A 1981 Raj 98 (104) : 1980 WLN 343 (DB).

(17) Where an aggrieved party fails to resort to the provisions of Section 6, for settling dispute about the wakf character of the property, by filing a civil suit, he will be precluded from agitating the same question over again in writ proceedings. A 1969 Mad 66 (68) : (1968) 1 Mad LJ 19.

(18) Petitioners claiming that income from private wakf was not liable to contribution as claimed by the State Wakf Board — No question whether corpus is wakf — Section 6 not attracted — Writ petition is maintainable. (1968) 1 Mad LJ 410 (417).

(19) Suit under, for decision of question whether wakf was Shia Wakf or Sunni Wakf — Two sects of Muslims, viz., Shias and Sunnis of the place, are not necessary parties to the suit — If, however, Court finds their presence necessary in order to enable it effectually and completely to adjudicate upon and settle all questions in suit it can have recourse to provisions of O. 1, R. 8, Civil P. C. 1968 Raj LW 337 (340).

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[c] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 6 (a) (not yet enforced).

[d] Substituted for the word "Commissioner" ibid, S. 6 (b).

[e] Inserted ibid, S. 6 (c).

*[6A, **Power of Tribunal to determine disputes regarding wakfs.**— (1) If, after the commencement of the Wakf (Amendment) Act, 1984, any question arises whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of S. 5 is wakf property or not, or whether a wakf specified in such list is a Shia Wakf or a Sunni Wakf, the Board or 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 of the list of wakfs relating to any part of the State and published or purporting to have been published after the commencement of the Wakf (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 the 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 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 reopen 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 wakf shall be stayed by any court, tribunal or other authority by reason only 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.

Section 6 (contd.)

(20) Where the Punjab Wakf Board filed a suit for possession of property claiming to be wakf property but there was no evidence of dedication of the property and that it vested in the plaintiff by virtue of Ss. 5 and 6 of the Wakf Act and the defendant also denied that it was a Wakf property it was held that it was obligatory on the part of the plaintiff to prove that the suit property was dedicated to public wakf to be able to invoke the provisions of the Act. 1982 Rev LR 159 (161) (Punj).

(21) Suit against Board — Notice of — Suits under Sections 15 (3) and 27 not different so far as Section 56 is concerned. (1966) 2 Mad LJ 104 (108) (DB).

(22) Till the preliminary survey has been made by the Commissioner appointed under the Wakf Act and the property included in the wakf list is published the management and superintendence of the wakf property does not vest in the Board and the Board cannot file a suit for possession of the alleged wakf property. 1982 Pun LJ 104 (105) : 1982 Land LR 526.

(23) Even Mutavalli or any person filing suit must issue notice as required by S. 56 — Only Wakf Board need not comply with provisions of notice. (1966) 2 Mad LJ 104 (107) (DB).

(24) Notification under Section 5 (2) that property was wakf — Alienee of property who had no notice of the notification is not bound by the notification. ILR (1976) 2 Mad 342 (348). (Reversed on another point in A 1982 Mad 376.)

(25) Act does not empower Board of Wakfs to decide the question whether particular property is wakf property or not if such dispute is raised by person who is stranger to wakf. AIR 1967 Raj 1 (9) : 1966 Raj LW 582 (DB). (AIR 1932 Oudh 210 (FB), Dissented from.)

(26) Execution proceedings of decree passed in suit for possession of wakf property after Wakf Act came into force in State of Bihar — Cannot be instituted by Mutawalli of Wakf property — the power is vested in the Board which can sue and be sued in its own name. A 1983 Pat 299 (302) : 1983 BBCJ (HC) 430 (DB).

(27) Persons who have no interest in the wakfs, i.e., persons other than those defined in Section 3 (h) are not amenable to the jurisdiction of the Commissioner or the Wakf Board. (1975) 1 APLJ 236 (240) : (1975) 2 Andh WR 22 (DB).

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

(4) The list of wakfs 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.]

[a] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 7 (not yet enforced).

7. Recovery of costs of survey.— (1) The total costs of making a survey [a][including the cost of [b][publication of list or lists of wakfs]] under this Chapter shall be borne [c][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 [d][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 the State Government, be recovered from the property comprised in the wakf in the same manner as an arrear of land revenue.

[a] Inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 3 (10-10-1964).

[b] Substituted for 'publication of list of wakfs' by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 7 (a) (2-12-1969).

[c] Substituted for certain words, ibid, S. 7 (b).

[d] Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 8 (not yet enforced).

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.

[a][CHAPTER IIA

CENTRAL WAKF COUNCIL

8A. 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.

8B. 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 [b][* * *] of the [b][* * *] pool of which [b][* * *]

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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 [b][* * *] 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.

8C. 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.

8D. Power of Central Government to make rules.— (1) The Central Government may, by notification in the Official Gazette, make rules[c] 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 [d][in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] in which it is so laid or the session immediately following 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.]

[a] Chapter IIA consisting of Ss. 8A to 8D inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 4 (10-10-1964).

[b] Words 'of the properties' and 'of the property' omitted by ibid, 1969 (38 of 1969), S. 8 (2-12-1969).

[c] For Central Wakf Council Rules, 1965, See Gaz. of Ind., 1965, Pt. II, S. 3 (i), p. 595.

[d] Substituted for the words "in two.....following" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 9 (not yet enforced).

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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.

[a][(1A) 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 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 or 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) [b][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.

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

[a] Inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 5 (10-10-1964).

[b] Substituted for the words "the said Board" ibid.

[c] Inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 10 (not yet enforced).

[a][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 remainder of the mem-

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Section 9

(1) The State Wakf Board was not functioning in the district of Kanyakumari before its transfer to Madras State and hence there can be no question of want of jurisdiction in the Wakf Board of this State by reason of S. 109 of the States Reorganisation Act, (1956), as under this section the Wakf Board was constituted for the entire State including that district in 1958. (1968) 2 Mad LJ 144 (142, 150).

(2) Wakf Board is constituted by the Wakf Act as a statutory body, and a statutory body is not a part of the Government and its officers are not officers of the Government. (1969) 1 Andh LT 127 (132, 133).

(3) Suit against Secretary of Wakf Board but not against the Board — Wakf Board being a corporate body under Section 9 (2), suit against its secretary is incompetent. (1985) 1 Orissa L Rev 78 (80).

(4) Suit for eviction — Rented premises property of Wakf Board — Person appointed as mutawalli for managing property and receiving rent is "landlord" entitled to file suit for eviction. A 1982 Him Pra 95 (96); (1982) 2 Ren CR 126 (DB).

(5) Disputes regarding wakfs — Executing proceedings of decree passed in suit for possession of wakf property after Wakf Act came into force in State of Bihar — Cannot be instituted by mutawali of Wakf property. A 1983 Pat 299 (302): 1983 BBCJ 433 (DB) (Pat).

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bership 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 or the 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 appointing suitable persons as members of the Board:

Provided also that 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 the Shia Wakfs and Sunni 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.

(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'.]

[a] Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 11 (Not yet enforced).

STATE AMENDMENT

Maharashtra

In its application to the State of Maharashtra, for sub-section (2), substitute the following:

"(2) There shall be a Chairman of the Board who shall be nominated by the State Government from amongst the members appointed under section 11."—Mah. Act 43 of 1965, S. 2 (26-10-1965).

[a][11. * * * * * *]

[a] Omitted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 12 (Not yet enforced).

Section 11

(1) The provisions of Sections 11, 18, 52, 62, 63 and 67 do not run counter to Art. 26 (b) and (d) of the Constitution and are valid. A 1959 Madh Pra 377 (379, 382).

(2) Fact that a person is a mutawalli does not prohibit his appointment under other clauses if he is qualified under them. 1970 Serv LR 569 (570) (Ker) (DB).

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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;

[a]["(d) if 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;

(e) if 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.".]

[a] Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 13 (Not yet enforced).

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, the [a][general superintendence of all wakfs in a State in rela-

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Section 11 (contd.)

(3) Section 11 empowers the State Government to appoint members of the Board and lays down categories from which such appointments could be made and provides for proper strength of Shia or Sunni members in the Board. Having regard to the functions which the Board is required to perform under the Act, it is difficult to say that Section 11 is in any way contrary to any right guaranteed by the Constitution. A 1959 Madh Pra 377 (382).

(4) Appointment of members of Wakf Board — Prohibition under Proviso that only one Mutawalli can be appointed as member under Cl. (d) — Prohibition does not apply if Mutawallis can be appointed under other clauses of S. 11. A 1983 MP 53 (57) (DB).

(5) Persons who are members of the Haj Committee or the Railway Users' Consultative Committee could not be regarded as persons having knowledge of administration, finance or law within the meaning of cl. (c) as there is neither any nexus nor any relative direct or indirect link between the sphere of activities of persons as members of such committees and the qualificational requirements laid down in cl. (c) of S. 11. A 1983 MP 53 (58) (DB).

(6) Appointment of members of Wakf Board under cl. (c) — Knowledge of administration, finance or law — Experience of 28 days as Director of Co-operative Land Development Bank cannot be regarded as sufficient for acquiring knowledge of administration or finance. Such person's capacity of President of District minority cell has no nexus with works and qualifications envisaged under S. 11 (a). A 1983 MP 53 (58) (DB).

(7) Simply because a person is a member of the Jamiat-Ul-Ulema-I-Hind, he could not be said to be eligible under Cl. (b) because under that clause, what is required is that a person should have knowledge of Muslim Law and he should be representing an Association such as the Jamiat-ul-Ulema-I-Hind. A 1983 MP 53 (58) (DB).

(8) Appointment of members of Wakf Board under Section 11 (b) — Knowledge of Muslim law — Kazi can be appointed as member under Cl. (b). A 1983 MP 53 (59) (DB).

Section 12

(1) Tenure of membership — Office is not held during the pleasure of Government. 1978 Serv LR 569 (570) (DB) (Ker).

(2) Proceedings of Board after expiry of term of its members resulting in reconstitution of District Wakf Committee — Not invalid in view of Section 20. A 1976 Andh Pra 165 : (1976) 1 Andh WR 102 (DB).

(3) Word 'member' in S. 12 does not include chairman. A 1980 Punj 306 (DB).

Section 15

(1) Under Section 15 the Wakf Board has general powers of superintendence and control over all the wakfs in the State subject to the

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tion to all matters, 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.

[b]['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;

[c]["(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][(d) * * * * *;]

[e][(e) to direct—

(i) the utilization of the surplus income of a wakf consistently with the objects of the wakf;

Section 15 (contd.)

direction of the wakf, its purpose and any usage or custom of the wakf sanctioned by the Muslim Law. Clauses (g) and (o) of sub-section (2) of the section give the Board power to appoint and remove Mutavallis and do all acts necessary for the due control and administration of the wakf. (1969) 2 Mad LJ 556 (557, 558) ** A 1985 Andh Pra 127 : 1984 (2) AP LJ (HC) 259 (DB).

(2) Application for removal of Mutavalli — Enquiry by Wakf Board — During pendency of enquiry mutavalli dispossessed and management of wakf taken over by Board — Act of Board unjustified. (1980) 1 Mad LJ 235 (237) : (1980) 93 Mad LW 546.

(3) Where the wakf deed confers on absolute power or discretion upon the Managing Trustee to appoint or not to appoint a manager, for a statutory body like the Wakf Board to force hands by calling upon the Trustee to appoint a manager, it cannot be said to be in conformity with the provisions of the Wakf deed and the proviso to Section 15 (1) of the Act is clear that the right of issuing directions is to be exercised only in conformity with the directions of the Wakf. ILR (1976) 1 Ker 419 (423, 424).

(4) Mutawalli — Appointment of — Wakf Board and not the State Government is competent. A 1981 Kant 37 (39) : (1981) 1 Kant LJ 63.

(5) Wakf Board has power to appoint mutavallis as per the scheme which has been framed by civil Court prior to passing of the Act. A 1982 Mad 115 (116, 117) : (1982) 1 MadLJ 245.

(6) Power of superintendence and control could not amount to management, management being the administration of day-to-day affairs of the Wakf. (1982) 1 KantLJ 59 (61, 62) : (1982) 1 RenCR 216.

(7) Wakf governed by Act — Compromise decree — A and B appointed joint mutawallis — B put in charge of management of wakf property — Suit by A against B for his share of income and rendition of accounts is maintainable and Ss. 15, 44 and 45 did not vest authority in Wakf Board to compel one mutawalli to render an account to another co-mutawalli. A 1978 Mad 121 (124, 125) : (1978) 1 MadLJ 103.

(8) All suits prescribed under different sections of the Act are covered by the requirement of 'notice' as contained under S. 6 of the Act. (1966) 2 MadLJ 104 (107, 108) (DB).

(9) Removal of mutavalli — Order directing taking over administration of wakf by Board and appointing executive officer — Omission to give notice under S. 43 (1) (c) — Wrong provision mentioned in the order — Effect is — Order still remains operative. A 1978 Mad 33 (35, 36) : (1977) 2 MadLJ 164.

(10) Suit against Wakf Board for declaration of plaintiff's title and injunction restraining Board from taking possession of property in execution of decree obtained by Board falls under S. 15 — Section 56 notice is must — Failure to give notice is not formal defect and plaint is liable to be rejected. A 1982 Mad 202 (204) : (1981) 2 MadLJ 437.

(11) Power to interfere with possession and management of wakf properties by mutavalli not having been conferred on Wakf Board under the Act, cannot be exercised by the Board. A 1971 Mad 243 (244, 245).

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(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,

[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 *[shall be exercised under sub-section (1)]

Section 15 (contd.)

(12) This section does not empower the Board to transfer the management of a Wakf taken over by it to another organisation or person. ILR (1982) 2 Kant 1172(1177).

(13) Powers of Board — Wakf being administered as per scheme settled in suit — Dispute over rights among descendants of founder of Wakf — Board has no jurisdiction to decide such dispute. A 1966 Mad 307(308).

(14) There is no provision under the Act for the Wakf Board to interfere with the administration of Wakfs which are controlled and administered under the scheme by a Civil Court, therefore the suit filed by Board for declaration that election of the trustees functioning under the scheme is void and invalid, is without jurisdiction. 1983 TLNJ 418 (421, 422) ** 1982 TLNJ 72(73) ** (1976) 89 MadLW 708 (709, 710) ** (1975) 88 MadLW 265 : (1975) 1 MadLJ 201.

(15) Civil Court has jurisdiction to determine to what extent property is dedicated for religious and charitable purposes. A 1968 Mad 243 (256) : (1967) 1 MadLJ 65.

(16) Board's power to appoint or remove a mutawalli is strictly limited to the special circumstances mentioned under Ss. 42 and 43 read with Ss. 15, 44 and 45 — Board cannot adjudicate upon validity of appointment to the office of Managing Trustee of Mutawalli in terms of Wakf deed — That is for the Civil Court to decide. A 1982 Ker 322 (324, to 327) : ILR (1982) 2 Ker 364.

(17) Settlement of scheme of management of mosque — Framing of scheme without hearing six out of eight trustees is illegal and must be set aside — They are parties affected within proviso to S. 5 (2) (d) — Wakf Board should hear them before settling a scheme for mosque. A 1972 Mys 60(61) : (1971) 2 MysLJ 518 (DB).

(18) Grant of land by a non-Muslim Ruler in favour of Fakkirs visiting the mosque and not to the mosque is neither a wakf nor a deemed wakf under S. 66 — Scheme decree also already framed for the property by Civil Court — Sanction for lease of land under S. 36A is not necessary — In such case general power of superintendence of the Wakf Board over all Wakfs under S. 15 will not enable the Wakf Board to interfere with the schemes framed by the Civil Court. A 1983 Mad 297(302) : (1983) 1 MadLJ 299 (DB).

(19) Wakf created before Act — Scheme framed by Civil Court in force — Wakf Board has power to direct Mutawalli to get properties registered under Act and to submit accounts etc., to it — Mutavalli need not file any return to Civil Court under the scheme. A 1969 Mad 350(351) ; (1968) 2 MadLJ 365.

(20) Scheme framed under S. 92, C. P. C. prior to coming into force of Act — Scheme does not cease to be operative after coming into force of the Act. A 1982 AndhPra 342 (348)(DB). (A 1969 Mad 350, Diss. from.)

(21) After the passing of the Act, the Board has been given specific powers for grant of lease for a term exceeding three years. Such a provision in S. 15 (2) bars the jurisdiction of the Civil Courts, to take cognizance of an application asking for sanction of such leases. After the passing of the Act, an application to the Court is misconceived. It is open for the parties to make such application to the Board itself which alone is competent to accord sanction. A 1966 Orissa 208(210) : ILR 1966 Cut 207.

(22) Lease of Wakf property by Mutavallis cannot be held to be invalid on the ground that the lease deed as finally settled has not been submitted for sanction by Board. It is sufficient if previous sanction is obtained with reference to all essential terms of the proposed lease. (1982) 2 KantLJ 264(276).

(23) Evidence of origin and dedication to Wakf should be shown to vest property in Board. A 1969 Punj 344(347) : 71 PunLR 1081.

(24) Adverse possession — Land alleged to be Wakf not in possession of Board for over twelve years — Claim of Board is barred. A 1969 Punj 344(350) : 71 PunLR 1081.

(25) Wakf property — Usufructuary mortgage by Mutavalli in favour of his own legal representatives — Suit for recovery by Wakf Board — Maintainable — Plea of adverse possession not available to mortgage in view of S. 10 of Limitation Act 1963. A 1982 Mad 376(380) : (1982) 1 MadLJ 226. (ILR (1976) 2 Mad 343, **Reversed.**)

(26) Suit for recovery of Wakf Property — No evidence to show that the State Wakf Board itself had assumed direct management of the endowment 'Agari Pallivasal' under Section 43-A of the Wakfs Act, before it filed the present suits — Held, that the State Wakf Board has not been appointed [illegible] of Ex-

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(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,

[h][(f) * * * * * *]

(g) to appoint and remove muttawallis in accordance with the provisions of this Act;

[i][(h) * * * * * *]

(i) to institute and defend suits and proceedings in a court of law relating to wakfs;

[j][(j) to sanction in accordance with the Muslim law, any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange [k][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][(l) * * * * * *

(m) * * * * * * *

(n) * * * * * * *]

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

(3) Where the Board has [m][* * * * * * *] given any direction under clause (e) of sub-section (2), any person interested in the wakf [n][or affected

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Section 15 (contd.)

Act, 1963, does not apply. ILR (1976) 2 Mad 343(351). (Reversed on another point in A 1982 Mad 376.)

(27) Where the Mutawallis of Wakf property initially created usufructuary mortgages in respect of certain Wakf properties and sold them only after 14-8-1947, S. 3 of Public Wakfs (Extension of Limitation) Act (1959), (as amended by T. N. Act 19 of 1972) would apply and the suits for recovery of possession by Wakf Board would be saved from the bar of limitation as the dispossession of Wakf in relation to properties in question could be said to have occurred only when sales were effected and not when usufructuary mortgages were effected. A 1982 Mad 376 (379, 380) : (1982) 1 Mad LJ 226. (ILR (1976) 2 Mad 343, Reversed.)

(28) Suit for recovery of possession of Wakf properties filed by Mutawalli in 1959 — Application of defendants allowed — Wakf Board, constituted on 12-4-1973 in pursuance of New Central Wakf Act, filing application under S. 57 (1) of Wakf Act. For setting aside the judgment in appeal and rehear appeal on ground that it was not represented in proceedings — Application is not maintainable. A 1985 NOC 31 (Pat).

(29) Wakf in its nature is a permanent dedication of property for a purpose recognised by the Muslim Law as pious, religious or charitable when once the property is held to be wakf, it always retains its character as a wakf and the grant of a patta under a compromise decree in favour of the Mokhasadars in possession of the property does not in any manner detract from the earlier dedication made of the property constituting the same as wakf. A 1985 AndhPra 127 : (1984) 2 APLJ 259 (DB).

(30) Recovery of evacuee wakf property — Sec. 11 (1) of the Administration of Evacuee Property Act prevails over any other law for the time being in force and in view of that section it is not open to the Wakf Board to have recourse to the provisions of Muslim Wakfs Act. 1977 RevLR 286(288) : 1977 Pun LJ 271 (Punj).

(31) Administration of Evacuee Property Act (31 of 1950), S. 11 — S. 11 is not impliedly repealed by S. 15 of the Wakf Act — Evacuee trust — Suit in respect of — Not maintainable by Board. A 1984 Pun 68(77)(FB).

(32) Notification under S. 55 (2) of A. of E. Property Act, delegating powers of Government under S. 11 (1) of that Act to Wakf Board in respect of Muslim evacuee property of religious nature — Absence of any indication in notification that suit property was wakf property — Mere exercise of powers by Board under Wakf Act in respect of the said property would not establish that the property was wakf property. A 1975 SC 1891(1892).

(33) Wakf Board constituted under Wakf Act is a Manager — Suits can be filed by Wakf Board. A 1977 Mad 79(82) : (1976) 2 MadLJ 263.

(34) Power given to Commissioner of Wakfs under the Bengal Wakf Act (13 of 1934), Section 27 (1) (a) and (b) which requires investi-

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by such direction] may institute a suit in a civil court of competent jurisdiction for °[setting aside such directions] and the decision of the civil court thereon shall be final.

[a] Substituted for the words "general superintendence of all wakfs in a State shall vest" by The Wakf (Amendment) Act, 1984 (69 of 1984), S. 14 (a) (i). (Not yet enforced).

[b] Inserted ibid, S. 14 (a) (ii).

[c] Substituted ibid, S. 14 (b) (i).

[d] Omitted ibid, S. 14 (b) (ii).

[e] Substituted for certain words by The Wakf (Amendment) Act, 1964 (34 of 1964), S. 7 (10-10-1964).

[f] Substituted for the words "or as nearly as practicable similar, to the original object", by The Wakf (Amendment) Act, 1984 (69 of 1984), S. 14 (b) (iii). (Not yet enforced)

[g] Substituted for the words "shall be exercised", ibid, S. 14 (b) (iv).

[h] Omitted ibid, S. 14 (b) (v).

[i] Omitted ibid, S. 14 (b) (v).

[j] Substituted for former clause (j) by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 7 (10-10-1964).

[k] Substituted for the words, figures and letter "or lease, as required by section 36A" ibid, S. 14 (b) (vi).

[l] Omitted ibid, S. 14 (b) (vii).

[m] Omitted ibid, S. 14 (c) (i).

[n] Substituted for the words "or affected by such settlement or direction" ibid, S. 14 (c) (ii).

[o] Substituted for the words "setting aside such settlement or direction", ibid, S. 14 (c) (iii).

a[15A. 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.

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ection 15 (contd.)

ition and determination of the nature and tent of wakf property, must be exercised in i-judicial manner. A 1982 Cal 288(290) : CalWN 414 (DB).

(35) Suit for eviction — Rented premises operty of Wakf Board — Person appointed Mutawalli for managing property and reiving rent is "landlord", entitled to file suit r eviction. A 1982 HimPra 95(96) : (1982) 2 nCR 126.

(36) The provision of S. 15 (2) (h) is merely enabling provision or in fact a provision ich casts a duty on the Wakf Board to take asures for the recovery of lost property of any wakf, in accordance with law. This provision is not a substantive provision providing any procedure for recovery of the possession of any wakf property. A 1977 Kant 147(151) : (1977) 1 KantLJ 342 (DB).

(37) Power of State Government to issue directions under S. 53 does not include power to interfere with day-to day functioning of wakf. A 1981 Kant 154(159).

(38) Disputes regarding wakfs — Execution proceedings of decree passed in suit for possession of wakf property after Wakf Act came into force in State of Bihar — Cannot be instituted by Mutawalli of Wakf property A 1983 Pat [illegible]

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(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 the 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, or any ancient monument or archaeological site and remains which have been declared under the Ancient Monuments and Archaeological Sites and Remains Act, 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 the 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 monument within the meaning of the Ancient Monuments Preservation Act, 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; 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,

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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 authorise 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 authorise 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 of 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-sec. (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

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(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 to 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 the shopping centres, markets, residential flats and other structures, if any, constructed thereon.

(13) The provisions of sub-sections (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 authorise 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 utilised and submit such direction to the State Government for approval, and, thereupon, such surplus income shall be utilised for such purposes as may be specified in the direction as approved by the State Government.]

[a] See foot note [a] under section 15D.

[a][15B. Powers of inspection by Wakf Commissioner 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 wakf or wakf property, the Wakf Commissioner, or any other person authorised 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 is 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 muta-

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been working under him in the past, had misappropriated, misapplied, or fraudulently retained, any money or other wakf property, or had incurred irregular, unauthorised 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, unauthorised 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.]

[a] See foot note [a] under section 15D.

[a][15C. Recovery of the amount determined under section 15B.— Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 15B, 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 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 15B, 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.]

[a] See foot note [a] under S. 15D.

[a][15D. 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 15B 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.

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(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 15C, 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, 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.".]

[a] Ss. 15A to 15D inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 15. (Not yet enforced)

OBJECTS AND REASONS

"The Committee feel that it should be clearly brought out that the main function of the Board is to ensure that the income and property of the wakf are applied to the objects and for the purposes for which the wakf was created or intended and that in performing its functions, the Board should act in conformity with the directions of the wakif.

It is also necessary to provide that when the Board settles any scheme of management for a wakf or directs in accordance with the cy pres doctrine in what manner the income of a wakf or surplus income thereof should be utilised, an opportunity should be given to the parties affected to represent their cases before the Board. Moreover, the aggrieved parties should have the liberty to file a civil suit for setting aside the decision of the Board. When the Board has to decide in accordance with the cy pres doctrine how the income or surplus income of a wakf should be utilised, the functions of the Board should be exercised—

(i) in the case of a Shia Wakf, by the Shia members of the Board only; and

(ii) in the case of a Sunni wakf, by the Sunni members of the Board only.

The Committee feel that there may be some Boards where there may not be an adequate number of Shia members or Sunni members and in such a case, the Board may co-opt persons who are Shias or Sunnis, as the case may be, to be temporary members of the Board for exercising its powers for the aforesaid purpose only.

In order that the Board may have effective control over the administration of wakfs the Committee consider that the Board should be given power to scrutinise and approve the budgets submitted to it by mutawallis. The Board should also arrange for the auditing of accounts of wakfs. These provisions have accordingly been incorporated in this clause."—S.C.R. (1954).

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 [a][and the term of office] of such committees shall be determined from time to time by the Board:

Section 16

(1) When a mutawalli recognised by the Wakf Board is effectively working, the Board has no power to appoint a committee for the Management of Wakf or to direct him to hand over the record to the committee without removing him. The fact that a supervisory committee can be appointed under S. 16 does not mean that the Board can direct the mutawalli to hand over the entire property to the committee without having recourse to S. 43 or S. 43-A. A 1974 AndhPra 287 : (1974) 1 Andh WR 33 (DB).

(2) Section confers powers to constitute committees for supervision of wakfs and for no other purpose. A 1967 Andh Pra 291 (293) : (1967) 1 AndhWR 221 (DB).

(3) Constitution of managing committee — Nomination of members — Person though defeated in the election can be nominated as member in the absence of any express or implied prohibition in the bye-laws or the Act. A 1983 AndhPra 116(118)(DB).

(4) Constitution of managing committee — Bye-laws prescribing that in case of Jamia Mosque 6 members would be elected and remaining 5 would be nominated — Held constitution of committee with 7 elected members and 4 nominated members would be contrary to law. A 1983 AndhPra 116(118)(DB).

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

[a] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 16. (Not yet enforced).

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 (1) 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.

*[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.

Section 17

(1) Removal of Chairman of Board by passing no confidence motion — Effect — He continues in office till appointment of his successor is notified in Official Gazette. A 1980 Punj 306(312)(DB).

Section 18

(1) Section 18 of the Act deals with the power of the State Government of removing a chairman or a member on specified grounds which cannot be assailed even on the grounds of propriety much less of legality. A 1959 Madhpra 377(382).

(2) Removal of members from Wakf Board — Government has no power to remove them from office except on grounds mentioned in section — Members do not hold office during pleasure of Government. 1970 Serv LR 569 (570, 571) (Ker)(DB).

(3) Removal from membership — Requisites for satisfaction of Government must be honest and bona fide — Chairman adopting course not approved by Board — Member opposing move of Chairman — No prejudice to interest of wakf — Government removing member for alleged discourteous action — Order held not bona fide and therefore not valid. A 1964 AndhPra 244 (245, 246, 247).

(4) Chairman of Wakf Board — Removal — Members of Board can remove him by passing vote of no-confidence. A 1980 Punj 306(310) (DB). (ILR (1975) AndhPra 242, Diss. from.)

Section 20

(1) In view of S. 12 and notwithstanding the fact that the term of the office of the members stood expired, still on account of the impact of the proviso the members shall have to hold office until the appointment of the successor is notified in the official gazette. In view of S. 20 the proceedings of the Board resulting in the reconstitution of the District Wakf Committee cannot be invalidated. A 1976 AndhPra 169 (171) : (1976) 1 AndhWR 102.

Section 21

(1) When no Rules or Regulations are made under provisions of Act prescribing terms and conditions of service of servants or officers employed by Board, appointments would be governed under general law either by a contract or terms of contract of service and would be terminated subject to terms of contract or by general application of principles of natural

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(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 66F 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 has 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 reappointment 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.

Section 21 (contd.)

justice and general law. A 1967 AndhPra 291 (293) : (1967) 1 AndhWR 221 (DB).

(2) Power of appointment or termination of services of officers and servants can be exercised by the Board alone — It cannot be delegated by the Board to a member of Board and some outsiders. A 1967 Andh Pra 291 (293).

(3) Termination of services of existing employee of Board by committee consisting of one

tion of termination by Board — Board has to show by some evidence that it considered case of employee before terminating his services — Mere formal ratification by Board will not cure defect of termination by Committee — Ratification of order of authority which is improperly constituted and which suffers from lack of jurisdiction does not amount to ratifying authority passing the order as original order under powers vested in it by statute. A 1967 AndhPra

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(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.]

[a] Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 17. (Not yet enforced).

*[21A. 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 duties, which renders his removal from the office of Wakf Commissioner necessary in the public interest, the State Government may, by 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.]

[a] See foot note [a] under S. 21F.

*[21B. 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.]

[a] See foot note [a] under S. 21F.

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[a][21C. Duties and other powers of the Wakf Commissioner.— (1) Subject to the provisions of this Act and of the 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 of the wakf 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.]

[a] See foot note [a] under S. 21F.

[a][21D. 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 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 wakf or to the 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.]

[a] See foot note [a] under S. 21F.

[a][21E. 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.]

[a] See foot note [a] under S. 21F.

[a][21F. Construction of reference with regard to exercise of powers by the Wakf Commissioner.— Any reference in this Act to the exercise of any power 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.]

[a] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 18 (Not yet enforced).

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[a][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 authorisation 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 authorisation.]

[a] Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 19 (Not yet enforced).

[a][22A. **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.]

[a] See foot note [a] under S. 22B.

[a][22B. **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.]

[a] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 20 (Not yet enforced).

23. **Inspection of records and issue of copies.**— (1) [a][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 Wakf Commissioner in the manner provided in section 76 of the Indian Evidence Act, 1872.

[b][(3) The powers conferred on the [c][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 [d][authorised in this behalf by the Wakf Commissioner].]

[a] Substituted for the words, "the Board may allow inspection of its proceedings or other records in its custody" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 21 (a) (Not yet enforced).

Section 22

(1) Supervision of wakf does not include appointment or termination of services of officer or servant which is specifically provided under S. 21 (3) and which Board alone can exercise — Power under S. 21 (3) cannot be delegated by Board to a committee consisting of a member of Board and some outsiders — Exercise of unauthorised jurisdiction amounts to usurpation of jurisdiction and renders decision of Tribunal a nullity, to remove which, Court must issue writ of certiorari. A 1967 AndhPra 291(293) : (1967) 1 AndhWR 221 (DB).

(2) Mere formal ratification by Board will not cure defect of termination of services made by Committee — Ratification of order of Authority which is improperly constituted and which suffers from lack of jurisdiction does not amount to ratifying authority passing the order as original order under powers vested in it by Statute. A 1967 AndhPra 291 (293, 294) : (1967) 1 AndhWR 221 (DB).

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[b] Inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 9 (10-10-1964).

[c] Substituted for the words "Secretary of the Board" ibid, S. 21 (b).

[d] Substituted for the word "authorised in this behalf by the Board" ibid, Section 21 (c).

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.

OBJECTS AND REASONS

"The Committee consider it necessary to provide specifically that the office of chairman or member of a Board should not disqualify a person from membership of Parliament.

The original Bill contemplated the setting up of a Central Board by the Central Government for the purpose of co-ordinating the activities of State Boards and supervising the functions of the State Boards. (See Chap. III, cls. (28 to 39), of the original Bill.) The Committee have considered the question and are of opinion that it is not necessary to have a Central Board. State Government has been given ample powers to supervise the functioning of Boards in the States, and if a Board does not perform its functions properly, the Board may also be superseded by an order of the State Government. Power has, however, been given in clause 62 [now S. 62] to the Central Government to call for any information or report in relation to the functioning of State Boards and the Central Government may give directions on questions of policy to be followed by the Boards. The provisions relating to Central Board have, therefore, been omitted."—S.C.R. (1954).

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 [a][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 [a][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;

Section 25

(1) Issue of registration certificate registering certain property as wakf property by Board of wakfs — Board being in the know that proper was in possession of a person who had lodged his claim thereto — Enquiry under S. 27 (1) not held — Board sending requisition to Deputy Commissioner to take action under S. 36-B (2) — **Held** registration was improper. A 1972 Mys 96 (98) : (1971) 2 Mys LJ 458.

(2) Wakf created for object of public utility — When it is not for benefit of Muslim community exclusively it is excluded from operation of Act. A 1964 Mad 18 (23) : (1963) 2 Mad LJ 346 (DB).

(3) From the examination of the provisions of the Act, their scope, object and the consequences that would enure, the only conclusion that can be drawn is that sub-sec. (8) of S. 25 is an imperative or mandatory enactment and is not a directory enactment. A 1980 Kant 118 (122) : (1980) 1 Kant LJ 469.

(4) The power conferred on the Board by S. 27 is a suo motu power to be exercised by the Board and cannot be exercised on an application made under S. 25 (8). A 1980 Kant 118(123) : (1980) 1 Kant LJ 469.

(5) Act applies to all wakfs created before or after it — Whether wakf is registered under Act or not is not material. A 1985 Andh Pra 127 : 1984 (2) APLJ (HC) 259 (DB).

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(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 [a][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 for the signing and verification of pleadings.

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

(7) On receipt of an application for registration, the [a][Wakf Commissioner] may, before the registration of the wakf, make such inquiries [c][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 [a][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.

[d][(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.]

[a] Substituted for the word "Board" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 22 (a) (Not yet enforced).

[b] Substituted for the words "it may consider" ibid, S. 22 (b).

[c] Substituted for the words "as it thinks fit" ibid, S. 22 (c).

[d] Inserted ibid, S. 22 (d).

26. **Register of wakfs.**— [a][(1)] The [b][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;

Section 26

(1) Issue of registration certificate registering certain property as wakf property by Board of Wakfs — Board being in the know that property was in possession of a person who had lodged his claim thereto — Enquiry under S. 27 (1) as to whether property was wakf property not held — Board sending requisition to Deputy Commissioner to take action under S. 36-B (2) requiring that person to deliver possession within specified time — Held registration was improper. A 1972 Mys 96 (98) : (1971) 2 Mys LJ 458.

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(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.

[a][(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).]

[a] Section 26 renumbered as sub-section (1) thereof and after the sub-section (1) as so renumbered sub-section (2) inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 23 (Not yet enforced).

[b] Substituted for the word, "Board" ibid, S. 23 (a).

[a][26A. **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;

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(b) a person may be appointed as an Executive Officer in an honorary capacity, that is to say, without payment of salary or, 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.]

[a] See foot-note [a] under S. 26B.

[a][26B. **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 authorised 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 utilised, for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of section 15.]

[a] Inserted by Wakf (Amendment) Act, 1984 (42 of 1984), S. 24 (not yet enforced).

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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.

[a][(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 or under the Societies Registration Act, 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 reversed or modified by a civil court of competent jurisdiction.]

[a] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 25 (not yet enforced).

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

[a] Substituted for the word "Board" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 26 (not yet enforced).

[b] Substituted for the words "may itself" ibid.

Section 27

Section 27 not to be read subject to S. 6. 1969 Raj 1(5) : 1969 Raj LW 77 (DB).

The duty cast under S. 27 (1) on the Board is a quasi-judicial one. The Scheme under S. 27 (1) clearly comprehends an enquiry which must necessarily comply with the rules of natural justice. Fact that decision of Board can be annulled by suit is not defence for breach of rules of natural justice. (1969) 35 ILR 1198 (1203, 1204) (DB).

For a suit under this section, a notice under S. 56 of the Act is necessary. (1966) 2 KantLJ 104 (109, 110) (DB).

Question if property is Waqf Property — Publication certificate registering certain property as Wakf Property by Board of Inquiry under S. 27 (1) — Held registration was improper and the action of Board in sending requisition was wholly without jurisdiction — Order of Deputy Commissioner was without jurisdiction. A 1972 Mys 96 (98) : 1972 MysLJ 458 (DB).

Wakf — Civil Court has jurisdiction to entertain suit for property dedicated for religious purposes. A 1968 Mad 243(256) : (1968) 1 MadLJ 65.

Wakf — List of wakfs under S. 27 — Lapse of one year without filing list as required by S. 6 (1) — Wakf Board divested of its jurisdiction to enquire into disputed wakfs. A 1969 Raj 1(7) : 1969 Raj LW 77 (DB).

(7) If a dispute, whether a particular property is a wakf property or not, is raised by a non-Muslim and a stranger to the wakf the Wakf Board has no jurisdiction to decide the matter in its own favour under this section and enter it in the register. The Board's decision would not be binding against such person. A 1967 Raj 1(8) : 1966 LW 582 (DB).

(8) Order under S. 27, Wakf Act declaring certain property as Wakf property — Alternative remedy by way of Civil Suit available in terms of sub-s. (2) of S. 27 — Writ petition being maintainable only under Cls. (b) and (c) of Art. 226 — Cl. (3) of Art. 226 operates as a bar to maintainability of petition. A 1977 Kant 147(151) : (1977) 1 KantLJ 342 (DB)

[See also A 1980 Kant 118(121) : (1980) 1 KantLJ 469. (Decision under S. 27 (1) — Open to challenge in writ jurisdiction.)]

(9) The power conferred on the Board by S. 27 is a suo motu power to be exercised by the Board and cannot be exercised on an application made under S. 25 (8) of Act. A 1980 Kant 118(122) : (1980) 1 KantLJ 469.

Section 28

(1) Distinction between Wakfs recognised by Muslim law and religious endowments recognised by Hindu law on the one hand and public charitable trusts as contemplated by English

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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 [a][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 [a][Wakf Commissioner].

OBJECTS AND REASONS

"An obligation has been imposed on the mutawallis and others to notify to the Board any change which may take place either in the management of a registered wakf or in any particulars mentioned in the application for registration. This would enable the Board to keep the Register of Wakfs up-to-date."—S.C.R. (1954).

[a] Substituted for the word "Board" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 27 (not yet enforced).

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.**— [a][(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:

[a][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.]

[b][(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 as so approved or modified shall be the budget of the wakf for that year.]

[a] Section 31 renumbered as sub-section (1) and to sub-section (1) as so renumbered, proviso added by the Wakf (Amendment) Act 1984 (69 of 1984), S. 28 (not yet enforced).

[b] Inserted ibid.

[a][31A. **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

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Section 28 (contd.)

law on the other, stated — Trust executed by Nizam of Hyderabad on 14-6-1934 Construction Trust held not a wakf and did not fall within provisions of Act. A 1963 SC 985 (988, 989, 992).

Section 31

(1) Mutawalli is bound by Ss. 31 and 32 to submit the budget report and the accounts — To prove an offence under S. 41 (i) it is, therefore, not necessary for the prosecution to show that the failure to submit accounts or budget was wilful, in the sense that they were deliberate or intentional. Even if the Mutawalli had not spent moneys and the income was meagre he is bound under the law to produce the accounts and the budget estimates periodically every year. A 1968 Mad 332 (332, 333) : 1968 CrlLJ 1182.

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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.]

[a] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 29 (not yet enforced).

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

[a][(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.

[a] Original S. 32 re-numbered as sub-section (2) thereof and sub-section (1) inserted before the so re-numbered sub-section by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 10 (10-10-1964).

33. Audit of accounts of wakfs.— [a][(1) The accounts of wakfs 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;

Section 32

... he had not spent moneys and the ... meagre, the Mutawalli is bound ... accounts and the budget estimates ... ally every year. Mere failure is ... offence if the Court is not ... the reasonable cause shown for protection. A 1968 Mad 332 (333) : 1968 CriLJ 1182.

(2) Wakf created for object of public utility — When it is not for benefit of Muslim community exclusively it is excluded from operation of Act. A 1964 Mad 18(23) : (1963) 2 Mad LJ 346 (DB).

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(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 properly 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 [illegible] thousand rupees, the accounts of such wakfs shall be audited concurrently as and when any expenditure is incurred and every such concurrent [illegible] 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 every 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 wakf shall be met from 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.]

[a] Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 30 (not yet enforced).

34. Board to pass orders on auditor's report.—[a][(1)] The Board shall consider the auditor's report [b][or where the auditor's report is submitted before 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 [c][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.]

[(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 sixty days of the receipt by him of the order, apply to the Tribunal to have the order 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

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...unt so certified, either in whole or in part, and may also make such ... as to costs as it may think appropriate in the circumstances of the ...

(3) No application made under sub-section (1) shall be entertained by the ...bunal unless the amount certified by the auditor under sub-section (2) of ...ction 33 has first been deposited in the Tribunal and the Tribunal shall not ... any power to stay the operation of the order made by the Board or ... 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 ... sub-section (1) or sub-section (2) shall, where such amount remains ...id, be recoverable in the manner specified in section 15C or section 15D ... if the said order were an order for the recovery of any amount determin... ...nder sub-section (3) of section 15B.]

[ ] S. 34 renumbered as sub-section (1) thereof and sub-section (1) as so renumbered sub-sections (2), (3), (4) and (5) inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 31 (not yet enforced).

[ ] Inserted ibid.

[ ] Substituted for the words "shall pass such orders on the report as it thinks fit" ibid, S. 31 (a) (ii).

35. **Sums certified due recoverable as arrears of land revenue.**— (1) ...ry sum certified to be due from any person by an auditor in his report ... section 33 unless such certificate is modified or cancelled by an [a][order of the Board or the Wakf Commissioner or the Tribunal as the case may be] ... under section 34, and every sum due on a modified certificate shall be ... 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 ...-section (1), the sum payable may, on a certificate issued by the Board ... giving the person concerned an opportunity of being heard, be recovered ... the same manner as an arrear of land revenue.

[a] Substituted for the words "Order of the Board" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 32 (not yet enforced).

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

(a) to carry out the directions [a][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 ...reunder];

(b) to furnish such returns and supply such information or particulars as may from time to time be [b][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.

[a] Substituted for the words "directions of the Board", by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 33 (not yet enforced).

[b] Substituted for the words "required by the Board", ibid.

Section 36

...tawalli has to carry out direction of ... perform other duties. There is ... institute and defend suit and proceedings in a court of law relating to wakfs on his own. A ...

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*["36A. **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 of 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 realised 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 on mortgage of any such property, the mutawalli or other person shall make payment of the mortgage-debt and obtain a discharge of the mortgage-deed from the mortgagee 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.

Section 36A

All that was intended by amendment of [illegible] in 1964, was to accord statutory recognition to the provisions of Mohammadan law by which before transfer of wakf property could be made, sanction of court should be obtained. (1974) 1 MadLJ 239(240).

[See also 1981 TLNJ 253(257) (Mad). (Even before the insertion of S. 36A with reference to the lease in favour of tenant was void-ab-initio.)]

A tenant of lands held by Wakf holding valid tenancy can claim benefit of S. 9, Madras City Tenant Protection Act — S. 36-A is no bar — It bars voluntary transfer without previous sanction of Board and not involuntary transfers or transfers by orders of Court. A [illegible] 145 (146, 147) : (1973) 1 MadLJ 74.

The Wakf Board has no jurisdiction to recover possession of the property transferred by person over whom it exercises no control, a stranger to wakf, simply because it has entered the property in its register. It is open to Board to file a civil suit for a declaration that property in dispute is a wakf property and to obtain possession. Where a wakf property is transferred by a person interested in the wakf without the sanction of the Wakf Board, the Board can send a requisition to the Collector to obtain and deliver possession of that property to the Board. A 1967 Raj 1 (8) (DB).

(4) Wakf-alal-aulad — No dedication in praesenti for pious, religious or charitable purpose recognised by Muslim law — Held Wakf was outside the scope of the Act. A 1979 Mad 231 (233) : (1979) MadLJ 189.

(5) Transfer of Wakf Property in contravention of S. 36-A — Section 36-B provides for procedure for its recovery — Wakf property transferred long before Wakf Board came into existence — Section 36-B cannot be invoked for its recovery. A 1977 Kant 147(151) : (1977) 1 KantLJ 342 (DB).

(6) Where under the terms of the wakf deed, there is no provision for distributing any part of the income in praesenti to any person other than the members of the family, and the poor Muslims come in only in the event of the entire line in the family becomes extinct and so long as single member of the family is alive there is no chance of any poor person coming and taking the benefit under the wakf deed and therefore the present wakf is a wakf-alal-aulad simpliciter and consequently it is outside the scope of the Act and therefore Section 36-A of the Act has no application. (1979) 1 Mad LJ 189 (193) (Mad).

(7) Grant of land by a non-Muslim Ruler in favour of Fakkirs visiting the Mosque and not to the Mosque — It is neither wakf within S. 3 (1), nor a deemed wakf under S. 66-C — Scheme decree also framed for property — Sanction for lease of land under S. 36-A is not

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(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 ... days from the date of communication to him of such decision or the ... cation of the decision, as the case may be, prefer an appeal to the Tri... 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 ...]

[Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 34 (not yet enforced).

36B. Recovery of wakf property transferred in contravention of section 36A.— (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 a previous sanction of the Board in contravention of the provisions of section 36A, 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 make 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 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

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...id.)
... Mad 297(302) : (1983) 1 Mad

...kf property for a period be... void as expressly provided under R. 5 of the A. P. Wakfs Rules. (1982) 1 A... 987) : (1982) 1 Andh. WR 414.

... submit the lease deed as finally ... Board for sanction cannot be ... ected the validity of the lease, ... sufficient if previous sanction is ... with reference to all essential terms ... lease. (1982) 2 Kant LJ 264

Section 36B

... Act 34 of 1964 is not retrospec... — S. 36-B will not apply to a ... which has been filed in 1962. ... 66(70).

... Sections 36-A and 36-B cannot take effect ... S. 36-B would come into play ... property has been transferred by a ... the Board exercises control ... to have obtained previous sanc... before such transfer. It cannot ... of property which is in the hands of a stranger over whom Board has no ... Act, imply because the ... to enter the property in its re... 1(8) : (1966) RajLW 582

... of Board to issue requisition ... be exercised only in respect ... oned in register of waqfs ... transferred in contravention of ... Pat 271 : 1976 BLJR 270(276). ... Pat LJR 335 (337) (DB).]

... intended by amendment of ... as to accord statutory recognition to the provisions of the Mohammadan law by which before transfer of Wakf property could be made, sanction of Court should be obtained — Properties belonging to wakf mortgaged after amendment of the Act without obtaining sanction of Wakf Board — Open to mortgagees to apply subsequently to the Board for according sanction — If they fail to obtain sanction, S. 36-B will come into operation. (1974) 1 MadLJ 239(240).

(5) Section is not applicable to property which is in the hands of stranger over whom Board has no control under the Act — That such property is entered in list as wakf property by Board does not give power to Board — Jurisdiction of Board is limited to administration of wakfs and person claiming under wakf — Hence it has no jurisdiction over a stranger and it cannot seek to dispossess him from property by having recourse to S. 36-B — But it can establish title and obtain possession of property in a properly instituted suit. A 1973 Mys 312 (314) : (1973) 1 Mys LJ 514 (DB).

(6) Issue of registration certificate registering certain property as wakf property by Board of Wakfs — Enquiry under S. 27 (1) not held — Property in possession of person who had lodged his claim thereto — Board sending requisition to Commissioner to take action under S. 36-B (2) — Held, registration was improper and action of Board in sending requisition was without jurisdiction — Consequently order of Deputy Commissioner was also without jurisdiction. A 1972 Mys 96(98) : (1972)) 2 MysLJ 458.

(7) When the Board decides the question as to whether the property belongs to a wakf and the property has been illegally transferred it exercises quasi-judicial functions. It must give

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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-sec. (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.]

[a] Inserted by Wakf (Amendment) Act, 1964 (34 of 1964), S. 11 (10-10-1964).

*['36C. **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 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 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.]

[*] See foot-note under S. 36E.

STATE AMENDMENT

Section 36C

Bihar

In its application to the State of Bihar, after S. 36B, insert as under—

36C. (1) If at any time it appears to the Board that any wakf land or building let out to any tenant is required for the purpose of the Board itself or for the

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Section 36B (contd.)

the transferees notice and give them a proper ... exercising the power of requisi... 1976 Pat 271(277) : 1976 BLJR 270.

... 1983 BBCJ 354(363) (DB) (Pat).]

... once the property is held to be ... it always retains its character as a wakf and the grant of patta in favour of the Mokhasadar in possession of the property does not in any way detract from the earlier dedication of the property constituting the same as wakf. (1978) 2 APLJ 259(267) (DB).

... Transfer of Wakf Property in contravention of S. 36A — S. 36-B provides for proceedings for recovery — Wakf property transferred long before Wakf Board came into existence — Section 36-B cannot be invoked for its recovery. A 1977 Kant 147(151) : (1977) 1 Kant LJ 342.

(10) Appeal under S. 36-B (4) — To be preferred to District Court" — Which means provisions of Civil P. C. would apply — Particularly so, when no special procedure is prescribed under this Act. A 1978 Pat 322(325) : 1978 BLJR 469.

(11) Appeal under Section 36-B (4) — Amendment of memo of appeal — Sought to add words that "order of Collector be set aside" — Held, should have been allowed. A 1978 Pat 322 (324) : 1978 BLJR 469.

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opment of the said land or building, the Board may by an order in writing ... the tenant to vacate such land or building within fifteen days of the date ... of such order:

Provided that nothing in this section shall affect any lease made in writing for ... cified period or any right, title or interest in any such land or building of any ...

(3) Any person aggrieved by the order of the Board under sub-section (1) may ... within the said period of fifteen days file an appeal before the State Government ... decision thereon shall be final.

(4) Notwithstanding anything to the contrary contained in any other law for the ... being in force, no order passed by the Board or the State Government ... this section shall be called in question in any court or tribunal.—Bih. Act 7 of 1977, S. 2 (10-1-1977).

"[36D. Removal of encroachments from wakf property.— (1) Whenever the Wakf Commissioner considers, whether on receiving any complaint or on ... own motion, that there has been an encroachment on any land, building, ... or other property which is wakf property and, which has been regis- ... as such under this Act, he shall cause to be served upon the encroacher ... e specifying the particulars of the encroachment and calling upon him ... show cause before a date to be specified in the notice, as to why an order ... ing him to remove the encroachment before the date so specified should ... made and shall also send a copy of such notice to the concerned muta-

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

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

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

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

Provided that no such suit shall be instituted by a person who has been ... 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.]

... foot-note [a] under S. 36F.

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

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

[a] See foot-note [a] under S. 36F.

[a][36F. 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 of 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 grating 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.']

[a] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 35 (not yet enforced).

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.**— Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, [a][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 [b][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 land revenue.

[a] Substituted for the words "Board" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 36 (a) (not yet enforced).

[b] Substituted ibid, S. 36 (b).

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, [a][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.

[a] Substituted for the words "the Board may direct the creation and maintenance in such manner as it may think fit" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 37 (not yet enforced).

40. **Extension of time.**— [a][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.

[a] Substituted for the words "the Board may if it is satisfied", by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 38 (not yet enforced).

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41. Penalties.— (1) 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;

[a][(g) * * * *]

(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;

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

[1][(1A) 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 therefor 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,

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 [d][made by the Board or the Wakf Commissioner or an officer duly authorised by the Board or the Wakf Commissioner.]

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

[f][(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.]

[f][(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.]

[a] [Clause (g) omitted by the Wakf (Amendment) Act, 1984 (34 of 1964), S. 12 (15-10-1964).

[b] Substituted for the words "fine which may extend to one thousand rupees", by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 39 (a) (not yet enforced).

Section 41

an offence falling under S. 41 (1), not be proved to have been committed in the sense that such failure to submit was 'deliberate' or 'intentional.' word 'wilful' is not used in proved by the prosecution that submission of accounts was a 'conscious' failure. A 1968 Mad 332 (332, 333): 1968 CriLJ 1182.

(2) Complaint by a person who is authorised by a special officer only to conduct cases in Court — Cognizance cannot be taken — Conviction can be set aside. A 1972 Mad 48(49): 1971 Mad LW (Cri) 229.

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[c] Inserted ibid, S. 39 (b).

[d] Substituted for the words "made by the Board or an officer duly authorised by the Board" ibid, S. 39 (c).

[e] Substituted for the words "presidency magistrate or a magistrate of the first class" ibid, S. 39 (d).

[f] Inserted ibid, S. 39 (e).

[a][41A. **Mutawalli not to spend any money belonging to a wakf for defending himself.**— No Mutawalli shall spend any money out of the funds of the wakf, 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.]

[a] See foot-note [a] under S. 41B.

[a][41B. **Power of Board to determine by whom costs etc. shall be paid.**— The Board shall determine by whom or out of which fund and to what extent 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 within 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.]

[a] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 40 (not yet enforced).

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.

Section 42

(1) The Intazamia Committee constituted by order No. 1 in his capacity as Mutawalli of wakf was called upon by the Board to produce materials regarding the claim regarding mutawallship. The Secretary, in his reply refused to recognise the status of the Board to exercise functions under the Act. On receipt of the aforesaid reply the Board, decided to hold an enquiry into this dispute and pending consideration of the matter appointed a Committee of 3 persons as the temporary Mutawalli in exercise of the power vested in the Board under S. 42, held, that the action of the Board in appointing a Committee of individuals to take over management of the Wakf in face of the dispute could not be said to fall outside the terms of S. 42 of the Muslim Wakfs Act. A 1959 Madh Pra 377 (DB).

(2) "For such period" — Words cannot be relied on to contend that power to appoint mutawalli is only for some restricted period. (1969) 2 Mad LJ 556(557).

(3) Framing of a scheme without hearing six out of eight trustees of a mosque is illegal and to be set aside — They are parties affected by proviso to S. 15 (2) (d) and it is incumbent part of Wakf Board to hear them before the scheme for the mosque. A 1972 Mys 60 (1971) 2 Mys LJ 518 (DB).

(4) Application under S. 42 — Wakf Board has jurisdiction to go into question — Application under Art. 226, premature. A 1963 Mad 132 (133).

(5) Board can go into question as to who is rightful mutawalli. (1969) 2 Mad LJ 556.

(6) Commissioner appointing a stranger as mutawalli — No opportunity given to heirs of last mutawalli of being substituted as mutawalli — Appointment invalid. A 1984 Cal 326(330); (1984) 88 Cal WN 103 (DB).

(7) A mutawalli is merely a manager of wakf and is directly under the control and superintendence of the Board and may even be removed from his office in accordance with S. 43. He cannot institute or defend a suit relating to wakf property in his own name. A 1983 Pat 299(301) : 1983 BBCJ 433 (DB) (Pat).

(8) The Board's power to appoint or remove a mutawalli is strictly limited to the special circumstances mentioned under Ss. 42 and 43 read with Sections 15, 44 and 45. The Board has no power to adjudicate upon the office. A 1982 Ker 322 (327) : II R (1982) 2 Ker 364.

[See also II R (1976) 2 Mad 341 (351), (Reversed on another point in A 1982 Mad 376.)]

(9) Section 42 conferring the power of appointment of mutawallis in the circumstances enumerated therein cannot be read as conferring the power of handing over or transferring

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43. Removal of mutawallis.— (1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from office if such mutawalli—

(a) has been convicted more than once of an offence punishable under section 41; or

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

[(c) * * * * *]]

(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](e) * * * * * *]

S. 43 (contd.)

management of wakf by the Board to another ILR (1982) 2 Kant 1172 (1172).

Wakf Board taking over management of under S. 43-A — No inquiry made — person functioning as mutawalli not given — Notification not specifying that action taken under S. 42 or under S. 43 (2) — of Board of taking over is illegal. A NOC 43 : (1982) 2 Andh WR 383.

Orders under S. 42 — Court can pass executory orders — Power of Civil Court to pass such orders is not taken away. A 1983 NOC 43 ; (1982) 2 Andh WR 383.

Section 43

Any order of removal of Mutawalli passed the Board without following the mandatory procedure prescribed by Ss. 43 (4) 45 r/w R. 23 will be wholly illegal and will in denying the mutawalli a reasonable opportunity of meeting those charges. (1981) 1 An LT 207 (212).

also (1979) 2 Kant LJ 501 (506). (Removal of a mutawalli — Enquiry akin to trial in Civil Court contemplated.)]

When a mutawalli recognised by the Wakf is effectively working, the Board has no power to appoint a committee for the Management of Wakf, and if there is such a committee it cannot order it to continue thereafter. The that a supervisory committee can be appointed under S. 16 it does not mean that the can direct the mutawalli to hand over entire property to the committee without having recourse to S. 43 or S. 43-A. (1974) 1 WR 33 (35) (DB).

Section 43-A does not confer the power handing over the management or transfer the management of a Wakf by the Board another person. ILR (1982) 2 Kant 1172 (1177).

Removal of Mutawalli — State Government has no power to order direct removal of mutawalli — Procedure for removal indicated Board also cannot remove a Mutawalli without A 1979 Pat 103 (106) : 1979 Pat (DB).

Application for removal of Mutawalli — Wakf Board — During pendency of Mutawalli dispossessed and management over by Board — Actio of Board unjustified. (1980) 1 MadLJ 235(238) : 1980 TLNJ 278 (Mad).

[See (1984) 1 KantLJ 1(8) : (1984) 1 Kant LC 253.]

[See also A 1981 Kant 206 (207) : (1981) 1 KantLJ 247. (Suspension of mutawalli pending enquiry into complaints — Order illegal.)]

(6) Wakf Board taking over management of Darga under S. 43-A — No inquiry made — Notice to person functioning as mutawalli not given —, Notification not specifying that action was taken under S. 42 or under S. 43 (2) — Action of Board of taking over is illegal. A 1983 NOC 43 : (1982) 2 Andh WR 383.

(7) State Government while disposing of an appeal against an order of removal of Mutavali acts quasi-judicially. Its order must be a speaking one. A 1971 Mad 418(419) : 84 Mad LW 358.

(8) Application for removal of mutawalli — Wakf Board has jurisdiction to enquire into allegations. A 1963 Mad 132(133).

(9) Where Mutawallis already appointed having their residence close to the graveyard were the best persons to look after the graveyard it was held that there was no necessity for their removal and fresh appointment. 1968 Jab LJ 225(229) (SC).

(10) Order directing taking over administration of wakf by Board and appointing executive officer — Omission to give notice, under Section 43 (1) (c) — Misquotation of the section or the omission to quote a provision of law in a notice or an order would not make the notice or the order unenforceable and much less illegal. A 1978 Mad 33(35) : (1977) 2 Mad LJ 164 (DB).

(11) Where the action of removal of Mutawalli under sub-s. (1) of S. 43 was taken by the 8 members of the Board consisting of 11 members the action, held, was not by three-fourths majority. It is necessary that the fraction should be rounded up to next full number. 1977 KerLT 659(660) (DB).

(12) Extent of Board's power to remove and appoint mutawalli indicated — Appointment to office of Managing Trustee of mutawalli — Board cannot adjudicate upon validity of appointment in terms of wakf deed — That is for Civil Courts to decide. A 1982 Ker 322(326) : ILR (1982) 2 Ker 364.

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[a][(f) is an undischarged insolvent; or

(g) is proved to be addicted to drinking liquor or other spirituous preparations, 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 wakf property, 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 breach of trust in relation to the wakf, or in respect of any money or other wakf property; or

(l) wilfully and persistently disobeys 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.]

[b][(2) * * * * *]]

(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) [c][* * *,]] unless it has held an inquiry into the matter in the prescribed manner and such decision has been taken by a majority of not less than [d][two-thirds] of the members of the Board.

[e][(4A) A mutawalli who is aggrieved by an order passed under any of the clauses (d) to (l) 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.]

[f][(4B) 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 so to do 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.

(4C) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4A), 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, 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 [g][* * *] 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 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 been the decree.

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[(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.]

[a] Substituted for former Cl. (b) by Wakf (Amendment) Act, 1964, S. 13 (10-10-1964).

[b] Substituted for the words "moral turpitude" by the Wakf (Amendment) Act, 1984 (60 of 1984), S. 41 (a) (i) (not yet enforced).

[c] Clauses (c) and (e) omitted ibid, S. 41 (a) (ii) and (iii).

[d] Clauses (f) to (l) inserted ibid, S. 41 (a) (iv).

[e] Omitted ibid, S. 41 (b).

[f] Words "or sub-section (2)" omitted ibid, S. 41 (c) (i).

[g] Substituted for the words "three fourths" ibid, S. 41 (c) (ii).

[h] Substituted ibid, S. 41 (d).

[i] Sections 4B and 4C inserted ibid, S. 41 (d).

[1] Inserted by Wakf (Amendment) Act, 1964 (34 of 1964), S. 13 (10-10-1964).

OBJECTS AND REASONS

... open to a Board to institute a civil suit for the removal of a mutawalli. Apart from ..., the Committee feel that the powers of a ... to remove a mutawalli by an executive ..., should be restricted. This power should ... exercised only when some Court has ... the mutawalli guilty of an offence. It has, therefore, been suggested that a mutawalli ... be removed by an executive order ... Board only if such mutawalli has been convicted more than once of an offence punishable under section 41 or has been convicted of an offence of criminal breach of trust or other offence involving moral turpitude. Where a committee of management has been appointed by the Board for performing the functions of a mutawalli, the Board has been empowered to supersede the committee, if the committee does not properly perform its functions. Before taking any action for the removal of a mutawalli the Board must hold an inquiry into the matter and the decision should be taken by a majority of not less than three-fourths of the members of the Board. The Committee also consider that when a mutawalli is removed from office, the Board should be empowered to direct the mutawalli to deliver possession of the wakf property to the Board or to any authorised person. If the mutawalli fails to deliver possession under the orders of the Board, the order of the Board should be executable as a decree of civil Court. It should also be made clear that the removal of a mutawalli from his office should not affect his personal rights, if any. Provision has accordingly been made."—S.C.R. (1954).

[a][43A. **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.

Section 43A

... working effectively — No report under S. 43-A — Cannot be directed to ... charge to the Board or the ... Committee. (1974) 1 An WR 33(35) (DB).

... and taking over management of ... A — No inquiry made — ... functioning as mutawalli not ... tion not specifying that action ... 42 or under S. 43 (2) — Action taking over is illegal, A 1983 ... Andh WR 383.

... was no evidence to show that ... Board itself had assumed management of the suit wakf under S. 43-A before it filed the suit for recovery of possession etc., it would not be possible to hold that the State Wakf Board has been appointed as the Manager of the endowments in these cases and that Art. 96 of Limitation Act, 1963 applies. ILR (1976) 2 Mad 343(351).

[Reversed on another point in A 1982 Mad 376.]

(4) Section 43-A of the Wakf Act contemplates direct management by the Board, in certain circumstances. Where a Wakf is not managed by the Board, it cannot take exemptions from the provisions of the Rent Control Act. (1982) 1 Kant LJ 59(62) : (1982) 1 RenCJ 712.

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(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.]

[a] Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 42 (not yet enforced)..

[a][43B. **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.]

[a] See foot-note [a] under S. 43F.

[a][43C. **Supervision and supersession of Committee of Managament.**— (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 directions 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 or with the directions of the wakif, he may, at any time, modify the 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 interests 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

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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 wakf.

(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 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.]

[a] See foot-note [a] under S. 43F.

[a][43D. 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.]

[a] See foot-note [a] under S. 43F.

[a][43E. 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.

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(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 fails 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 Magistrate under sub-section (2), the Magistrate may authorise the 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 may 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).]

[a] See foot-note [a] under S. 43F.

a[43F. 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 for 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

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members of the committee appointed for the proper administration of the ...f.

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

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

Provided further that the Tribunal shall have no power to make any order ...ng 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 ...re or after the scheme has come into force, cancel or modify the scheme ...hich has been framed under this section.

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

[a] Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 43 (not yet enforced).

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

[a] Substituted for the word "Board" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 44 (i) (not yet enforced).

[b] Substituted for the words "it shall take such action thereon as it thinks fit" ibid, S. 44 (ii) (not yet enforced).

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Section 44

...ning of a scheme without hearing six ...ght trustees of a mosque is illegal and ... set aside — Imperative on the part of ...ard to hear them before settling a ... for mosque. A 1972 Mys 60 (61) : ... MysLJ 518 (DB).

(2) Application under S. 44 — Who can ... — 'Person interested in a wakf' occurring in S. 3 (k) definition takes in all persons who ... entitled to receive any pecuniary or other ... from the wakf and all other persons ... right to worship or to perform any religious rite in a mosque etc. or any other ... institution connected with the wakf or to participate in a religious or charitable institution under the wakf. (1976) 89 Mad LW 672 ...

(3) Application under S. 44 Wakf Act is not ... where mismanagement is by Board itself. A 1983 Delhi 439 (444).

(4) Under S. 43 (4) before a mutawalli can be ..., an inquiry has to be held that means, ... inquiry should be held and the mutawalli ... to be removed should be given ... to meet the said charges. (1981) ... (213).

... inquiry contemplated under S. 45 is ... to the matters mentioned in S. 44 ... relating to the administration of the Wakf. Therefore, either under S. 44 or under S. 45 of the Act, the question of appointment of a receiver pending such an enquiry does not arise. R. 10-A of the Andhra Wakf Rules authorising such appointment is therefore clearly ultra vires of the powers and does not confer any power either on the Board or the Legal Adviser to appoint a Receiver pending enquiry. A 1975 Andh Pra 104 (104, 105) : (1974) 2 Andh WR 372.

(6) Appointment to office of Managing trustee of mutawalli — Board cannot adjudicate upon validity of appointment in terms of wakf deed — That is for Civil Courts to decide. A 1982 Ker 322 (326, 327) : ILR (1982) 2 Ker 364.

(7) Wakf gorverned by Act — Compromise decree — A and B appointed joint mutawallis — B put in charge of management of wakf property — Suit by A against B for his share of income and rendition of accounts, Ss. 15, 44 and 45 did not vest authority in the Wakf Board to compel the mutawalli to render an account to the co-mutawalli and therefore A could not have approached the Wakf Board for the relief and that the suit was maintainable. A 1978 Mad 121(125) : (1978) 1 Mad LJ 103 (DB).

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45. **Inquiry by the Board.**— [a][(1) The [b][Wakf Commissioner] may, either on an application received under section 44 or on [c][his own motion],

(a) hold an enquiry 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 [d][as he thinks fit].

(2) For the purposes of any inquiry under this Act, [e][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 for enforcing the attendance of witnesses and producting of documents.

[f][(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.]

[a] Substituted for the former sub-section (1) by Wakf (Amendment) Act, 1964 (34 of 1964), S. 15 (10-10-1964).

[b] Substituted for the word "Board" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 45 (a) (i) (not yet enforced).

[c] Substituted for the words "its own motion", ibid, S. 45 (a) (ii) (not yet enforced).

[d] Substituted for the words "as it thinks fit", ibid. S. 45 (a) (iii) (not yet enforced).

[e] Substituted for the words "the Board or any person authorised by it", ibid, Section 45 (b) (not yet enforced).

[f] Inserted, ibid, S. 45 (c) (not yet enforced).

CHAPTER VI

FINANCE OF THE BOARD

46. **Annual contributions payable to the Board.**— [a][(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.

Section 45

Under S. 45 the Board suo motu or on an application under S. 44 has no power to decide anything apart from matters relating to the administration of wakf and has no jurisdiction to decide disputed question of title. A 1972 Andh [illegible] 33) : (1973) 1 Andh WR 85 (DB).

Application for removal of Mutawalli — Enquiry by Wakf Board — During pendency of enquiry Mutawalli dispossessed and management of Wakf taken over by Board — Action of Board unjustified. (1980) 1 Mad LJ 235 : (1980) 93 Mad LW 546 (547, 548).

Wakf governed by Act — Compromise decree — A and B appointed joint mutawallis — A put in charge of management of wakf property — Suit by A against B for his share of profits and rendition of accounts, Ss. 15, 44 and 45 do not vest any authority in the Wakf Board to compel one mutawalli to render an account to the co-mutawalli and hence suit is maintainable. A 1978 Mad 121(125) : (1978) 1 Mad LJ 103.

Appointment to office of managing trustee of mutawalli — Board cannot adjudicate upon, validity of appointment in terms of wakf deed — That is for Civil Court to decide. A 1982 Ker 322(327) : ILR (1982) 2 [illegible]

Rule 10A of A. P. Wakf Rules, 1956 beyond the scope of S. 45 does not confer any power either on the Board or its Legal Adviser to appoint a receiver pending enquiry. (1974) 2 AndhPraLJ 188 ** A 1975 AndhPra 104(105) : (1974) 2 AndhWR 372.

(6) State Government has no power to order direct removal of mutawalli — Procedure for removal indicated — Board also cannot remove a mutawalli without inquiry. A 1979 Pat 103(106) : 1979 PatLJR 380 (DB).

(7) Order of removal of mutawalli by Board without any enquiry not only contravenes the statutory requirements of Ss. 43 (4) and 45 but is also violative of the principles of natural justice and is illegal and invalid. (1981) 1 Andh LT 207(213).

(8) If a complaint has to be inquired into by the authorities, either by the authorities under the Wakf Act, 1954 or by the authorities under the Hyderabad Atiyab Inquiries Act, 1952, it is necessary that the persons who are affected and against whom a complaint is made should be informed and should be given notice of the proceedings and the grounds on which the authorities want to disturb their present status quo. 1983 MahLR 575(578)(DB)(Bom).

Section 46

(1) The State Wakf Board has no jurisdiction either to claim, demand or collect contribution from the income of the properties in respect of a private wakf. The Board has only a limited jurisdiction to collect contribution only in res-

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Explanation I.— 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 any 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 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 reinvested 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, 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 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) capital 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

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...income set apart for religious, charitable purposes. (1968) 1 MadLJ ... 317).

...ing" calculation of — Expenses to be deducted. A 1964 Ker 310 ... 367 (DB).

...Wakfs cannot demand and recover on estimates of provisional ... any wakf. (1974) 1 Kant LJ 286

...known principle that a uniform rate taking into account the varying abilities of different parties to pay is not a bad law. ILR (1974) 2 Ker 316.

(5) Part of Wakf income utilized for maintenance and education of poor and needy descendants of testator — Does not cease to be charitable and religious purpose — Section 46 applies. ILR (1980) 1 Ker 545(554); 1980 KerLT 497.

(6) Imposition of uniform rate on gross income of the wakfs — Cannot be said to involve any hostile discrimination — Not violative of Art. 14 of the Constitution. A 1975 Ker 123 (128): 1974 KerLT 815 (DB).

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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 [b][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 said contribution payable by 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 to 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.

[c][(6) Where, after the commencement of the Wakf (Amendment) Act, 1984, the mutawalli of wakf fails to submit a return of the net annual income of the wakf within the time specified therefor 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 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 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 assessment relates, serve upon the mutawalli a notice requiring him with

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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.]

[a] Substituted for former sub-section (1) by Wakf (Amendment) Act, 1984 (69 of 1984), S. 46 (a) (not yet enforced).

[b] Substituted for the words "any particular wakf" ibid, S. 46 (b) (not yet enforced).

[c] Inserted, ibid, S. 46 (c) (not yet enforced).

*[46A. **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 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 two thousand rupees, or with both.]

[a] See foot-note [a] under section 46B.

*[46B. **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 inams, or laying down 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.]

[b] Sections 46A, 46B inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 47 (not yet enforced).

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.

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[a][47A. **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-sec. (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.]

[a] Inserted by Wakf (Amendment) Act (69 of 1948), S. 46 (not yet enforced).

48. Wakf Fund.— [a][(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.

(1A) 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.

[a] Substituted for former sub-section (1) by Wakf (Amendment) Act, 1964 (34 of 1964), S. 17 (10-10-1964).

49. Budget of the Board.— [a][(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 the financial year and forward a copy of the same to the State Government.

[a][(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 its 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

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...ations, corrections or modifications suggested by that Government, and ... State Government shall after considering such representations, communi... within a period of three weeks from the date of receipt thereof, to the ... its final decision in relation to the matter and the decision of the ... Government shall be final.

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

[Section 49 renumbered as sub-section (1) thereof and after sub-s. (1) as so renumbered the sub-sections (2), (3) and (4) inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 49 (not yet enforced).

50. **Accounts of the Board.**— The Board shall cause to be maintained ... books of account and other books in relation to its accounts in such form ... in such manner as may be prescribed.

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

(2) The auditor shall submit his report to the State Government and the ... of the auditor shall, among other things, specify [a][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 irregularity 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.

[a] The words "whether the accounts ..... specify" inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 50 (not yet enforced).

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.**— (1) 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 as the same manner as an arrear of land revenue.

54. **No financial liability of Government.**— Omitted by the Wakf (Amendment) Act, 1964, S. 18 (34 of 1964).

Section 52

... 52 which empowers the State ... pass orders on the report of ... it may think fit, as against any ... to in the Auditor's report after calling for an explanation from him, cannot be assailed on the ground of its being contrary to natural justice or propriety or legality. A 1959 MadhPra 377(382).

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[a][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 Tribu-

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Section 55

Sanction of Board is required under Section (2) only in respect of suits of the nature contemplated in S. 55 (1) — No need to leave or consent of Advocate-General under S. 92, Civil P. C., for filing a suit in respect of a private trust or private wakf — Such a suit could be filed by any interested person without leave or consent of Advocate-General — It is only in the case of a suit relating to a wakf falling under S. 92, Civil P. C., it is necessary to obtain not only sanction of Advocate-General but also consent of Wakf Board. (1971) 2 MadLW 80(84).

Suit seeking relief which could be granted by Wakf Board — Not maintainable without permission of Board. (1974) 87 MadLW 835(DB) ** A 1984 Mad 276(276) : (1984) 1 MadLJ 77 ** (1979) 1 MadLJ 145(150)(DB).

Suit against Mutawalli — Board also impleaded — Benefit of proviso cannot be claimed — Board's action or direction not having been complained of — Suit filed without consent of Board — Not maintainable. A 1984 Mad 116(122) : (1984) 1 MadLJ 180 (DB).

Board contemplated by the Act not constituted at the relevant time — Bar under the provisions of S. 55 (2) not attracted — Non-compliance with S. 55 (2) would not bar maintainability of suit under S. 92, Civil P. C. A 1969 SC 1569(1597).

Scheme framed under S. 92, C.P.C. prior to coming into force of Act — Scheme does not cease to be operative after coming into force of the Act. A 1982 AndhPra 342(348)

To effect S. 55 (1) engrafts an exception to S. 92, Civil P. C. and S. 14 of the Religious Endowments Act. A 1964 Mad 247(250) : (1963) 1 MadLJ 281 (DB).

(7) Section 55 whether impliedly repeals Sections 92 and 93, Civil P. C. or S. 14, Religious Endowments Act, 1863, so far as wakfs are concerned — Application by any person or authority other than Board for sanction of Collector under S. 93, Civil P. C., for institution of suit under S. 92 against trustees of Wakf — Maintainable — Sanction of Board required under S. 55 (2) is in addition to that required under S. 92, Civil P. C. A 1962 Ker 343 (343, 346, 352) : 1964 KerLT 544 (FB).

(8) Suit by Managing Committee of the mosque — Relief of injunction against certain alleged trespassers on land belonging to mosque — Such suit is not barred under the Section. A 1973 Raj 322(326) : 1973 RajLW 456.

(9) Wakf property registered under the Act — Wakf Board constituted for purposes of management of said institution under the Act — In view of S. 55, suit to obtain any of the reliefs referred to in S. 92, Civil P. C., by any person or authority other than the Board is not competent without consent of Board. ILR (1972) Guj 817(821).

(10) Newly appointed Mutawallis filing suit qua Mutawallis for recovery of properties and monies belonging to trust and also for an account from former trustee — Suit not filed on behalf of general public — S. 55, held not applicable. (1971) 84 MadLW 555(561)(DB).

(11) Section 55 (2) should be read harmoniously with powers of Advocate-General under S. 92, Civil P. C. — Consent required under S. 55 (2) — Not judicial act. A 1964 Mad 247 (250, 251) : (1963) 1 MadLJ 281 (DB).

(12) The consent or sanction accorded by the Wakfs Board under S. 55 (2) of the Act is

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having jurisdiction for the determination of the dispute, question or other relating to such wakf or wakf property, transfer such application to 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, while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 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 the 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 procedure specified in the Code of Civil Procedure, 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.]

[a] Substituted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 51 (not yet enforced).

*[55A. **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 for wakf property it shall hold its proceedings as expeditiously

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S. 55 (contd.)

... administrative act of the Board — Its ... not judicial or quasi-judicial — It ... the purview of correction by the ... of a writ of certiorari. A 1961 Mad 244 ... 2 MadLJ 77.

... under for appointment of mutawalli — Suit against tenant of mosque — Mosque represented by M ... to be mutawalli whose claim for ... was negatived by Court earlier — ... decided — Suit by person who ... mutawalli by Court under Cl. (2) ... set aside compromise — Held ... liable to be set aside as mosque represented by competent person. ... 342(346)(DB).

... under Ss. 27 (1) and 55 (... — Open to challenge in writ jurisdiction. A 1980 Kant 118(121) : (1980) 1 KantLJ 469.

(15) Section 55 shows that suits under S. 92, C.P.C. continue to be maintainable even after the passing of the Wakf Act. A 1985 SC 378 (375) : (1985) 1 CurLJ (Civ&Cri) 271.

(16) In deciding whether a suit falls within S. 92, Civil P. C. the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. Further, in such cases, it is very necessary to substantiate fully the allegations as to the breach of trust or compel the Court reasonably to give a direction to the trustees in management to properly administer the trust. If either or both of the above requirements are not fully made out, then the very basis of the suit under Section 55 of the Wakf Act or under S. 92 of the Civil P. C. would fail. A 1976 Mad 371 (374, 376) : (1976) 2 MadLJ 184 (DB).

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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.]

[a] See foot note [a] u/s. 55F.

*[55B. **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.]

[a] See foot note [a] u/s. 55F.

*[55C. **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.]

[a] See foot note [a] u/s. 55F.

*[55D. **Appointment of a receiver in certain cases.**— Notwithstanding anything contained in the Code of Civil Procedure, 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.]

[a] See foot note [a] u/s. 55F.

*[55E. **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 proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been

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registered, after such commencement, in accordance with the provisions of this Act.

(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.

[a] See foot-note [a] under S. 55F.

*[55F. **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.]

*[a] Ss. 55A, 55B, 55C, 55D, 55E and 55F inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 52 (not yet enforced).

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 court.— (1) In every suit or proceeding relating to [a][title to, or possession of, wakf property] [b][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

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Section 56

(1) Notice under the section is mandatory. A 1973 Mad 104(106): (1972) 2 MadLJ 222.

(2) Section 56 relates to the notice of suits by parties against the Board and not to any kind of suit of any litigant. A 1972 AndhPra 333(335): (1973) 1 AndhWR 85.

(3) Where the notice neither sets out cause of action or relief proposed to be claimed but only informs that it is intended to file a suit, it is not a proper notice. A 1973 Mad 104 (106): (1972) 2 MadLJ 222.

(4) If notice is issued by only one of the plaintiffs and suit is filed by him along with others, such a notice is not a proper notice under this section. A 1973 Mad 104(106): (1972) 2 MadLJ 222.

(5) Section takes in all suits which complain against any act of Board, irrespective of fact whether it is statutory suit or common law suit. — Word 'act' in section refers not only to voluntary acts but also involuntary acts. (1966) 79 MadLW 241 : (1966) 2 MLJ 104 (107 to 109) (DB).

(6) Suit against Board — Notice of — Suits under Ss. 6, 15 (3) and 27 not different so far as S. 56 is concerned. (1966) 2 MLJ 104.

(7) Suit against Wakf Board for declaration of plaintiff's title — Act of Board falling under S. 15 — Section 56 notice is a must — Failure to give notice — Plaint is liable to be rejected. A 1982 Mad 202 (205, 206) : 94 MadLW 803.

(8) Suit by mutawalli against municipality in respect of Kabristan — Board joined only as proper party — No relief claimed against Board — Section 56, not attracted. 1985 Guj L Herald 237(241).

Section 57

(1) Sections 57 and 59 would embrace within their sweep suits or proceedings which relate to title to wakf property. In all such suits or proceedings, the Board is entitled to plead as a party and to notice and to be entitled for an order of annulment of the decree that may be made in such proceedings without notice to Board. 1974 RajdhaniLR 85(94)(Delhi).

(2) Failure to issue any notice to Wakf Board by the Court by itself will not render proceedings illegal — An alleged trespasser

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sale, applies in this behalf to the court or other authority under whose order the sale was held.

[a] Substituted for the words "title to wakf property" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 53 (a) (not yet enforced).

[b] Substituted for the words "or the right of a mutwalli, "the court", ibid, Section 53 (b) (not yet enforced).

53. Proceedings under the Land Acquisition Act, 1894.— (1) If, in the course of proceedings under the Land Acquisition Act 1894 [a][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

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Section 57 (contd.)

cannot be heard to say that for want of a notice to Wakf Board the proceedings shall be rendered void. A 1973 Raj 322(326) : 1973 WeeklyLN 448 (Raj).

(3) Expression "relating to" — Meaning of — Words have both direct and indirect significance depending on context — Suit for declaration that certain decrees for possession obtained against representives of Durgah were fraudulent — Suit is within scope of S. 57 (1). A 1968 Mad 79 (80, 81) : (1967) 1 MLJ 190 (DB).

(4) Knowledge of suit or proceeding — Knowledge of Chairman of State Wakf Board obtained in some informal manner is not his official knowledge or knowledge of Wakf Board. A 1968 Mad 79(82) : (1967) 1 MLJ 190.

(5) Wakf Board in possession of property under invalid Wakf — Notice held not essential. A 1982 AndhPra 349(357) : (1982) 1 Andh LT 285 (DB).

(6) Where a suit based on title to the land adjoining a mosque was filed against the President and the Secretary of the mosque and it was found that the land in suit was not included in the list of Wakf published by the State Wakf Board and there was no evidence to show that it was wakf property it was held that a mere allegation by the defendants that it was Wakf property did not attract the section. Under the circumstances there was no need for the Court to give notice to the Wakf Board and it was unnecessary for the Board to apply under sub-section (3) of S. 57. (1979) 2 APLJ 15(22).

(7) Wakf-alal-aulad — No dedication in praesenti for pious, religious or charitable purpose recognised by Muslim Law — Held wakf was outside the scope of the Act. A 1979 Mad 231 (234) : (1979) 1 MadLJ 189 (DB).

(8) Suit relating to Wakf property — Notice to Wakf Board under sub-sec. (1) not issued — Notice is mandatory — Decree passed in such a case is void and unenforceable. ILR (1977) 1 Cut 411(414) ** ILR (1977) 1 Cut 407(409). (Suit to establish right as mujawar.)

(9) In every suit or proceeding relating to wakf property the Court has to issue notice to Board at the cost of the party instituting the and in the absence of the notice it would be open to the Board to have the decree declared void within one month of the Board's knowledge of the decree. A 1985 SC 375(375)

(10) Application under S. 57 (3) must be filed in the High Court. 1979 BLJ 645(648) (Pat).

(11) Decree passed by single Judge of High Court in second appeal — Application under S. 57 (3) filed before him — Appeal before Division Bench against order passed by single Judge on application can be filed without obtaining leave under S. 18 (2) of Rajasthan High Court Ordinance. 1977 WLN (UC) 38 (40) (DB)(Raj).

(12) Second Appeal from Title Suit against Wakf Board — High Court dismissing it in limine — Application under S. 57 (3) challenging the decree held should be filed before the H. C. — Dismissal under O. 41, R. 11, Civil P. C. too is a decree — Application filed before the Lower Appellate Court was incompetent. A 1980 Pat 141 (142, 143) : 1980 BLJR 55.

(13) Wakf-alal-aulad simpliciter — Mutawalli having power to sell property for the benefit of Wakf — Sanction given by Court — Application by Wakf Board for revocation of the sanction given by the court — Held sanction under S. 36A had no application and the Wakf Board cannot come and complain under S. 57 seeking revocation of sanction. (1979) 1 Mad LJ 189(193)(DB).

(14) Suit by trustees of Khatargach sect, for declaration of title to and possession of 'nohra' against managers of Masjid Khari in Mohalla Teliwada — Suit decreed — First and second appeal dismissed — Application under S. 57 by Wakfs Board to declare decree void — Knowledge of Wakfs Board is essential for calculating limitation. A 1981 Raj 98(101) : ILR (1980) 30 Raj 1124 (DB).

(15) The period of one month prescribed in sub-sec. (3) of S. 57 is applicable only to an application under S. 57 (3) this is a summary remedy available to a Wakf Board. This summary remedy does not bar the plaintiff from instituting a suit for declaration of title and recovery of possession at any time before the title of the Wakf to the property is extinguished by adverse possession and enjoyment by the party in possession. (1981) 94 MadLW 81 : (1981) 1 MadLJ 220(222).

Section 58

(1) Section 58 of Muslim Wakfs Act is entirely concerned with proceedings before the Collector under the Land Acquisition Act and does not cover a reference under S. 18 of the Land Acquisition Act (1894) pending in a Civil Court — Such a reference is a proceeding within S. 59. (1966) 1 MadLJ 212(213).

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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.

[b][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 [c][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 [c][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.

[a] The words "or under any other law ..... property" inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 54 (a) (i) (not yet enforced).

[b] Explanation inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), Section 54 (a) (ii) (not yet enforced).

[c] In sub-sections (3) and (4) words, brackets and figure "or under ..... in sub-section (1)" inserted by Wakf (Amendment) Act, 1984, S. 54 (b) & (c) (not yet enforced).

59. Board 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

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Section 59

(1) The object of S. 59 appears to be that the Board being the body in which the general superintendence over all Wakfs is vested, it will be in the interest of the Wakf that the Board appears and pleads as a party to the proceedings. (1966) 1 MLJ 212(213).

(2) In suits or proceedings which relate to or to wakf property, the Board is entitled to be as a party and to notice and to be entitled for an order of annulment of the decree that may be made in such proceedings without notice to Board. 1974 Rajdhani LR 85 (94)

(3) Section places no limitation for appearance of Board as party. (1966) 1 MadLJ 212 (213).

(4) Dispute concerning wakf properties in Mysore State — Proceedings under S. 145, Criminal P. C. — Mysore Muslims Wakf Board primarily interested in wakf and is entitled to be impleaded in proceedings. A 1962 Mys 128; (1962) CriLJ 77(78).

Proceeding in respect of Wakf — Reference under S. 18 of the Land Acquisition Act to be regarded in proceeding within S. 59 and section will have to be applied on allegation. Wakf Board — Final determination of nature of property to be in reference itself. (1966) 1 MLJ 212(213).

(6) The Wakf Act does not empower the Wakf Board to decide whether a particular property is a wakf property or not if such a dispute is raised by a person who is a stranger to wakf. See Ibid, S. 5 (4) (f). A 1967 Raj 8 (9): 1966 RajLW 582 (DB).

(7) Institution of suit against Municipality — Compliance with S. 271 of Municipalities Act — Wakf Board making prayer under S. 59 Wakf Act to be joined as co-plaintiff — Fresh notice under Sec. 271 of the Municipalities Act unnecessary. 1968, RajLW 407(409).

(8) The language used in S. 59 does not indicate that the property must be a wakf property before commencement of the suit or proceedings and that the Board could appear and plead only in the Court of the first instance. What is required is that the suit or proceedings must be pending and the property must be wakf property, when the Board applies for being impleaded to enable it to appear and plead, ILR (1980) 1 Kant 262 (265, 266).

(9) When a scheme has been framed by a Civil Court prior to the passing of the Wakf Act then it shall prevail and shall be taken as

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[a][Wakf Commissioner] may appear and plead as a party to the suit or proceeding.

[a] Substituted for the words "Board" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 56 (not yet enforced).

STATE AMENDMENT

Sections 59A, 59B

Tamil Nadu

In its application to the State of Tamil Nadu, after S. 59 insert as under—

"59-A. Properties and funds of wakfs not to vest under the law of limitation after the 14th August 1947 and suits not barred.— Nothing contained in any law of limitation for the time being in force—

(i) shall be deemed to vest or ever to have vested in any person the property or funds of any wakf which had not vested in such person or his predecessor-in-title on or before the 14th August 1947;

(ii) shall be deemed to bar or ever to have barred any suit or proceeding for the recovery of any such property or funds.

59-B. Extension of period of limitation for suits to recover rent and mesne profits of wakfs.— Notwithstanding anything to the contrary contained in the Limitation Act, 1963 (Central Act 36 of 1963), the period of limitation in respect of any suit or proceeding for the recovery of rent or mesne profits in respect of the property of any wakf shall be twelve years."—T. N. Act 34 of 1982, S. 2 (21-6-1982).

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 any wakf property or the rights of the mutawalli shall be compromised without the sanction of the Board.

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 [a][the Wakf Commissioner may apply] to the court for an order directing the mutawalli [b][to pay to the Wakf Commissioner or to any person authorised 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 duty imposed on him under the wakf and the mutawalli wilfully fails to discharge such duties, the Board 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.

[a] Substituted for the words "the Board may apply" by Wakf (Amendment) Act, 1984, S. 59 (not yet enforced).

[b] Substituted for the words "to pay to the Board or to any person authorised by the Board" ibid. S. 59 (not yet enforced).

[c][**61A. 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 such period.]

[c] Inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 57 (not yet enforced).

Section 59 (contd.)

... Wakf Board for administering ... for which that scheme has ... open to the Wakf Board to ... Civil Court for modifying the ... occasion or necessity arises, ... W 708 (709).

Section 60

(1) In view of Section 60, the mutawalli has right to file a suit for the purpose of discharging the duties at mutawalli for protecting wakf property and for administering it. 1985 Cur LR 237(245).

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CHAPTER VIII
MISCELLANEOUS

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 wakf administration in 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 powers and functions 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.]

[1] Substituted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 58 (not yet enforced).

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.

STATE AMENDMENT

Maharashtra

In its application to the State of Maharashtra, in S. 63—

(i) for the words "the State Government may" substitute the words "the State Government or any officer authorised by the State Government may";

(ii) after the words "the State Government", insert the words "or officer"; and

(iii) in the marginal note, for the words "State Government", substitute the words, "State Government or officer."—Mah. Act 43 of 1965, S. 3 (26-10-1965).

[2][63A. **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.

Section 62

S. 62, 63 and 67 which deal with powers of Central Government and State Government to give directions to the Board are intended to safeguard proper functioning of the Board in the discharge of its duties under the Act. A 1959 MadhPra 377(382).

Section 63

S. 62, 63 and 67 are intended merely for proper functioning of the Board in the discharge of its duties under the Act. A 1959 MadhPra 377(382).

The authority of the State Government in giving directions to the Board and in directing straightly removing a Mutawalli. A 1979 Pat 103(106) : 1979

(3) Section 63 does not empower the State Government to assume the powers of the Wakf Board, nor does it enable the State Government to direct the Wakf Board to get the appointment of mutawallis or committee of management of a wakf approved by the State Government. A 1981 Kant 37(39) : (1981) 1 KantLJ 63.

(4) The power of the State Government to issue general or special directions to a Board in its working or in the performance of its functions cannot be construed as empowering the Minister for Wakfs or the Government to interfere with the day to day functioning of every wakf in the State. A 1981 Kant 154 (159).

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63B. 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 proceeding arising out of an application 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:

Provided 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 been made to the Board and had 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.]

[a] Sections 63A, 63B inserted by Wakf (Amendment) Act, 1984, S. 59 (not yet enforced).

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, [a][or has wilfully 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 notifica-

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Section 64

... The conditions precedent to the supersession of the Board under S. 64 (1) are (i) when the State Government decides to supersede a Wakf Board it must first give reasonable opportunity to the Board to show cause against the proposed action. (ii) After that Wakf Board has to be given adequate opportunity to submit explanations and to file objections, if any. (iii) State Government has then to consider explanation and objections. (iv) If on a consideration of the allegations against the explanations and objections the State Government is of the opinion (a) that the Board is unable to perform its statutory duties or it has persistently made default in performance of its statutory duties; or has exceeded or abused its powers, ... 112 (114, 142).

... supersession of a statutory Board ... civil consequences that will ... narily it should be a reasoned order. The order must disclose the application of mind. To start with there must be uncontroverted facts and evidence. They must be weighty in the sense that an extreme step of supersession would alone be a solution. A 1983 Delhi 439 : ILR (1983) 1 Delhi 414.

(3) Section 64, is an extreme remedy. It is only when other remedies provided in the Act are not effective and the circumstances are such that the State Government, on a proper consideration, has formed the opinion that supersession of the Board is necessary and unavoidable on the grounds stated under S. 64, recourse to that drastic power shall be had. Even when the State Government has decided to supersede the Board, it must do so only for a limited period of time and not for an indefinite period. A 1984 Ker 370(D).

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

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Board in the manner provided in section 10 and S. 11. The words "or has wilfully ..... in the State" inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 60.

65. **Proctection of action taken in good faith.**— No suit or other legal proceeding shall lie against the Board or [a][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.

[a] Substituted for the words "the Commissioner" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 61 (not yet enforced).

"66. **Wakf Commissioner, members of Board, etc., to be deemed to be public servants.**— (1) The Wakf Commissioner, Survey Commissioner, members of the Board, every auditor, every 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.

(2) Every mutawalli 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 servants within the meaning of section 21 of the Indian Penal Code.".

[a][66A. **Special provision for reorganisation of certain Boards.**— (1) Where on account of the reorganisation of States [b][under any law providing for reorganisation of States] the whole or any part of a State in respect of which a Board was, immediately before the [c][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 [d][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 [e][such reconstitution] including proposals regarding the transfer of the assets, rights

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Section 65

... plaint against 8 accused for invading ... owning private library in possession ... — Accused 1, Secretary of ... and 2 to 4, employees thereof — Section 65 of Wakf Act is no bar to prosecution — Sanction under S. 197, Criminal P. C. is not necessary. A 1970 AndhPra 13(18): 1970 CriLJ 26 (DB).

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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 as 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 [a][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 employee of the Board to, or by, any such transferee and [c][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.]

[a] Inserted by the Wakf (Amendment) Act, 1959 (30 of 1959), S. 4 (2-9-1959).

[b] Substituted for the words and figures "under the States Reorganisation Act, 1956" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 63 (a) (i) (not yet enforced).

[c] Substituted for the figures, letters and words "1st day of November, 1956", ibid, S. 63 (a) (ii).

[d] Substituted for the words "it should be reconstituted or reorganised as an intra State Board", ibid, S. 63 (a) (iii).

[e] Substituted for the words "such reconstitution and reorganisation, as the case may be", ibid, S. 63 (a) (iv).

[f] Substituted for the words "reconstitution and reorganisation, ibid, S. 63 (b) (i).

[g] Substituted for the words and figures, Subject to the provisions of section 111 of the States Reorganisation Act, 1956, ibid, S. 63 (b) (ii).

[66B. **Special provision for establishment of Board for part of a State.**—Where on account of the territorial changes brought about by [b][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 and has not been, brought into force in the remaining part thereof, then, notwithstanding anything contained in this Act; it shall be lawful for the Gov-

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...ment of the State to establish one or more Boards for such part or parts of ... this Act is in force and in such a case, any reference in this Act to the "State" in relation to a Board shall be construed as a reference to that ... 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 ... the State Government may by order notified in the Official Gazette, dissolve the Board established for the part of the State or reconstitute and reconstitute 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 ... shall vest in, and be the assets, rights and liabilities of the reconstituted ... or the new Board, as the case may be.]

[a] Inserted by the Wakf (Amendment) Act, 1959 (30 of 1959), S. 4 (2-9-1959).

[b] Substituted for the words and figures "the States Reorganisation Act, 1956," this Act is, as from the 1st day of November, 1956, applicable by Wakf (Amendment) Act, 1964 (69 of 1964), S. 64 (not yet enforced).

[66C. 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 be-

... a mosque, idgah, imambara, dargah, khangah or a maqbara;

... a Muslim graveyard;

... choultry or a musafarkhana,

Section 66C

... 66-C which applies the Act to ... made by non-Muslims, no dedi... by a non-Muslim would be part ...erty — Under S. 66-C, grant ... support of a wakf as described in Cls. (a) to (c) in that section — It does not ... a non-Muslim creating a Wakf for ... can donate property to an al... wakf and that too if the wakf ... under any of the three clauses ... that section — Grant for kazi ... mosque is not one of the wakfs ... any one of the three clauses in ... 1974 Mad 225(228) : (1974) 1 Mad ... 258) (DB) ** (1967) 80 MadLW 67 (70, 71) (DB). (For original foundation of ... must be person professing Islam. ... is removed to some extent by ... which grant in support of exist... whomsoever made is wakf.)

... ming provision in S. 66-C is not ... spective effect to the provision — ... intended by S. 66-C is notwithstanding definition in S. 3 (1) to deem ... ations made by non-Muslims as ... the condition laid down in Section 66C is satisfied. (1973) 1 CutWR 216(222). ... ard -- Origin of Wakf not provcation either by Muslim or non... — Dedication cannot be pre... Punj 344 (347, 350) : 71 PunLR ...

... 66-C is applicable S. 3 (1) (i) ... (Obiter). (1966) 2 MLJ 104 (105, ...

... 64 Amendment Act, all service ... for any purpose recognised by ... pious religious or charitable have the effect of constituting the property subject matter of the grant to be wakf, it is so because wakf in its basic essential involves the permanent dedication of the property for such performance. A 1985 Andh Pra 127 : (1984) 2 APLJ 259 (DB).

(6) The section itself indicates properties donated or given by non-Muslims for maintainance of certain wakfs are brought within the purview of the Act but the section does not enable non-Muslims to create a wakf. A 1983 AndhPra 199(200) : (1980) 1 APLJ 301.

(7) What all S. 66-C says is that where any movable or immovable property has been given or donated by a person not professing Islam for the support of wakf being (i) a mosque, idgah, imambara, dargah, khangah or maqbara (ii) a Muslim graveyard and (iii) choultry or musafarkhana, then such property shall be deemed to be comprised in the wakf and be dealt with in the same manner as the wakf in which it is so comprised. While S. 66-C speaks of properties being donated or given for the support of specified institutions, the definition of wakf is general and includes all purposes recognised by Muslim law as pious, religious, charitable. A 1983 AndhPra 57(62) : (1982) 2 AndhLT 313 (DB).

(8) Grant of land by a non-Muslim Ruler in favour of Fakkirs visiting the Mosque and not to the Mosque — It is neither wakf within S. 3 (1), nor a deemed wakf under S. 66C. The fact that S. 66C of the Act deals with certain donations made by non-Muslim as a "deemed wakf" will clearly indicate that the dedication made by non-Muslim will not come within the definition of 'wakf' occurring in S. 3 (1) of the Act. A 1983 Mad 297(300) : (1983) 1 Mad LJ 299 (DB).

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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.]

[Inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 21 (10-10-1964).

[66D. **Powers of Board and Wakf Commissioner 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 Wakf Commissioner to require any person having the custody of any record, register, report or other document relating to a wakf or any immovable property which is or may be wakf 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 Wakf Commissioner copies or extracts from the required record, register, report or other document.]

[See foot-note [a] under S. 66H.

[66E. **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 proceeding in respect of the administration or management of any wakf, or any other matter 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.]

[See foot-note [a] under S. 66H.

[66F. **Power of Central Government to constitute common Boards.**— (1) Where the Central Government is satisfied that by reason of—

(a) the smallness of the Muslim population in two or more States,

(b) the slender resources of the wakf in such States, and

(c) the disproportion between the number and income of the wakfs and the Muslim population in such States,

it is expedient in the interests of the wakfs 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, after consultation with 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 the 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, references 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, make, 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

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such conditions and restrictions as may be specified by the Central Govern-ment, and shall by the said name sue or be sued.]

[a] See foot-note [a] under S. 66H.

*[66G. **Period of limitation for recovery of wakf properties to be thirty years.**— Notwithstanding anything contained in the Limitation Act, 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 shall begin to run when the possession of the defendant becomes adverse to the plaintiff.]

[a] See foot-note [a] under S. 66H.

*[66H. **Special provision as to evacuee 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 which immediately before it became such evacuee property within the said meaning was property comprised in a wakf and, in particular, any entrustment (whether by transfer of any instruments or in any other manner and whether generally or for specified purposes) of any such property to a Board made before the commencement of the Wakf (Amendment) Act, 1984 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 with effect from the date of such entrustment, and

(b) authorise such Board to assume direct management of the wakf concerned for so long as it might deem necessary.]

* Sections 66D, 66E, 66F, 66G, 66H inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 65 (not yet enforced).

67. **Power to make Rules.**— (1) The State Government may, by notification in the Official Gazette[a], make rules to carry out the [b][purposes of this Act, 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-sec. (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) * * * * * * * ;]

(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;

Section 67

62, 63 and 67 are intended merely proper functioning of the Board of its duties under the Act. 377(382).

Wakf Rules (1964), R. 6 — No on against Chairman and re-chairman — Meeting for — Must be convened by Government in accordance with R. 6 in absence of specific provision. A 1980 Punj 306(311)(DB).

(3) Punjab Wakf Rules (1964), R. 6 — Chairman of Wakf Board — Removal — Members of Board can remove him by passing vote of no-confidence. A 1980 Punj 306(310)(DB). (ILR (1975) AP 242, **Dissented from.**)

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(h) the form in which, and the time within which, the budget of the Board may be prepared and submitted by the Board [1][* * *];

(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) the manner of election of members 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 21B;

(p) the conditions and restrictions subject to which the Wakf Commissioner and any authorised officer of the Board may inspect any record, register or other document in a public office in pursuance of the provisions of section 22B;

(q) the conditions subject to which an Executive Officer may be appointed under section 26A and salaries and allowances of such Executive Officer;

(r) the manner in which an inquiry may be held by the Wakf Commissioner under section 26B with regard to wakfs which appear to have ceased to exist or in relation to buildings, or other places which were being used for religious purposes 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 within which, a separate budget for wakfs under the direct management of the Board shall be prepared as required by section 31A;

(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 36A, 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 36D 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 (1) of section 43A;

(y) manner of publication of order made under sub-section (2) of section 43C;

(z) the manner in which consultation may be made with a mutawalli under sub-section (1) of section 43F;

(za) manner of publication of order made under sub-section (2) of section 43F;

(zb) the rate at which contribution is to be made by a mutawalli 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) of section 55;

(ze) the form in which an annual report is to be submitted under section 63A and the matters which such report shall contain.

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(zf) rules regulating the conduct of business by, and affairs of, the committee Board under clause (c) of sub-section (3) of section 66F;

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

[-] For rules in Lakshadweep Union Territory, see Gaz. of Ind., 1965, Pt. II, S. 3 (i), p. 598; for Rules in Mysore (now Karnataka) State, see Mys. Govt. Gaz., 1964, Pt. IV, S. 2-C (i), p. 420; for Rules in Pondicherry, see Pondi. Gaz., 17-3-1972, Ext., (No. 3); for Rules in Andhra Pradesh, see A. P. Gaz., 1956, Pt. I, (R. S.), p. 331; for rules in Assam, see Assam Gaz., 1962, Pt. II-A, p. 1768; in Gujarat, see Guj. Gaz., 1963, Pt. IV-A, p. 31; in Kerala, see Ker. Gaz., 1966, Pt. I, S. IV (Supp.) No. 18, G. 820 & Ker. Gaz., 1967, Pt. I, S. IV, No. 37; in Madhya Pradesh, see M. P., Gaz., 1960, Pt. IV (Ga), p. 987 [30-11-1961]; in Maharashtra (Marathwada area), see Maha. Gaz., 1961, Pt. IV-A, p. 617; in Orissa, see Ori. Gaz., 16-3-1961, Ext. (No. 220); in Punjab, see Punj. Gaz., 1964, Pt. III (L. S.), pp. 165-181. In Rajasthan, see Raj. Gaz., 1964, Pt. IV (Ga), p. 435 (6); in Tamil Nadu, see Ft. St. Geo. Gaz., 1959, Pt. I, Supp., p. 665.

[1] Substituted for certain words by the Wakf (Amendment) Act, 1964 (31 of 1964), S. 22 [10-10-1964].

[2] Clause (d) omitted by Wakf (Amendment) Act, 1964 (69 of 1964), S. 66 (1).

[3] Words "approved by the State Government", omitted by Wakf (Amendment) Act, 1964, S. 22 [10-10-1964].

[c] Substituted for Clause (n) by Wakf (Amendment) Act, 1964 (69 of 1964), Section 66 (ii) (not yet enforced).

STATE AMENDMENT

Maharashtra :

In its application to the State of Maharashtra, in S. 67, in clause (h) of sub-section (2), after the words "submitted by the Board", insert the words, "and approved by the State Government."—Maha. Act 43 of 1965, S. 4 [26-10-1965].

[a][67A. **Rules made by the Central Government to be laid before Parliament.**— Every rule made by the Central Government under section 66F 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.]

[a] Inserted by Wakf (Amendment) Act, 1964 (69 of 1964), S. 67 (not yet enforced).

68. **Power to make regulations.**[a]— (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 at the meetings 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;

Section 68

Termination of services of officers and servants of Board — Rules applicable — If no regulations are made under the Act services would be terminated subject to terms of contract or by general application of principles of natural justice and general law. A 1967 AndhPra 291(293) : (1967) 1 AndhWR 221 (DB)

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(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.

[a] For Regulations in: (i) Andhra Pradesh, see A. P. Gaz., 1964, Pt. II, p. 15;
(ii) In Marathwada (Maharashtra) see Maha. Gaz., 1960, Pt. IV-C, p. 926;
(iii) In Orissa, see Orissa Gaz., 1961, Ext. (No. 596);
(iv) In Punjab, see Punj. Gaz. 1967, Pt. III, p. 604;
(v) In Rajasthan, see Raj. Govt. Gaz., 5-11-1964, Pt. IV (Ga), p. 435 (6).

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

(1) The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810;

(2) [a][* * *] the Religious Endowments Act, 1863;

(3) The Charitable Endowments Act, 1890.

[b][(3A) On and from the commencement of the Wakf (Amendment) Act, 1984, sections 92 and 93 of the Code of Civil Procedure, 1908.]

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

(5) The Mussalman Wakf Act, 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.

[a] Words "section 5 of" omitted by Wakf (Amendment) Act, 1964 (34 of 1964), S. 23 (15-10-1964).

[b] Inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 68 (not yet enforced).

Section 69

...tion 55 whether impliedly repeals Section 92 and 93, Civil P. C. or S. 18, Religious ...nts Act 1863, so far as wakfs are ... — Application by any person or ...ther than Board for sanction of ... under S. 93, Civil P. C. for institu... under S. 92 against trustees of ...faintainable — Sanction of Board ... under S. 55 (2) is in addition to that required under S. 92, Civil P. C. A 1962 Ker 343(346): 1962 KerLT 544 (FB).

(2) S. 69 (2) is no warrant for the proposition that S. 11 of the Administration of Evacuee Property Act (1950), stands expressly repealed thereby. A 1984 Punj 68B (78): (1984) 86 PunLR 386 (FB).

(3) Act extended to State of Bihar from 7-4-1973 by S. 1 (3) Notification — Effect is that Bihar Wakf Act, 1947 stands repealed from that date. 1975 BLJR 536(540)(DB)(Pat).

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"[170. **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.]

[1] Inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 24 [10-10-1964].

*[SCHEDULE

(See Section 9 (1A))

LIST OF AMENDMENTS

1. In sub-section (2) of S. 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 S. 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 Central Board of Wakfs, associations such as State Jamiat-ul-Ulma-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;"; and

(b) the second proviso shall be omitted.

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

4. For S. 27, the following section shall be substituted,—

"27. **Decision if a property is a Wakf property.**— (1) The Board may itself collect the information, regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is a 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 a civil court on any question referred to it under sub-section (1) shall be final."]

[2] Inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 24 [10-10-1964].

[THE] WAREHOUSING CORPORATIONS ACT, 1962
(ACT 58 OF 1962)

[The text of the Act printed here is as on 30-4-1985.]

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Preamble

Whereas, it is expedient to provide for better governance, administration and supervision of certain classes of waqfs in Uttar Pradesh.

It is hereby enacted in the Eleventh Year of the Republic of India as follows :

Preliminary

Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Muslim Waqfs Act, 1960.

(2) It shall extend to the whole of Uttar Pradesh.

(3) It shall come into force at once.

2. Application of the Act.—(1) Save as herein otherwise specifically stated, this Act shall apply to all waqfs, whether created before or after the commencement of this Act, any part of the property comprised in which is situate in Uttar Pradesh, and to all the waqfs which at the time of the coming into force of this Act were under the superintendence of the Sunni Central Board or the Shia Central Board constituted under the U. P. Muslim Waqfs Act, 1936 (U. P. Act XIII of 1936).

[1][(2) This Act shall also apply to the endowments hitherto governed by the Husainabad Endowment Act, 1878, the trusts known as King's side and Queen's side of Shahnajaf Trust, the waqfs known as waqf Abbu Saheb, Raouza Kazman Waqf and Waqf Wazir Begum, Lucknow and any other endowment, Trust or Waqf hitherto administered by the Trustees appointed under the said Husainabad Endowment Act ; and all these endowments, Trusts and Waqfs shall be deemed to be waqfs for the purpose of this Act :

Provided that the State Government shall have the power to make, by notification in the official *Gazette*, such adaptations, whether by way of modification, addition or omission, not affecting the substance of the provisions of this Act, as it may deem fit, in its application to the aforesaid endowments, trusts and waqfs.]

(3) [2][* * * * * *]

3. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(1) "beneficiary" means a person or object for whose benefit a waqf is created and includes religious, pious or charitable object and any other object of public utility established for the benefit of the Muslim community or any sect thereof ;

(2) "Board" means the Sunni Central Board or the Shia Central Board constituted under this Act ;

(3) "Commissioner" means a Commissioner of Waqfs appointed by the State Government under Section 4 ;

(4) "family" includes—

(i) parents and grand-parents ;

1. Substituted by Act No. 25 of 1963, vide Sec. 2, (w. e. f. Sep 3, 1960).
2. Omitted by Act No. 28 of 1971, vide Sec. 2, (w. e. f. Oct. 31, 1971)

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(ii) wife or husband ; and

(iii) persons related through any ancestor, male or female.

(5) "Mutawalli", means any person appointed either verbally or under any deed or instrument by which a waqf, has been created or by a competent authority to be the Mutawalli of a waqf, and includes any Naib-Mutawalli, Khadim, 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 or committee for the time being managing or adminstering any waqf property as such ;

Comments

The word 'Mutawalli' has been defined in Section 3 (5) of the Waqfs Act of 1960 to mean a manager of a waqf or endowment and to include an amin, a sajjadanashin, a khadim, naib-mutawalli and committee of management and also any person who is for the time being incharge of, or administering any endowment as such. They are persons, whether individuals or members of a committee, incharge of or administering any endowment who are, within the meaning of the Waqfs Act of 1960, mutawallis. A committee enjoying the powers of superintendence cannot be said to be incharge of or administering an endowment, otherwise the Waqf Board constituted under the Waqfs Act, shall also become a mutawalli.—*U P. Suuni Central Waqf Board* v. *Mohammad Alim Chesthi*, 1965 All. LJ 1170 at 1173.

(6) "net income" means the total income less revenue, cess, rates, taxes or surcharge payable to the Government or to any local authority ;

(7) "Property" includes Government securities and bonds, shares in firms and companies, stocks, debentures and other securities and instruments, and each and other commodities ;

(8) "Prescribed" means prescribed by bye-laws or rules made under this Act ;

(9) "Sub-Committee" means a sub committee appointed for any local area under Section 27 ;

(10) "Tribunal means a Tribuual constituted under Section 70 ;

(11) "Waqf" means the permanent dedication of grant of any property for any purpose recognized by the Muslim law or usage as religious, pious, or charitable and includes waqfs-alalaulad [1][to the extent to which the property is dedicated or granted for any such purpose as aforesaid] and waqfs by user ; and "waqif" means the person who makes such dedication or grant ;

(12) "Waqf property" includes offerings made at a shrine or tomb or Imambara ; and

(13) "State Government" means the Government of Uttar Pradesh.

CHAPTER I

Survey of Waqfs

4. Appointment of Commissioner of Waqfs and Additional or Assistant

1 Ins. by U. P. Act 28 of 1971, vide sec 3 (b) (w. e. f Oct. 31, 1971).

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Commissioners of Waqfs.—The State Government may, from time to time, by notification in the official *Gazette*, appoint a Commissioner of Waqfs and as many Additional Commissioners of Waqfs or Assistant Commissioners of Waqf as may be necessary for the pursose of making a survey of all Waqf properties in the State or in specified areas thereof whether the waqfs be subject to this Act or not.

Comments

(*i*) *Noti. No.* 937/*M. W.*-677-76, *dated March* 10, 1977.—In exercise of the powers under Section 4 of the U.P. Muslim Waqfs Act, 1960, the Governor is pleased to appoint with effect from the date of taking over charge, Sri Zahir Ullah, Deputy Secretary to Government, U. P., in Revenue Department as Assistant Commisioner of Waqfs, U. P., in addition to his duties, for the purpose of makig a survey of all waqf properties in the State.

(*ii*) *Notl. No.* 3639/*MW*-677-76, *dated Nov.* 3, 1977.—Consequent upon the retirement of Sri Zahir Ullah, Deputy Secretary to Government, Uttar Pradesh, in Revenue Department, who was appointed as Assistant Commissioner of Waqf, Uttar Pradesh in addition to his duties vide Notification No. 937/MW-677-76, dated March 10, 1977, the Governor in exercise of the powers under Section 4 of the U. P. Muslim Waqfs Act, 1960, (U. P. Act No. XVI of 1960), is pleased to appoint with effect from the date of taking over chrrge, Sri Hamid Ali Khan, Assistant Compensation Commissioner, Uttar Pradesh as Assistant Commissioner of Waqfs, Uttar Pradesh, for the purpose of survey of Waqf properties in the State.

(*iii*) *Noti. No.* 2775-*MW*/677-76 *dated Sept.* 21, 1977.—In exercise of the powers under Section 4 of the Uttar Pradesh Muslim Waqfs Act, 1960, the Governer is pleased to appoint, with effect from the date of taking over charge, Sri Fazle Ahmed Khan, Settlement Commissioner, Uttar Pradesh, as Commissioner of Waqfs, in addition to his duties, for the purpose of making a survey of all waqf properties in the State.

(*iv*) *Noti No.*1862-*I*/*MW*-720-77 *dated July* 1, 1978.—In exercise of the powers under Section 4 of the Uttar Pradesh Muslim Waqfs Act, 1960, the Governor is pleased to appoint the Deputy Collector declared as Officer-in-charge (Waqfs) by the District Officer of the districts of Meerut, Saharanpur, Aligarh, Faizabad, Bijnor, Lucknow, Allahabad, Jaunpur, Gorakhpur, Jhansi, Moradabad and Muzaffarnagar as *ex officio* Assistant Commissioners of Waqfs for the purpose of making survey of waqf properties within the limits of their respective jurisdiction.

(*v*) *Noti. No.* 282/*LII*-720-76, *dated January*, 30, 1979.—In exercise of the powers under Section 4 of the U. P. Muslim Waqfs Act, 1960, the Governor is pleased to appoint the District Officers and Additional District Magistrates of Bara Banki, Lakhimpur Kheri. Rampur, Bareilly, Budaun, Kanpur, Agra, Azamgarh, Varanasi, Dehra Dun, Bahraich and Naini Tal as *ex officio* Addi, tional Commissioner of Waqfs for the purpose of making survey of Waqf properties within the limits of their respective districts.

5. An Additional Commissioner of Waqfs or an Assistant Commissioner of Waqfs shall exercise all the powers and perform all the duties under this Act have been conferred or enjoined upon the Commissioner.

6. Survey of Waqfs.—(1) The Commissioner shall apportion the work of survey of Waqfs between himself and the Additional and Assistant Commissioners in such manner as he may think proper, and shall generally supervise and control their work.

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(2) The Commissioner of Waqfs shall, after making such inquiries as he may consider necessary, ascertain and determine--

(a) the number of all waqfs in the area showing the Shia waqfs and Sunni waqfs separately ;

(b) the nature and objects of each waqf ;

(c) the gross income of the property comprised in each waqf ;

(d) the amount of revenue, cesses, rates, taxes and surcharge payable to the Government or the local authority in respect of each waqf property ;

(e) expenses incurred in the realization of the income and the pay or other remuneration of the Mutawalli of each waqf ;

(f) [* * * * *][1].

(g) such other particulars relating to each waqf as may be prescribed :

Provided that where there is a dispute as to whether a particular waqf is a Shia waqf or Sunni waqf and there are clear indications in the recitals of the deed of waqf as to the sect to which it pertains, such dispute shall be decided on the basis of such recitals.

(3) The Commissioner shall while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) in respsct 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 accounts and witnesses ;

(e) making any local inspection or local investigation ; and

(f) any other matter which may be prescribed by the State Government.

(4) The Commissioner, the Additional Commissioner of Waqfs or Assistant Commissioner of Waqfs shall submit his report of enquiry, containing the particulars mentioned in sub-section (2) above, to each of the Boards and the State Government and the State Goverotment shall, as soon as possible, notify in the official *Gazette* the waqfs relating to particular sect, to which, according to such report, the provisions of this Act apply.

Comments

"Any person interested in a waqf"—Interpretation of.—When the Central Board assumes jurisdiction over any waqf under the Act it proceeds to do so on the decision of three points by the Commsssioner of Waqfs. It assumes that the property is a waqf ; that it is either a Sunni or a Shia waqf, and that it is not a waqf which falls within the exceptions mentioned in Section 2 of the Act. The literal construction of the expression "any person interested in a waqf" would render a part of the sub-section wholly meaningless and ineffective. The legislature has definitely contemplated that the decision of the Commissi-

1, Omitted by Section 4 of U. P Act Ne. 28 of 1971 (w. e. f. Oct 31, 1971).

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oner of the Waqfs that a particular transaction is a waqf can be challenged by persons who do not accept the correctness of the said decision, and it is this class of persons who are obviously intended to be covered by the words "any person interested in a waqf". It is well settled that construing the provisions of a statute courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective ; an attempt must always be made as to reconcile the relevant provisions as to advance the remedy intended by the statute. On a reading of the relevant sub-section of section 6 as a whole there can be no doubt that the expression "any person interested in a waqf" must mean "any person interested in what is held to be a waqf". It is only persons who are interested in a transaction which is held to be a waqf who would sue for a declaration that the decision of the Commissioner of the Waqf in that behalf is wrong, and that the transaction in fact is not a waqf under the Act —*Siraj-ul-Haq Khan* v. *Sunni Central Board of Waqfs, U. P.*, AIR 1959 S. C. 198 at 203, 204 : 1959 SCR 1287 : 1959 All LJ 83 : 1959 SCJ 367].

"Dispute" referred to in Section 6—Ambit and scope of—Section 6(2) of the Act enjoins upon the Commissioner of Waqf to show the number of Waqfs in the area; whether they are Sunni Waqfs or Shia Waqfs separately. Sub-section (b) of Section 6 (2) of the Act gives the nature and object of each waqf and under sub-section (g) of the said sub-section, such other particulars of the waqf, as may be prescribed, have to be mentioned. It would be taking a very narrow view of the Section if the dispute referred to in Section 6 is taken to mean a dispute only with regard to the area of the properties owned by the waqfs or disputes concerning rights of taxes or sub-charges payable to the Government, expenses and realization of income made by the Mutawalli. There does not appear to be any restriction placed upon the word 'dispute' in Section 8 of the Act, which would exclude the nature of the waqf being considered or which would preclude a party from challenging that a particular property claimed by the Shia Waqf or the Sunni Waqf and *vice versa* does not relate to that waqf. In the instant case the plaintiff had come forward with the plea that they had got the Masjid in question registered as a Shia Masjid under Chapter III, Section 29, Muslim Waqfs Act.—*Mohammad Musteh Hasan Jaffery* v. *Azam Ali*, 1983 All. LJ 678 at 680 : 1983 All. LR 370 : 1983 All WC 409.

7. **Recovery of costs of survey**—(1) The total cost of making a survey under this Chapter, shall, where the survey is State-wide, be borne by all the Mutawallis in proportion to the income of the property of the waqfs in the State, and where the survey is confined to a particular area, by the Mutawallis of the waqfs situate in that area in proportion to the income of the property of the waqfs in that area.

(2) Notwithstanding anything contained in the deed or instrument creating any waqf, any Mutawalli may pay from the income of the waqf property 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 the State Government, be recovered in the manner provided in Section 83.

8. (1) If any dispute arises whether a particular property is waqf property or not or whether a waqf is a Shia waqf or Sunni waqf, the Board concerned or the Mutawalli of the waqf or any person interested therein, may, in accordance with the provisions of this Act, refer the dispute for adjudication to the Tribunal :

Provided that no such dispute shall be entertained by a Tribunal after

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the expiry of one year from the date of the publication of the list of waqfs under sub-section (4) of Section 6.

(2) The Commissioner, Additional Commissioner of Waqfs and Assistant Commissioner of Waqfs shall not be made a party to any proceeding under sub-section (1).

Comments

Waqf whether Shia or Sunni waqf—When the nature of the waqf being a Shia or Sunni Waqf is challenged and when a person other than the Mutawalli of the said Waqf has committed acts of trespass etc. upon the property of waqf, that the proper section to apply for giving relief to the Mutawalli would be Section 8 and not Section 57-A of the Act.—*Mohammad Musteh Hasan Jaffery* v. *Azam Ali*, 1983 All. LJ 678 at 681 : 1983 All. WC 409 : 1983 All. LR 370.

9. (1) The provisions of this chapter shall not apply to the proceedings of any survey of waqf properties started before the commencement of this Act, and such survey shall be completed in accordance with the provisions of the U. P. Muslim Waqfs Act 1936, (U. P. Act XIII of 1936).

(2) Nothing in this chapter shall affect the finality of the decisions of the Chief State Commissioner of Waqfs or of any State Commissioner of Waqfs or Commissioner of Waqfs in cases in which prior to the commencement of this Act the report of such Commissioner has become final.

CHAPTER II

Establishment of Boards and their Functions

10. **Establishment of Central Boards**—(1) There shall be established in Uttar Pradesh two separate Boards to be called the "Sunni Central Board" and the "Shia Central Board" of Waqfs. Each Board shall be a body corporate and shall have perpetual succession and a common seal and shall by its said name sue or be sued :

Provided that the Boards which were constituted under the U. P. Muslim Waqfs Act, 1936 (U. P. Act XIII of 1936) and were functioning at the time of the commencement of this Act shall deemed to have been constituted under the provisions of this Act and shall continue to function till the expiry of their term under the U. P. Muslim Waqfs Act, 1936 (U. P. Act XIII of 1936).

(2) Anything required or permitted by this Act to be done by the Board shall in case of Sunni Waqfs be done by the Sunni Central Board and in case of Shia waqfs by the Shia Central Board :

Provided that the control and superintendence of the Shia Board over the [1][Properties which were hitherto governed by the Husainabad Endowment Act, 1978, or which were administered by the Trustees appointed thereunder] shall be subject to directions as may be issued by the State Government from time to time.

11. **Constitution of Sunni Central Board.**—(1) [2][The Sunni Central Board shall consist of the following Sunni Muslims, elected [* * *][3] or [co-opted][4] or nominated as hereinafter indicated]—

1. Subs by Act XXV of 1963, vide sec 4 (w. e. f. Nov. 1, 1963).
2. Re-numbered as sub-section (1) by U. P. Act No. 3 of 1970.
3. The words "in the manner prescribed" omitted by U. P. Act 11 of 1974.
4. Subs. by U. P. Act No. 3 of 1970, S. 2(1)

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(i) [1][six members, of whom at least one shall be a member of the State Legislative Council, to be elected from amongst themselves by Sunni members of the State Legislature] ;

(ii) [2][two Sunni Advocates enrolled with the Uttar Pradesh State Bar Council, to be elected by Sunni members of the High Court Bar Association, Allahabad and Avadh Bar Association, Lucknow] ;

(iii) one member to be elected from amongst themselves by members of the Working Committee of the Provincial Jamiat-ul-Ulema, U. P. ;

[3][(iv) two members, one of whom shall have knowledge or practical experience in respect of finance and the other in respect of administration, to be nominated by the State Government ;

(v) one member to be co-opted by the above [eleven][4] members from amongst Mutawallis of waqfs to which this Act applies having each an annual income of not less than [rupees three thousand][5] ;

(vi) the President, if he is not one of the above [twelve][6] members].

[7][(2) The election and co-option under sub-section (1) shall be held and made within such time and in such manner as the State Government may by general or special order direct, and any question or dispute relating to any such election or co-option, shall be referred to, the State Government whose decision shall be final.]

12. **Constitution of Shia Central Board.**—[8][(1) The Shia Central Board shall consist of the following Shia Muslims elected [9][* * *] or co-opted [or nominated or *ex- officio*][10] as hereinafter indicated] :

[11][(i) all Shia members of the State Legislature] ;

[12][(ii) one member to be nominated by the State Government] ;

(iii) one member to be elected by the Board of trustees of the Shia College, Lucknow from amongst its members ;

[13][(iv) three members, one of whom shall be Mutawalli of a waqf to which this Act applies having an annual income of not less than [rupees three thousand],[14] one shall have knowledge or practical

1. Subs. by U. P. Act No. 18 of 1972, Sec. 2 (a) (w. e. f. April 15, 1972).
2. Subs by U P. No. 18 of 1972, sec, 2(b) (w. e. f. April 15, 1972) and substituted by U. P. Act 11 of 1974, S. 2(b).
3. Subs. by U. P. Act No, 3 of 1970, S 2 (1) (ii).
4. Subs. by U. P, Act No. 18 of 1972 for the word "ten".
5. Subs. by U. P. Act No. 28 of 1971 S. 5.
6. Subs. by U.P. Act No.18 of 1972 Sec 2(c) for the words "eleven" (w e.f. April 15, 1972).
7. Subs. by U. P. Act 11 of 1974, S. 2.
8. Section 12 re-numbered as S. 12 (1) thereof by S. 3 (1) of U. P. Act No. 8 of 1970.
9. The words "in the manner prescribed" omitted by S. 3(a) of U. P. Act No. 11 of 1974.
10. Ins. by S (i) (a) of U. P. Act No. 18 of 1972. (w. e. f. April 15, 1972).
11. Subs. by S. 3(1) (i) ibid (w. e f. April 15, 1972).
12. Subs. by S. 3(1) (i) of U. P. Act No. 3 of 1970.
13. Subs. by U. P. Act No. 3 of 1970.
14. Subs. by U. P. Act 28 of 1971.

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experience in respect of finance and administration, and the third shall be an Alim, to be co-opted by [1][the members referred to in the foregoing clauses];

(v) the President, if he is not one of [2][the members referred to in the foregoing clauses.]

[3][(2) The election and co-option under sub-section (1) shall be held and made within such time and in such manner as the State Government may, by general or special order direct, and any question or dispute relating to any such election or co-option shall be referred to the State Government whose decision shall be final].

13. [4]**Nomination in certain cases.**—If any of the bodies referred to in [5][clause (iii)] of sub-section (1) of Section 11 and [6][clause (iii) of sub-section (1) of Section 12] [7][does not exist or is unable or fails to return the requisite number of members] [8][within such time as may be specified by the State Government in that behalf] the deficiency shall be made good by nomination of a Sunni Muslim or Shia Muslim, as the case may be, by the State Government.

14. [9]**Term of the Board.**—(1) Subject to the provisions of Section 23 the term of the members of the Board shall be five years [10][from the date of the notification of its constitution]:

Provided that the State Government may, by notification in the official *Gazette*, extend the said period by a further period not exceeding one year:

[11][Provided further that except as provided in sub-section (2), the outgoing members of the Board (including its President) shall, notwithstanding the expiration of their term, continue to hold office as members and President respectively until the constitution of the new Board is notified by the State Government in the official *Gazette*].

[12][(2) Where as a result of any interim order of any Court, either the State Government is unable to issue a notification of due constitution of the new Board or after such notification is issued the new Board is unable to function, the State Government may for the duration of such other order appoint a Sunni Muslim or a Shia Muslim, as the case may be, as Controller of the Board, and such Controller shall perform, exercise and discharge the function, powers and duties of the Board as well as of its President and members].

1. Subs by S. 3(i) of U. P. Act No. 8 of 1972 for the words "the above seven members."
2. Subs by S. 3 of U. P. Act No. 11 of 1974 for "the words "the above ten members".
3. Ins. by S. 3 of U. P. Act No. 11 of 1974.
4. Subs. by S. 4 of U. P. Act No. 3 of 1970, Sec. 4.
5. Subs by S. 4 of U. P. Act No. 18 of 1972, for the words and figures "clauses (i) to (iii)" (w.e.f. April, 15, 1972).
6. Subs. by S. 4 of U. P. Act No. 18 of 1972.
7. Subs: by S. 7 of U. P. Act No. 28 of 1971.
8. Subs. by S. 4 of U. P. Act No. 11 of 1974.
9. Section 14 re-numbered as Section 14 (1) thereof by S. 5 of U.P. Act 3 of 1970.
10. Subs. by S. 5 (a) (i) of U P. Act No. 3 of 1970.
11. Ins. and be deemed to have been inserted w e f December 5, 1969 by Section 5 (a) (ii) by Act 3 of 1970.
12. Ins. by Section (b) ibid.

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Comments

(1) Noti. No. 40 (1166)/68-Nayaya (Ka-2), dated August, 9, 1968.—In exercise of the powers under the proviso to Section 14 of the Uttar Pradesh Muslim Waqfs Act, 1960 (U. P. Act No. XVI of 1960), read with the proviso to sub-section (1) of Section 10 of the said Act, the Governor is pleased to extend the term of the members of the Shia Central Board of Waqfs, U. P., upto March 31, 1969.

(2) Noti. No. 40 (ii)/69, dated March 22, 1970.—Whereas the High Court by its order, dated Sept. 6, 1969 as modified by order, dated February 5, 1970 in writ petition No. 7[illegible]4 of 1969, has restrained the issue of a notification under Section 14 of the U. P. Muslim Waqfs Act, 1960 duly constituting the new Board and neither the new members nor the outgoing members have been allowed to function as such (with the only exception that the new members have been allowed to proceed with the formalities for the constitution of the new Board).

And whereas certain elected members of the Sunni Central Board of Waqfs have been restrained by the High Court by its order, dated August 25, 1969, in writ petition No. 7[illegible]4 of 1960 from participating in the election of the President, and as such the constitution of the new Board has remained incomplete.

And where as the State Government is accordingly unable to issue notifications of due constitution of the new Shia Central Board of Waqfs and Sunni Central Board of Waqfs, U. P. ;

Now, therefore, the Governor in exercise of the powers conferred by sub-section (2) of Section 14 of the said Act hereby appoints Sri Ali Akhtar Rizvi, I. A. S., (a Shia Muslim) as Controller of the Shia Central Board of Waqfs and Sri Raziul Hasan Chisti, I. A. S., (a Sunni Muslim) as Controller of the Sunni Central Board of Waqfs to perform, exercise and discharge the functions, powers and duties of the respective Boards as well as of their Presidents and Members for the duration of the said orders of the High Court.

(3) Noti No. 351-W/VII-A.N.-366-71 dated December 31, 1975.—Whereas, as a result of the orders of the High Court of Judicature at Allahabad (Lucknow Bench), dated August 14, 1975, in Special Appeal No. 51 of 1975, the State Government is unable to issue notification, under Section 14 of the U. P. Muslim Waqfs Act, 1960, of the due constitution of the Shia Central Board of Waqfs.

Now, therefore, in exercise of the powers under sub section (2) of Section 14 of the U. P. Muslim Waqfs Act, 1960 read with Section 21 of the U. P. General Clauses Act, 1904, and in supersession of Government Notification No. 1537/VII-A-II-40 (11)-69, dated April 17, 1971, the Governor is pleased to appoint, with immediate effect, Brigadier S. A. H. Rizvi (a Shia Muslim) as Controller of the Shia Central Board of Waqfs, U. P., Lucknow, vide Sri Imtiaz Husain who will cease to be Controller of the said Board, to perform, exercise and discharge the functions, powers and duties of the said Board as well as its President and Members for the duration of the said order of the High Court.

15. Election, etc. of the President.—(1) Immediately after [the election, co-option or nomination, as the case may be, of all the members other than the President][1] and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy, or otherwise, to appoint a President, the Secretary of the Board shall convene [2][a meeting of such members] to elect

1. Subs. by U. P. by Act No. 26 of 1966, Section 3.
2. Subs by Section 5 of U. P. Act No. 11 of 1974.

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a President. The members may elect either a person from among themselves or any other person as President :

Provided that a Mutawalli of a waqf to which this Act applies or a Government Treasurer or a whole-time servant of the Government or of any waqf administration shall not be elected as President.

(2) The President shall be honorary [* * *][1]

16. Conduct of Business.—(1) The office of the Board shall be at Lucknow and the Board shall meet for the transaction of business at such times and place as may be prescribed.

(2) The quorum for a meeting of the Board shall be one-half of the total number of members of the Board :

Provided that where a meeting is adjourned for want of quorum, the quorum required for the first meeting after such adjournment shall be one-third of the total number of members of the Board, and where the meeting is again adjourned for want of quorum, no quorum shall be required for the second and subsequent adjourned meetings.

(3) The decision of the Board shall be by a majority of its members present and voting. In case of equal division the President shall have a casting vote.

17. Appointment, etc., of Secretary.—The Board shall appoint a person to be its whole-time Secretary possessing such qualification and on such pay, allowances and terms and other conditions of service as may be prescribed :

Provided that the Secretory shall be a Muslim belonging to the Sunni sect in the case of Sunni Central Board and to the Shia sect in the case of Shia Central Board.

18. Staff of Central Board.—The Board may appoint such staff and officers as may be necessary for the purpose of carrying out the provisions of this Act on such salaries, allowances and other condition of service as may be prescribed.

19 Functions of the Board —(1) The general superintendence of all waqfs to which this Act applies shall vest in the Board. The Boord shall do all things reasonable or necessary to ensure that the waqfs [2][* *] under its superintendence are properly maintained, controlled and administered and the income thereof is duly appropriated to the purposes for which they were founded or for which they exist.

(2) Without prejudice to the generality of the provisions of sub-section (1), the powers and duties of the Board shall be—

(a) to maintain a complete and authentic record containing information relating to the origin, income, objects and beneficiaries of waqf in each district ;

(b) to prepare and settle its own budget ;

(c) to settle and pass the budgets submitted by the Mutawallis to the Board ;

1. Omitted by Section 6 of U. P. Act No 3 of 1970.

2. The words "or endowments" omitted by U P. Act No. 25 of 1961 with effect from September 3, 1960.

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(d) to settle and pass the annual budgets of the sub-committees ;

(e) to take measures for the recovery of lost properties of any waqf ;

(f) to settle or madify schemes of management of a waqf other than the waqfs, endowments and trusts referred to in sub-section (2) of Section 2][1] ;

Provided that where the Board has settled any scheme of administration under this clause, any person interested in the waqf and affected by such settlement may, within 90 days from the date of the order of such settlement, refer the matter to a Tribunal which shall give its decision thereon ;

[2][(ff) to direct—

(i) the utilisation of the surplus income of a waqf consistently with the objects of the waqfs ;

(ii) in what manner the income of waqf, the objects of which are not evident from any instrument, shall be utilised ;

(iii) in any case where any object of a waqf has ceased to exist or has become incapable of achievement, that so much of the income of the waqf as was previously applied to that object shall be applied to any other object that may be specified, which shall be similar, or as nearly as practicable similar to the original object :

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard] ;

(g) to inspect or cause inspection of waqf properties, accounts or records or deeds and documents relating thereto ;

(h) to investigate into the nature and extent of waqfs and waqf properties and call, from time to time, accounts and other returns and information from the Mutawallis and give directions for the proper administration of waqfs ;

(i) to arrange for the auditing of accounts submitted or required to be submitted by the Mutawallis ;

(j) to direct the deposit of surplus money in the hands of a Mutawalli in any approved bank or in a post office [* * *][3].

(k) to administer the waqf Fund ;

(l) to keep regular accounts of the receipts and disbursement and submit the same to the State Government in the manner prescribed ;

(m) to institute when necessary an inquiry relating to the administration of a waqf ;

(n) to sanction, on the application of the Mutawalli or a person

1. Subs by section 5 (ii) of U. . Act No. 25 of 1963 and be deemed to have come into force on September, 3, 19 0.
2. Inserted by Section 8 (a) of U. P. Act No. 28 of 1971, (w.e.f. October 31, 1971).
3. The words "and to utilize it on the objects of the waqf" omitted by U. P. Act No 28 of 1971, Section 8 (b). (w e f. October 31, 1971).

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interested in the waqf or on its own motion, a lease, mortgage or other transfer of property of the waqf or its conversion into another property :

Provided that no such lease, mortgage, transfer or conversion shall be sanctioned unless the proposal is approved by at least two-thirds of the total members of the Board :

Provided further that any objection made by any person interested in the waqf property, against such lease, mortgage, transfer or conversion within such time and manner as may be prescribed, shall be considered and decided before such lease, mortgage, transfer or conversion is completed ;

(o) to remove a Mutawalli, or appoint a Mutawalli and to put the Mutawalli so appointed in possession of the waqf property under the provisions of this Act :

Provided that in the appointment of Mutawallis or in making any other management of waqf property, the Board shall be guided, as far as possible, by the directions of the waqf, if any ;

(p) to issue direction under the provisions of this Act to a Mutawalli or a committee of management or committee of supervision ; and

(q) to institute and defend suits and proceedings in a court of law relating to waqfs.

Comments

Powers of the Board.—Under the scheme of the U. P. Muslim Waqfs Act the control and supervision over the waqf is that of the board constituted under Section 10 of the Religious Endowments Act, 1863. It is the board that has full powers with regard to inspection of accounts, their auditing, administration of the waqf funds and all such matters. *U. P. Sunni Central Waqf oard* v. *Mohammed Alim Cheshti*, AIR 1971 SC 1396 at 1398 : 1971 All WR 486.

Applicability of the Section.—A bare perusal of Section 19 of the Act will show that it does not apply to cases to which Section 49-A of the Act applies. Its applicability is confined to cases covered under three other sections mentioned therein. In any case even this provision can only save a suit or proceeding instituted by the Board or such judgment or decree which had been obtained before the commencement of the *U. P. Amending* Act 28 of 1971. In this case neither a suit nor a proceeding at the instance of the Board was pending at that time nor any judgment or decree had been obtained by the Board before the commencement of the Act. Section 19 of the U. P. Act 28 of 1971, therefore, cannot come to plaintiff's rescue. A mere permission to transfer the waqf property obtained by the Mutawalli from the district Court does not *per se* amount to transfer of the property. *Surendra Mohan* v. *Surendra Singh*, 1986 All. L. J. 166 at 168 : 1985 All. L. R 723.

No departure from line of succession set out in the deed of waqf is permissible.—The District Judge has no power to make any departure from the line of succession set out in the deed of waqf and to appoint any Mutawalli against the wishes of the Waqif. *Surendra Mohan* v. *Surendra Singh*, 1986 All. L. J. 166 at 169 : 1985 All. L. R. 723.

20. **Delegation of powers.**—Subject to such conditions and limitations, as may be specified, the Board may delegate to the President or to the Secretary

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of any other servant of the Board or to any member, such of its powers and duties under this Act, as it may deem necessary, and may likewise withdraw any such delegation.

21. **Disqualifications and removal of members.**—(1) A person shall be disqualified for being appointed, or for continuing as, a President or member of the Board if he—

(a) is a non-Muslim ;

(b) is less than twenty-one years of age ;

(c) is a person of unsound mind ;

(d) is an undischarged insolvent ;

(e) has been convicted of an offence involving moral turpitude ; or

(f) has, on any previous occasion, been removed from the office of a member or has been removed by order of a competent court from any position of trust either for mismanagement or corruption.

(2) The Board may remove any of its members, if he—

(a) is or becomes subject to any disqualifications specified in sub-section (1) ; or

(b) refuse to act or is incapable of acting or acts in a manner which the Board, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the waqfs ; or

(c) absents himself from five consecutive meetings of the Board, without permission of the Board or without sufficient excuse.

(3) The removal of any member under sub-section (2) shall be notified in the official *Gazette*.

22. **Resignation of President and members.**—The President or any member of the Board may resign his office by writing to the Board, and on such resignation being accepted by the Board, he shall be deemed to have vacated his office.

22-A. **Cessation of membership.**—A person who is a member of the Board in his capacity as a member of the State Legislature or as an Advocate or as a Mutawalli or as a representative of any other body shall cease to be member of the Board on his ceasing to hold that capacity.[1]

23. **Filling of vacancy.**—On the seat of a member becoming vacant by his removal, resignation, death or otherwise, a new member shall be [elected, co-opted or nominated][2] as the case may be, in his place, in the manner provided in this Act, 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.

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

1. Ins. by U. P Act No. 81 of 1974.
2. Subs. by U. P. Act Not 28 1971.

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25. Opinion of the Board.—The Mutawalli of any waqf may apply by petition to the Board for its opinion, advice or direction on any question affecting the management or administration of the property of such waqf and the Board shall give its opinion, advice, or direction thereon :

Provided that the Board shall not be bound to give such opinion, advice or direction on any question which is not in its opinion a fit question for summary disposal or where the Board for any other reason to be recorded in writing, considers it inappropriate to do so.

26. Inspection of records and issue of copies.—(1) [1][The Board may allow inspection of and issue of copies of its proceedings or other records in its custody on payment of such fees and subject to such conditions as may be prescribed.]

All copies issued under this section shall be certified by the Secretary of the Board[2] or such other officer of the Board as the Secretary may by general or special order authorise in that behalf in the manner provided in Section 76 of the Indian Evidence Act, 1872 (Act I of 1872) [3][and shall be received as *prima facie* evidence of the proceeding or record and be admitted as evidence of the matter or transaction therein recorded in every case where, and to the same extent, as the original proceeding or record would, if produced, have been admissible to prove the matter or transaction.]

[4][(2) No member, officer or servant of the Board shall, in any legal proceeding to which the Board is not a party, be required to produce any register or document, the contents of which can be proved under sub-section (1) by a certified copy, or to appear as a witness to prove the matter or transaction recorded therein, unless the court, for reasons to be recorded, considers it necessary to make such an order.

27. Sub-Committees.—(1) The Board may, whenever it considers necessary, establish in any local area a sub-committee for the supervision of waqf, or waqfs generally, in that area.

(2) The constitution, functions and duties of the sub-committee shall be such [as may from time to time be determined by the Board].[5]

CHAPTER III

Registration of Waqfs

28. Savings.—A waqf registered before the commencement of this Act under the U. P. Muslim Waqfs Act, 1936, (U. P. Act XIII of 1936) shall be deemed to have been registered under the provisions of this Act.

29. Registration.—(1) Every other waqf, whether subject to this Act or not and whether created before or after the commencement of this Act, shall be registered at office of the Board of the sect to which the waqf belongs.

(2) Application for registration shall be made by the Mutawalli within three months of his entering into possession of the waqf property :

1. Renumbered as sub-section (1) of Section 26 by U. P. Act No. 28 of 1971.
2. Ins by U. P. Act No. 28 of 1971 (w.e f. Oct. 31, 1971).
3. Ins. by ibid (w.e.f. Oct. 31, 1971).
4. Ins. by S. 9 (2) of U. P. Act 28 of 1971 (w.e.f. Oct. 31, 1971).
5. Sub., by S. 10 of U. P. Act No. 28 of 1971 (w.e.f. Oct. 31, 1971), for the words "as may e prescribed".

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Provided that such applications may be made by the waqif or his descendants or a beneficiary of the waqf or any Muslim belonging to the sect to which the waqf belongs.

(3) The application for registration shall be made in such form and manner and at such place as the Board may prescribe and shall contain the following particulars, as far as possible—

(a) a description of the waqf properties sufficent for the identification thereof ;

(b) the gross annual income from such properties ;

(c) the amount of land revenue, cesses, and rates and taxes annually payable in respect of the waqf properties ;

(d) an estimate of the expenses annually incurred in the realization of the income of the waqf properties ;

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

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

(ii) purely religious purpose ;

(iii) charitable purpose ;

(iv) any other purpose ; and

(f) any other particulars prescribed by the Board.

(4) Every such application shall be accommpanied by a copy of the Waqf Deed or, if no such deed has been executed or a copy thereof cannot be obtained, shall cantain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the 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 (Act V of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply such other particulars or information as it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the waqf, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and the correctness of any particular therein, and, when the application is made by any person other than the person administering the waqf property, the Board shall, before registering the waqf, give notice of the application to the person administering the waqf property and shall, after affording him a reasonable opportunity of being heard, pass such orders as it may deem fit.

(8) Any person aggrieved by an order of the Board under sub-section (7) may, by application within 90 days from the date of that order, refer the dispute to the Tribunal which shall give its decision thereon.

Comments

Applicability of the provisions of the Limitation Act, 1963 to proceedings under this Act —Even though under section 29 (8) a period of 90 days has been fixed as a period within which the dispute can be referred to the Tribunal, yet, there is no provision in the U. P. Muslim Waqfs Act, which excludes the

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application of the Indian Limitation Act to these proceedings. Section 29, Limitation Act, applies Sections 4 to 24 of the said Act, to all special or local laws unless expressly excluded.

In these circumstances, it was open to the opposite parties to approach the Board under section 29 (8) of the Act, even beyond a period of 90 days for the purpose of getting the registration of the Masjid as a Shia Waqf set aside by reference to the Tribunal *Mohammad Mustech Hasan Jaffrey* v. *Azam Ali*, 1983 All. LJ 678 at 682 : 1983 All. LR 370 : 1983 All. WC 409.

30. **Register of waqfs.**—The Board shall maintain a register of waqfs which shall contain in respect of each waqf, copies of the waqf deeds, when availalle, and the following particulars, namely—

(a) the class of the waqf ;

(b) the name of the Mutawalli ;

(c) the rule of succession to the office of Mutawalli under the waqf deed or by custom or by usage;

(d) particulars of all waqfs 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 ; and

(f) such other particulars as may be prescribed.

31. **Power to cause registration of waqf and to amend register.**—The Board may direct a Mutawalli to apply for the registration of a waqf, or to supply any information regarding a waqf or may itself collect information and cause the waqf to be registered or may at any time amend the register of waqfs.

32 **Notification of change in registered waqfs.**—(1) In the case of any change in the management of a registered 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 29, the Mutawalli shall, within three months from the date of occurrence of the change, notify such change to the Board.

33. **Decision if a Property is waqf property.**—(1) The Board may collect or cause to be collected information regarding any property which it has reason to believe to be a waqf property and if any question arises whether a particular property is waqf property or not, it may, after making such inquiry as it may deem fit, decide the question.

(2) Any person aggrieved by the decision of the Board under sub-section (1) may by apolication within 90 days from the date of such decision, refer the dispute to the Tribunal which shall give its decision thereon.

CHAPTER IV

Finance of the Boards

34. **Annual contributions by waqfs.**—(1) The Mutawalli of every waqf to which this Act applies shall pay annually to the Board such contribution, not exceeding six per cent of the net annual income of such of its property as is

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situate in Uttar Pradesh, as the Board may, subject to the sanction of the State Government determine from time to time :

Provided that in the case of a waqf part of the income whereof is applied for the benefit of the waqif or his descendants or family or any other private purpose, the aforesaid contribution shall not be levied on such part of the income.

(2) The contribution under this section shall be payable with effect from the date on which this Act comes into force, and the contribution due from any waqf for any period preceding the commencement of this Act shall be deemed to be a contribution levied under this Act and be recoverable in the manner provided in this Act or the rules framed thereunder.

(3) The Board may, in the case of any class of waqfs, reduce or remit, from time to time, such contribution for a specified period provided that it shall be within the power of the Board to reimpose the contribution reduced or remitted either under this Act or under the U. P. Muslim Waqfs Act, 1936 (U. P. Act XIII of 1936).

(4) The contribution payable under sub-section (1) shall, subject to the prior payment of any dues to the State Government or any local authority or of any other statutory charge on the waqf property or the income thereof, be a first charge on the income of the waqf and shall, on a certificate issued by the Board after giving the Mutawalli of the waqf concerned an opportunity of being heard, be recoverable in the manner provided in Section 83.

(5) If a Mutawalli realises the income of the waqf and refuses or neglects to pay such contribution, he shall also be personally liable for such contribution and it may be realised from his person or property in the manner provided in sub-section (4).

(6) The Mutawalli of a waqf may realise the contributions payable by him under sub-section (1) from persons entitled to receive any pecuniary or other material benefits from the waqf, but the sum realisable from any one of such persons shall bear to the total contribution the same proportion as the value of the benefits receivable by such person bears to the entire net annual income of the waqf.

[1][35. (1) Where any waqf is entitled to be paid annuity on account of rehabilitation grant under Section 99 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, (U.P.Act 1 of 1951) any contribution payable by such waqf under Section 34 of the extent of six per cent of the aggregate of the said annuity and of the interest payable to the waqf on Zamindari Abolition Compensation Bond Stock Certificates issued under the rules made under the said Act, may be paid by the State Government out of such annuity on production by the Secretary of the Board of a certificate in the prescribed form :]

Provided, however, that the amount paid shall not exceed six per cent of the annuity.

(2) Any sum paid by the State Government under and in accordance with sub-section (1) shall be full discharge of the State Government to the extent of the amount so paid.

36. 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

1. Subs by U. P. Act No. 26 of 1966, S. 5.

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sums of money and on such terms and conditions as the State Government may determine.

37. (1) All moneys received by the Board under Section 34 and all other moneys realised by the Board under this Act shall form a fund to be called the "Uttar Pradesh Shia Waqf Fund" or the "Uttar Pradesh Sunni Waqf Fund" as the case may be.

(2) The Waqf Fund shall, subject to the control of the Board, be applied to—

(a) repayment of any loan incurred under Section 36 and payament of interest thereon ;

(b) payment of the cost of audit of the Waqf Fund ;

(c) payment of the salary and allowances of the Secretary and staff of the Board and the salary and allowances of the staff of a sub-committee, if found necessary, by the Board ;

(d) payment of travelling allowance to the President, members, Secretary and staff of the Board and of a sub-committee, if any ; and

(e) payment of all expenses incurred by the Board and a sub-committee, if any, in the performance of the duties, imposed, and in exercise of the powers conferred, by or under thts Act.

(3) If any surplus or accumulation out of the income of the Board remains after meeting the expenditure referred to in sub-section (2) the Board may use such surplus accumulation or any portion thereof, for the preservation and protection of waqf properties or for such religious, pious or charitable purposes as the Board may deem fit.

38. Budget of the Board.—The Board shall in in every year prepare, in such form and at such time, as may be prescribed, a budget for the next year, showing the estimated receipts and expenditure during that year, and forward a copy thereof to the State Government.

39. Accounts of the Board—(1) The Board shall cause to be maintained such books of account in such form and manner as may be prescribed.

(2) The accounts of the Board shall be audited and examined annually by the chartered accountants appointed by the Board.

(3) The report of the auditors shall, *inter alia.*, specify all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property or of loss ; and the report shall also contain the name of any person who, in the opinion of the additors, is responsible, by his neglect or misconduct, for such expenditure or failure or loss.

40. Government to pass orders on audit report.—The auditors appointed under Section 39 shall submit their report to the State Government who shall examine the 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.

41. Recovery of sums due.—Every sum certified in the audit report to be due from any person, unless such certificate is modified or cancelled by an order of the State Government made under Section 40 and every sum due on

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such modified certificate, shall be paid by such person within a reasonable time to be fixed by the Board ; and if payment is not made in that time, the sum payable may, after affording the person concerned an opportunity of being heard, be recovered in the manner provided in Section 83.

CHAPTER V

Special Powers of the State Government

42. General supervision by the State Government.— The State Government—

(i) shall exercise general supervision over the Board and may call for any document, record or information from the Board ; and

(ii) may further require the accounts of the Board to be audited by an auditor to be appointed by it.

43. Power of the State Government to issue directions.—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.

44. Supersession of the Board.—In case of gross mismanagement and persistent dereliction of duty by the Board or when, in the opinion of the State Government, the Board has so flagrantly abused or exceeded the powers vested in it by law that its continuance is likely to prove detrimental to the public interest, the State Government may, by notification in the official *Gazette*, supersede the Board after affording it an opportuaity to explain the charges against it and after taking into consideration the explanation, if any, submitted by it.

Comments

The Advocate General contended that the impugned order suspending the Board may not be interfered with and a necessary direction be only issued to the State Government to grant a hearing to the Board. Held that the circumstances of the present case, the impugned order cannot be upheld having found it invalid on account of non-compliance of principles of natural justice. [*Muzaffar Hasan* v. *State*, 1982 All.L.J. 909 at 913.

45. State Government to take over functions of the Board.—(1) Where the Board is superseded under the provisions of Section 44, the State Government shall appoint an Anministrator, who shall be a Sunni in the case of the Sunni Central Board and a Shia in the case of the Shia Central Board, to carry out the functions of the Board.

(2) Upon the publication of a notification under Section 44 superseding the Board—

(a) all the members of the Board shall, as from the date of supersession, vacate their offices ; and

(b) all the powers and duties which may, under the provisions of this Act, be exercisable or performable by or behalf of the Board ; shall, during the period of supersession, be exercised and performed by the Administrator and such Administrator shall be deemed to be the Board for all purposes.

46. Formation of and transfer of Administration of waqf to the new Board—(1) Where the Board is superseded under the provisions of Section 44,

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a new Board shall be constituted within one year of the date of supersession, in accordance with the provisions of this Act.

(2) As soon as a new Board is constituted under sub-section (1), the State Government shall, by notification in the official *Gazette* transfer the administration of the waqfs to such Board and thereupon the administrator appointed by the State Government shall cease to exercise the functions of the Board from the date of the publication of such notification.

47. Administration of properties of the Husainabad and affiliated waqfs — (1) The State Government shall settle the scheme of administration regarding the [waqfs, endowments and trusts referred to in sub-section (2) of Section 2].[1]

(2) The State Government may in consultation with the Shia Central Board amend or modify the scheme of administration settled under sub-section (1) and State Government may issue directions from time to time to remove any doubt or difficulty in the administration of these (waqfs, endowments, and trusts).[2]

Comments

Saving of adaptations and schemes of administration.—Any adaptations of the previsions of the Principal Act made under the proviso to sub-section (2) of Section 2 or any scheme of administration settled under Section 47 of the said Act or any action taken thereunder shall de deemed to have been so made, settled or taken under the said Act, as amended by this Act XXV of 1963 any judgment, order or decree of any court notwithstanding. (Vide U. P. Act XXV of 1963, sec. 7).

CHAPTER VI

Mutawallis and Waqfs Accounts

[3][48. **Emergency powers of Board when Office of Mutawalli of waqf vacant.**—Without prejudice to the generality of the powers conferred by clause (c) of sub-section (2) of Section 19, the Board may, where there is a vacancy in the office of the Mutawalli of a waqf—

(a) appoint any person to act as Mutawalli for such period and on such conditions as it thinks fit ; or

(b) by notification in the official *Gazette* assume direct management of the waqf for [4][such period not exceeding five years as may be specified in the notification] :

Provided that in the case of a waqf created by a deed, the Board may act under this section only if there is no one competent to be appointed as Mutawalli under the terms of such deed].

49. Duties of Mutawallis.—It shall be the duty of every Mutawalli—

(a) to carry out all directions, consistent with the provisions of this Act, issued to him by the Board or, with the previous approval of the Board, by the sub-committee constituted under Section 27 ;

1. Subs by U P. Act No. XXV of 1963.
2. Ibid and be deemed to have come into effect on September 5, 1960.
3. Subs. by U. P. Act No. 26 of 1966.
4. Subs by U. P. Act. No. 28 of 1971, (w. e. f. Oct 31, 1971), for the words "a specified period not exceeding three years".

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(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board or the sub-committee ;

(c) to allow inspection of waqf property, 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.

[1][49-A. **Transfer of immovable property of waqf.**—Notwithstanding anything contained in the deed or instrument, if any, by which the waqf has been created, no transfer by way of—

(i) sale, gift, mortgage or exchange ;

(ii) lease for a period exceeding three years in the case of agricultural land or for a period exceeding one year in the case of non-agricultural land or building—

of any immovable property of the waqf shall be valid without the previous sanction of the Board.

Comments

Section 49-A of the Act lays down restrictions on the rights of Mutwalli to transfer immovable property belonging to the waqf and no transfer of immovable waqf propety by way of sale, gift mortgage or exchange would be valid without the previous sanction of the Waqf Board. *Surendra Mohan* v. *Surendra Singh*, 1986 All. L. J. 166 at 168 : 1985 All.L.R. 723.

49-B. Recovery of Waqf property transferred in contravention of Section 49-A.—(1) If the Board is satisfied after making an inquiry in such manner as may be prescribed that any immovable property entered as property of a waqf in the register of waqfs maintained under Section 30, has been transferred without the previous sanction of the Board in contravention of the provisions of Section 49-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 it or by sending it by post to the person for whom it is intended ; or

(b) if such person cannot be found, by affixing it on some conspicuous part of his last known place of abode or business, or by giving or tendering it 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 ths person on whom the order is to be served is a

1. Secs. 49A and 49B, Ins. by U. P. Act 28 of 1971 Sec. 12, (w. e. f. Oct. 31, 1971).

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minor, service upon his guardian or upon any adult member or servant of his family shall be deemed to be service upon the minor.

(4) Any person aggrieved by an 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 Court of the District Judge within whose jurisdiction the property is situate.

(5) The District Judge may either dispose of the appeal himself or may transfer it to the Court of any Additional District Judge or Civil Judge under his administrative control and may also withdraw any such appeal and either dispose of the same or transfer it to any other Court of Additional District Judge or Civil Judge under his administrative control, and in every case the decision of the court shall be final.

(6) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without any 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 as may be necessary, for the purpose and then deliver it to the Board.

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

Comments

The District Judge after considering the facts on the record came to the conclusion that in the present case sufficient cause has been made out for condonation of delay in filing appeal and the reference. This is clearly a finding of fact and as such, no interference is called for under Art. 226 of the Constitution of India in this regard. *Shia Central Board of Waqfs, U. P. v. District Judge, Rampur*, 1986 All. L. J. 425 at 426 : 1985 All. W. C. 948 : 1985 All.C.J. 693.

50. Budget and Accounts of Waqfs to be submitted by Mutawallis.—In particular and without prejudice to the generality of the duties prescribed in Section 49, every Mutawalli of a waqf shall—

(a) prepare, in every year a budget for the next financial year showing in such form as may be prescribed the estimated receipts and expenditure during that year, and submit it before the 31st March of the year to the Board for approval ;

(b) submit to the Board before the 1st day of May in every year, a full and true statement of accounts, in such form and containing such particulars as may be prescribed, and verified in the manner prescribed by the Code of Civil Procedure, 1908 (Act V of 1908) for verification of pleadings of all moneys received and expended by the Mutawalli on behalf of the waqfs during the period of twelve months ending on the 31st day of March preceding the submission of such statement or during that portion of the said period during which the provisions of this Act have been applicable to the waqf :

Provided that in respect of a waqf-alal-aulad the statement of accounts required to be submitted by the Mutawalli shall relate only to such portion of the income as is, specified or set apart for religious or charitable purposes.

51. Audit of Accounts of waqfs.—(1) The accounts of waqfs submitted to the Board under Section 50 shall be audited and examined annually or at such other interwals as the Board may determine, by an auditor appointed under Section 18.

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(2) The auditor shall submit his report to the Board and the report of the auditor shall, *inter alia*, specify all cases of irregular, illegal or improper expenditure or of a failure to recover money or other property or loss or waste of money caused by neglect or misconduct of the Mutawalli 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 auditor, is responsible for such expenditure or failure, and the auditor shall in every such case certify the amount of such expenditure or loss.

(3) The costs of the audit of the accounts of a waqf shall be paid from the Waqf Fund.

52 Board to pass orders on Audit Report.—The Board shall examine the auditor's report, and 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.

Comments

Section 52 does not apply to private waqfs.—Section 52 of the Act imposes a duty on every mutwalli of a waqf-al-al-aulad to prepare and furnish to the Commissioner a true statement in respect of the gross income of the waqf property, the expenses and other particulars. Under the Muslim Waqfs Act private waqfs are excluded from operation of the Act. Where the suit related to private waqf property, the maintainability of the suit could not be challenged on the ground of non-compliance of Section 52 of the Act. *Abdul Salam* v. *Mohammad Ismail*, 1965 All. L. J. 898 at 900, 901.

53. Recovery of dues.—(1) Every sum certified by an auditor in his report under Section 51 to be due from any person, unless such certificate is modified or cancelled by an order of the Board 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 notice of demand for the same issued by the Board.

(2) If such payment is not made within the period mentioned above, the sum payable may, on a certificate issued by the Board after affording the person concerned an opportunity of being heard, be recovered in the manner provided in Section 83.

Comments

Requirement of notice before instituing any suit against the Central Board is mandatory.—It is unreasonable to assume that offerings which would be made from year to year by the devotees should be specified in the notification issued under Section 5 (1) of the Act. Therefore, the argument that any of the suit properties have not been duly notified by respondent I under Section 5 (1) of the Act cannot be sustained. It was incumbent upon the appellants to have given the requisite notice under Section 53 before instituting the present suit. The requirement as to notice applies to suits against a Central Board in respect of their acts as well as to suits for any relief in respect of any waqf. It is not denied that the present suit would attract the provisions of Section 53 if the argument that the Darga and the offerings are not notified is rejected. The result is that the suit is not maintainable as a result of the appellants failure to comply with the requirements of Section 53. We would accordingly confirm the finding of the High Court that the appellants' suit is barred by time under Section 5 (2) and is also not maintainable in view of the fact that the appellants have not given the requisite notice under Section 53 of the Act.

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Siraj-ul-Haq Khan v. *Sunni Central Board of Waqf, U. P.*, AIR 1959 SC 198 at 208 : 1959 ALJ 83 : 1959 SCR 1287 : 1959 SCJ 367.

54. **Penalties.**—(1) If a Mutawalli fails without reasonable cause or excuse, the burden of proving which shall be upon him—

(a) to apply for registration of a waqf as provided in Section 29, or

(b) to submit statements of particulars or of accounts and returns and to have the accounts audited as required by this Act, or

(c) to supply information or particulars required by the Board or a sub-committee, or

(d) to allow inspection, under the provisions of this Act, of Waqf properties and deeds and documents relating thereto, or

(e) to give assistance in enquiries and investigations when called upon to do so by the Board or by a sub-committee or by a Superintendent, Inspector, Auditor or any other person working under the orders of the Board, or.

(f) to deliver possession of any Waqf property if ordered to do so by the Board, or

(g) to deposit any surplus income in his hands in any recognized bank when directed to do so by the Board, or

(h) to carry out the directions given by the Board or a sub-committee consistent with the provisions of this Act, or

(i) to do any other act which he is by or under this Act, required to do ;

he shall be liable to pay such penalty, not exceeding rupees fifty for the first contravention and rupees two hundred and fifty for every subsequent contravention, as the Board may determine.

(2) The State Government may *suo motu* or on the application of the person aggrieved, call for the record of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the order imposing penalty under sub-section (1) and may pass such orders as it deems fit.

55. **Removal of Mutawallis.**—(1) The Board may, after affording him an opportunity of being heard, remove a Mutawalli other than a Managing Committee from his office if he—

(i) is fined on more than one occasion under Section 54, or

[1][(i-a) has failed to pay, without reasonable excuse, for two consecutive years, the contribution payable by him under Section 34, or

(ii) is convicted of an offence relating to the Waqf property or money which, in the opinion of the Board, renders him unfit to continue as Mutawalli, or

(iii) is convicted of an offence involving moral turpitude or is required to furnish security under Section 109 or Section 110 of the Code of Criminal Procedure, 1898 (Act V of 1898), or

(iv) wrongly destroys or alienates any Waqf property, or

1. Inserted by S. 13 of U. P. Act No. 28 of 1971 (w. e. f. Oct 31, 1971)

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(v) is adjudged insolvent, or

(vi) is, in the opinion of the Board, unfit to discharge the duties of a Mutawalli owing to any physical or mental disability, or moral delinquency, or

(vii) is guilty of mis-appropriation or gross mis-management of Waqf property, or has persistently neglected to comply with the directions given by the Board for the proper management of the waqf.

(2) A person aggrieved by an order of removal under sub-section (1), may, by an application, refer the matter to the Tribunal within 90 days of the date of communication of the order of removal.

CHAPTER VII

Special Powers of the Board

56. Application for inquiry.—A beneficiary or any person interested in a waqf, may make an application to the Board supported by an affidavit to institute an enquiry relating to the administration of the waqf, or for the examination and audit of the accounts thereof, and the Board may make or cause to be made through its own officer, or through a sub-committee constituted under Section 27, such enquiry, examination or audit as it may deem fit.

Comments

Scope of.—Under Section 56 of the Act, a beneficiary or any person interested in the waqf may make an application to the Board supported by an affidavit, to institute an inquiry relating to the administration of the waqf or for examination and audit of its account. *Mohammad Musteh Hasan Jaffrey* v. *Azam Ali*, 1983 All. L. J. 678 at 680 : 1983 All. L. R. 370 : 1983 All. W. C. 409.

57. Inquiry by the Board.—If, after enquiry made on an application under Section 56, or made by the Board *suo motu*, the Board is of opinion that the Mutawalli or the committee of management has acted otherwise than in accordance with the terms and conditions of the waqf, it may direct the Mutawalli or the committee of management to take such action as the Board may deem expedient.

[1][**57-A. Recovery of possession of Waqf property from unauthorised occupants.**—(1) If the Board is satisfied after making an inquiry in such manner as may be prescribed that any person is in unauthorised occupation of any immovable property entered as property of a waqf in the register of waqfs maintained under Section 30 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) The provisions of sub-sections (2), (3), (4), (5), (6) and (7) of Section 55-B shall *mutatis mutandis* apply in relation to a requisition under sub-section (1) as they apply in relation to a requisition under sub-section (1) of that section.]

Comments

Applicability of the section.—When the nature of the waqf being a Shia or Sunni waqf is challenged and when a person other than a *mutawalli* of the

1. Ins. by U. P. Act 28 of 1971. Sec. 14. (w. e. f. Oct. 31. 1971).

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said waqf has committed acts of trespass etc. upon the property of the waqf, in such a case the proper section to apply for giving relief to the *mutawalli* would be section 8 and not section 57-A of the Act. *Mohammad Musteh Hasan Jaffrey* v. *Azam Ali*, 1983 All. L. J. 678 at 680 ; 1983 All. L. R. 370 : 1983 All. W. C. 409.

Scope of the section.—Section 57-A of the Act lays down that if the Board is satisfied after making inquiry in such manner as may be prescribed that any immovable property of a waqf is in unauthorised occupation of any person, it may send requisition to the Collector within whose jurisdiction the property may be situate to obtain and deliver possession of the property to it. *Haji Nizamuddin* v. *State of U. P.*, AIR 1978 All. 271 at 272 : 1977 All. L. R. 663.

Unauthorised occupant of immovable property of waqf has right of appeal to the District Judge against the order of the Collector.—Sub-clause (2) of Section 57-A of the Act provides that provisions of sub-sections (2), (3), (4), (5), (6) and (7) of Section 49-B shall *mutatis mutandis* apply in relation to a requisition under sub-section (1) as they apply in relation to a requisition under sub-section (1) of that section. In view of this provision, the provisions of Section 49-B sub-clause (2) to sub-clause (7) would clearly apply. After the receipt of a requisition of a Board, the Collector has to pass an order directing the person in possession to deliver the property to the Board. In view of this provision (vide Sec. 49-B (4)) after the Collector issued a notice to Irshad Ali that he is in unauthorised possession of the property, he had a right to file an appeal before the District Judge. *Shia Central Board of Waqfs U. P.* v. *District Judge, Rampur*, 1986 All. L. J. 425 at 426 : 1985 All. W. C. 948 ; 1985 All. C. J. 693.

In *Magan Nath Misra* v. *Syed Shakir Ali Abidi*, (1985 All L. J. 842) it was held that, in a case where a dispute is in regard to unauthorised occupation of a property of a waqf entered in the register of waqf then the aggrieved person had a right of appeal.

58. Powers of inquiring authority.—For the purposes of an inquiry under this [Act][1] the inquiring officer or committee shall have the same power of enforcing the attendance of witnesses and production of documents as the civil court has under the Code of Civil Procedure, 1908 (Act V of 1908).

59. Determination of object of a waqf whose object does not exist, etc.—(1) Where the object of any waqf has ceased to exist or can not be accomplished, then notwithstanding anything contained in Section 92 of the Code of Civil Procedure, 1908 (Act V of 1908) or any law for the time being in force, the Board may, on its own motion or on the application of a member of the sect to which the waqf belongs, determine the object to which the funds, property or income of the waqf, or part thereof, shall be applied :

Provided that before such determination of the object the Board shall give notice to the Mutawalli of the waqf, and to such other persons as may appear to the Board to be interested therein and shall make such inquiry as it may deem necessary :

Provided further that the object so determined by the Board shall be

1. Sub for the words 'chapter' by S. 15 of U. P. Act No. 28 of 1971, (w. e. f. Oct. 31, 1971).

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similar, or as nearly similar as may be practicable to the object for which the waqf was created.

(2) The Mutawalli or any other person interested in the waqf, may, within 90 days from the date of the order under sub-section (1) refer the matter to a Tribunal.

60. Direction where the object of a waqf is not evidenced.—(1) If in any case the object of a waqf is not defined with precision, the Board shall direct the manner in which the funds, property or income of the waqf, or any surplus thereof, shall be utilized :

Provided that no such direction shall be given without first affording to the person affected an opportunity of being heard.

(2) Any person affected by the direction of the Board under sub-section (1) may, within 90 days from the date of such direction, refer the matter to a Tribunal in accordance with the provisions of this Act, but pending the decision of the Tribunal on such reference, the direction of the Board shall be complied with.

61. Exercise of certain powers given in the deed, etc. to a Judge or other authority.—Whenever the deed of a waqf, or any decree or order of a court or the scheme of management of the waqf provides that a Judge or any other authority may appoint or remove a Mutawalli or settle or modify the scheme of management or otherwise exercise superintendence over the waqf, the powers exercisable by the Judge or such other authority shall, notwithstanding anything in the deed of waqf, decree, order or scheme, be exercisable by the Board as far as may be in accordance with the directions contained in the deed of waqf, decree, order or scheme, as the case may be.

62. Powers to secure discharge of obligations.—(1) Where a Mutawalli is under an obligation to perform any act which is recognized by Muslim law as pious, religious or charitable and the Mutawalli fails to perform such act, the Board may direct the Mutawalli to pay to the Board or to any person authorized by the Board in this behalf, the amount necessary for the performance of the act and the Board or the person so authorized shall perform such act.

(2) Where a Mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the State Government or any local authority, the Board may pay the dues from the Waqf Fund and may recover the amount so paid from the Waqf property.

(3) Any sum of money due under sub-section (2) may, on a certificate issued by the Board after giving the Mutawalli concerned an opportunity of being heard, be recovered in the manner provided in Section 83.

63. Committees of supervisions and Board's Power to supersede them.—(1) Wherever the supervision or management of a waqf is vested in any committee appointed by the waqif or any competent court or authority, such committee shall, notwithstanding anything in the Act, continue to function until superseded by the Board under sub-section (2) :

Provided that such committee shall be under the control of the Board and shall abide by such directions of the Board as are not inconsistent with any directions of the waqf or the court or authority appointing such committee.

(2) Notwithstanding anything contained in the Act, the Board may

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supersede any such committee as aforesaid if it does not, in its opinion to be recorded in writing, function properly and satisfactorily and on such supersession, any decree or order of a court or competent authority under which such committee has been constituted, shall cease to have any force in so far as it relates to the constitution of such committee.

(3) An order passed by the Board under sub-section (2) shall be final and shall not be questioned in the court of law :

Provided that any party aggrieved by an order under sub-section (2) may, within 90 days from the date of the order, refer the matter to a Tribunal for adjudication.

(4) Where the Board supersedes a committee by an order under sub-section (2), it may either appoint a new committee of supervision or management, or may assume direct management of the waqf.

(5) Where in a case in which the Board has assumed direct management of a waqf or appointed a Mutawalli or a committee of management and the Board or the Mutawalli or committee so appointed, is prevented from taking possession of the property of the waqf or of any title deeds or other deeds or other documents relating thereto, [1][the Board may by order direct the Mutawalli to deliver possession of Waqf property and the title deed or the documents relating thereto to the Board or any officer thereof duly authorised in that behalf or to any person or committee appointed to act the Mutawalli of the Waqf property, and the order of the Board shall be forwarded to the Court of Munsif, or where there is no Munsif, the Court of Civil Judge, within whose territorial jurisdiction the said property is situate or the said Mutawalli resides, and the court shall thereupon execute the order as if it were a decree made by itself in a suit].

(6) The Board may instead of superseding any committee under sub-section (2) remove any member thereof if the Board is satisfied that the member has flagrantly abused his position as such or has knowingly acted in a manner prejudicial to the interest of the waqf. The order of ramoval shall be duly served on the member concerned :

Provided that no order for removal of the member shall be made unless an opportunity has been afforded to him of being heard :

Provided further that an appeal shall lie within 30 days from the date of service of the order of removal, to the State Government and the order of the State Government, on appeal, shall be final and be not questioned in any court of law.

CHAPTER VIII

Certain Suits or Proceedings Relating to Waqfs by, or against the Board or by others

64. Institution of suits under Section 14 of the Religious Endowments Act, 1863 and Section 92 of the Code of Civil Procedure 1908.—(1) A suit to obtain any of the reliefs mentioned in Section 14 of the Religious Endowments Act, 1863 (Act XX of 1863) and in Section 92 of the Code of Civil Procedure, 1908 (Act V of 1908) relating to any waqf may notwithstanding anything to the contrary contained in those Acts, be instituted by the Board without obtaining the leave or consent referred to in those Acts.

1. Subs by S 16 of U. P. Act no. 28 of 1971 (w. e. f. Oct. 31, 1971).

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no consequence.—The injunction order having been upheld in appeal by the Civil Judge the order of the Munsif became merged in the appellate order and the Munsif ceased to have any jurisdiction to entertain an application to have it set aside. If the order passed by the Munsif became void by virtue of Section 66 (3), then in law it would be deemed to be a nullity. It is a fundamental principle that if a decree or order passed by a court is a nullity its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon. [Vide *Kiran Singh* v. *Chaman Paswan*, AIR 1954 SC 340] The application of the Shia Board to the Munsif to have the injunction order set aside should have been allowed and the Munsif had acted illegally and with material irregularity in the exercise of jurisdiction in not setting aside the injunction order passed by him. Once an order is treated as a nullity it is of no consequence that it had been upheld in appeal. *Sheikh Ahmad Raza* v. *Shia Central Board of Waqfs, Lucknow*, 1967 All LJ 1022 at 1024.

The Civil Judge holding that the injunction order was void and was without jurisdiction in that the application of the Board for setting aside the said order was beyond time. The appellate order upholding the injunction granted by the Munsif suffered from the same vice as the order passed by the Munsif. Once it is held that the Munsif had no jurisdiction to pass the injunction order the appellate court would have no jurisdiction to affirm such an order and the appellate order would automatically fall through by reason of its being without jurisdiction. *Sheikh Ahmad Raza* v. *Shia Central Board of Waqfs, Lucknow*, 1967 All LJ 1022 at 1024.

67. **Proceeding under the Land Acquisition Act, 1894.**—(1) If, in the course of proceedings under the Land Acquisition Act, 1894 (Act I of 1894), it appears to the Collector before an award is made that any property under acquisition is Waqf 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.

(2) Where the Board has reason to believe that any property under acquisition is Waqf property, it may, at any time before the award is made, 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 (Act 1 of 1894), without giving an opportunity to the Board of being heard.

(4) Any order passed under Section 31 or Section 32 of the Land Acquisition Act, 1894 (Act I of 1894), without giving an opportunity to the Board of being heard, shall be declared void if the Board, within one month of its becoming aware of the order, applies in this behalf to the authority which made the order.

68. **Board to be made a party to a suit or proceeding regarding a waqf on its application**—In any suit or proceeding in respect of a waqf or any Waqf property by or against a stranger to the waqf or any other person, the Board may appear and plead as a party to the suit or proceeding.

Comments

When the dispute related to the property which was claimed to be waqf property, the Munsif should have allowed the Board to appear and plead as a party to the suit. The law had made a provision to that effect simply to

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safeguard the interests of the waqf. It after hearing the Board, the Munsif came to the conclusion that the plaintiffs were the absolute owners of the property, he could grant them a decree without any difficulty. In rejecting the prayer of the Board, he appears to have ignored the mandatory provisions of law. *Sunni Central Board v. Smt. Rabia Basri*, 1966 AllLJ 791 at 792.

69. **Bar to compromise of suits by or against Mutawallies.**—No suit or proceeding pending in any court by or against Mutawalli of a waqf relating to title to Waqf property or the rights of the Mutawalli shall be compromised without the sanction of the Board.

[1][69-A. **Bar of suit, etc. for certain reliefs.**—No suit or other proceeding shall be instituted by the Board in a civil court for any relief which may be obtained by proceedings under Section 49-B or Section 57-A.]

CHAPTER IX

Tribunals—Their Constitution, Powers and Functions

70. **Constitution of Tribunals.**—(1) The State Government may, by Notification in the official *Gazette*, constitute as many Tribunals as may be necessary for the purposes of this Act. Each Tribunal shall have jurisdiction over such areas in the State as may be specified.

(2) A Tribunal shall consist of one person only, who shall be a judicial officer of the State Government, not below the rank of a Civil Judge, and who may be appointed as such either by name or by official designation.

Comments

(*1*) *Notification No. 37 (3) (2)-65-Nayaya Ka-II, dated March 7, 1970.*—In exercise of the powers under Section 70 of the Uttar Pradesh Muslim Waqfs Act, 1960 read with Section 21 of the General Clauses Act, 1904 (U. P. Act No. I of 1904), and in partial modification of Noti. No. 2470/VII-28-W-60, dated Sept. 7, 1960, as amended from time to time, the Governor is pleased to appoint with effect from the date of publication of this notification in the Gazette, the First Civil Judge, Saharanpur, as Tribunal for the purposes of the former Act of 1960, in place of the existing Tribunal mentioned at Serial No. 32 of the list of Tribunals incorporated in the aforesaid notification and to further order that he shall have jurisdiction over the revenue areas of the district of Saharanpur.

(*2*) *Noti No. 4125/MW-242-77, dated Nov. 29, 1977.*—In exercise of the powers under Section 70 of the U. P. Muslim Waqfs Act, 1960 read with Section 21 of the General Clauses Act, 1904, and in supersession of Government Notification No. A-2470/VII-28-28-W-60, dated Sept. 7, 1960 as amended from time to time, and all other notification issued in this behalf, the Governor is pleased to appoint, with effect from the date of publication of this notification in the Uttar Pradesh Gazette, the following Judicial Officers of the State Government as Tribunals for the purposes of the said Act No. XVI of 1960 and to order that each Tribunal shall have jurisdiction over the revenue areas specified in Column 3 against each :

1. Ins. by U. P. Act 28 of 1971, Sec. 17 (w. e. f. Oct. 31, 1971).

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S. No.	Designation	Areas of Jurisdiction
1.	Civil Judge, Agra	District of Agra
2.	Civil Judge, Aligarh	District of Aligarh
3.	Civil Judge, Allababad	District of Allahabad
4.	Civil Judge, Azamgarh	District of Azamgarh
5.	Civil Judge, Bahraich	District of Bahraich
6.	Civil Judge, Barabanki	District of Bara Banki
7.	Civil Judge, Bareilly	District of Bareilly
8.	Civil Judge, Basti	District of Basti
9.	Civil Judge, Budaun	District of Budaun
10.	Civil Judge, Bulandshahr	District of Bulandshahr
11.	Civil Judge, Deoria	Disirict of Deoria
12.	Civil Judge, Faizabad	District of Faizabad
13.	Civil Judge, Farukkhabad	District of Farukkhabad
14.	Civil Judge, Etah	District of Etah
15.	Civil Judge, Ghazipur	District of Ghazipur
16.	Civil Judge, Gonda	District of Gonda
17.	Civil Judge, Gorakhpur	District of Gorakhpur
18.	Civil Judge, Hardoi	District of Hardoi
19.	Civil Judge, Kheri	District of Kheri
20.	Civil Judge, Lucknow	District of Lucknow
21.	Civil Judge, Mathura	District of Mathura
22.	Civil Judge, Moradabad	District of Moradabad
23.	Civil Judge, Rae Bareili	District of Rae Bareili
24.	Civil Judge, Sitapur	District of Sitapur
25.	Civil Judge, Unnao	District of Unnao
26.	Civil Judge, Jaunpur	District of Jaunpur
27.	2nd Civil Judge, Kanpur	District of Kanpur
28.	1st Civil Judge, Meerut	District of Meerut
29.	Civil Judge, Saharanpur	District of Saharanpur
30.	District and Session Judge, Tehri-Garhwal	District of Tehri and Uttar Kashi.
31.	Civil Judge, Dehradun	District of Dehradun
32.	Addl. District and Sessions Judge, Fatehpur	District of Fatehpur
33.	Addl. District and Sessions Judge, Hamirpur	District of Hamirpur
34.	Civil Judge, Pilibhit	District of Pilibhit
35.	Civil Judge, Varanasi	District of Varanasi
36.	Civil Judge, Mirzapur	District of Mirzapur
37.	Addl. District and Sessions Judge, Pratapgarh	District of Pratapgarh

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38. Civil Judge, Mainpuri	District of Mainpuri
39. Civil Judge, Muzaffarnagar	District of Muzaffarnagar
40. Civil Judge, Shahjahanpur	District of Shahjahanpur
41. Civil Judge, Etawah	District of Etawah
42. Civil Judge, Bijnor	District of Bijnor
43. Civil Judge, Ballia	District of Ballia
44. Addl. District and Sessions Judge, Banda	District of Banda
45. Civil Judge, Jhansi	District of Jhansi
46. Civil Judge, Kumaun at Naini Tal	District of Naini Tal
47. Civil Judge, Rampur	District of Rampur
48. Civil Judge, Sultanpur	District of Sultanpur
49. Addl. District and Sessions Judge, Almora	District of Almora and Pithoragarh
50 Civil Judge, Pauri	District of Pauri-Garhwal, Chamoli
51. Civil Judge, Lalitpur	District of Lalitpur
52. Civil Judge, Ghaziabad	District of Ghaziabad
53. Civil Judge, Jalaun	District of Jalaun.

71. References of disputes, etc. to Tribunals.—Any dispute, question or matter, which may under this Act be referred to a Tribunal, shall be referred to a Tribunal having jurisdiction over the area in which the property to which such dispute, question or matter relates is situate or if such property is situate in areas under the jurisdiction of more than one Tribunal, then to any of them, and the Tribunal of competent jurisdiction shall adjudicate upon such dispute, question or matter in accordance with the provisions of this Act :

Provided that no proceedings under this Act in respect of any waqf shall be stayed or suspended merely by reason of the pendency of any such dispute, question or matter before a Tribunal.

72. Procedure before Tribunals.—(1) Subject to the provisions of this Act any rules that may be made in this behalf, a Tribunal shall follow the same procedure as is provided in the Code of Civil Procedure, 1908, (Act V of 1908) in regard to suits.

(2) The provisions of the Indian Evidence Act, 1872, (Act 1 of 1872) shall be deemed to apply in all respects to the adjudication of disputes by a Tribunal.

73. Awards by Tribunals—(1) When a dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, give its award in writing under its signature.

(2) A Tribunal may either of its own motion or on the application of any party to the dispute, correct any clerical or arithmetical mistake in the award, or error arising therein from any accidental slip or omission.

(3) A copy of the award and whenever correction is made in the award as aforesaid, a copy of the order shall be handed over to each of the parties to the dispute, or if any party is not present before the Tribunal at the time of the award or order, as the case may be, a copy of it shall be sent by registered post ot the address of such party.

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74. Powers of Tribunals.—A Tribunal shall be deemed to be a civil court and shall have the same powers as are vested in such a court under the Code of Civil Procedure, 1908 (Act V of 1908) when trying a suit or executing a decree or order.

75. Bar to suits in matter to be decided by Tribunals.—No person shall institute any suit or other proceeding in any civil court with respect to any dispute or question or matter which is required or permitted under this Act to be referred to a Tribunal for adjudication.

76. Award not appealable.—The award of a Tribunal shall be final and conclusive and binding upon the parties concerned and the award shall have the force of decree and it shall neither be questioned nor appealed against in any court of law :

Provided that the High Court may, in its discretion, at any time *suo motu* or on the application of the Board or of any person aggrieved, call for and examine the record of any case for the purpose of satisfying itself as to the correctness, legality or propriety of any award made under this Act, and pass such orders as it deems fit.

Comments

Order appointing Receiver is appealable.—While Sec. 76 of the Act makes the Tribunal final and conclusive and clearly says that no appeal would lie against it in any Court of law, it could be said that Sec. 76 does not pointedly say that no appeal shall lie from an order passed by the Tribunal during the pendency of the reference before it. Section 75, however, bars the institution of any suit or proceeding in any civil Court with respect to any dispute or question or matter referred to a Tribunal for adjudication. It may be that there is no express bar against an appeal from an order appointing a receiver by the Tribunal and in the absence of any such bar the provisions of Order XLIII of the Code of Civil Procedure would be applicable and since an order appointing a receiver is an appealable order, an appeal from an order of the Tribunal appointing receivers would be maintainable. *Sunni Central Waqf Board* v. *Sirajul Haq*, AIR 1963 All 537 at 540 : 1963 All LJ 607.

77. Removal of difficulties.—(1) The State Government may, for the puspose of removing any difficulties in regard to the implementation of the provisions of Section 70 to 76 of this Act, direct, by order published in the official *Gazette*, that these provisions shall during such period as may be specified, take effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be expedient or necessary :

Provided that no such order shall be made after twenty-four months from the date of the commencement of this Act.

(2) No order, made under sub-section (1), shall be questioned in any court of law, on the ground that no difficulty as is referred to in the said sub-section existed or was required to be removed.

CHAPTER X

Miscellaneous

78. 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.

(2) In particular, and without prejudice to the generality of the forego-

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ing power, such rules may provide for all or any of the following matters, namely—

(a) the manner in which reference shall be made to a Tribunal ; and

(b) the procedure and time schedule to be followed by a Tribunal.

(3) All rules, made under this Act, shall be published in the official *Gazette*, and shall, unless some later date is appointed, come into force on the date of such publication.

(4) All rules shall be laid for not less than fourteen days before the State Legislature as soon as they are made and shall be subject to such notifications as the Legislature may make during the session is which they are so laid.

79. Board's power to make bye-laws.—(1) The Board may, subject to the previous approval of the State Government, make bye-laws consistent with this Act for carrying out its functions and the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers such bye-laws may provide for all or any of the following matters, namely—

(a) [* * * *][1]

(b) the time and place of the meetings of the Board ; their procedure and conduct of business ;

(c) the qualifications, emoluments, terms and conditions of service of the Secretary and the staff of the Board ;

(d) fees and conditions for the grant of inspection and copies of the Board's proceedings or records ;

(e) the constitution, functions, procedure and conduct of business of the sub-committee ;

(f) the form and manner of making applications for registration of waqfs ;

(g) the particulars to be contained in, and the form of, the register of waqfs ;

(h) the method of calculating the income of a waqf for the purpose of levying contribution under this Act ;

(i) the form and manner of preparation of the annual budget and accounts of the Board and of each waqf ;

(j) the form and manner of submission of various returns required by the Board in respect of any or each waqf ;

(k) the custody and investment of Waqfs Fund ;

(l) the grant of travelling allowance to the President or members of the Board ;

(m) the books and accounts to be kept at the office of the Board and of the sub-committee, if any ;

(n) the matter of keeping, auditing and publishing of the accounts of

1. Omitted by U. P. Act No. 11 of 1974, S 7.

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waqfs, the form and content of the auditor's report and the scale of remuneration to be paid to the auditors ;

(o) the fee to be paid on applications before the Board or the sub-committee ;

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

(q) Any other matter which is required or allowed by this Act to be prescribed by the Board.

80. **Rules, bye-laws and names of members and Presidents to be notified.**—(1) All rules and bye-laws framed under this Act, shall be published in the official *Gazette* and shall thereafter have the force of law.

(2) The name of the members and Presidents of the Boards shall be published in the official *Gazette.*

81. **Protection of action taken in good faith.**—(1) No suit or other legal proceeding shall lie against the State Government or the Board or the 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.

(2) The Commissioner, the Additional Commissioner of Waqfs, the Assistant Commissioner of Waqfs, every auditor, every officer and servant of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or rules or orders made thereunder, shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (Act XLV of 1860).

82. **Surplus and accumulation.**—All money that may be available as surplus or accumulation out of the income of waqfs shall be spent on such charitable or religious objects recognized by the Muslim law as such, as may be determined by the Board. Such money may be given as loan, with the approval of the Board, by one waqf to another on such terms and conditions as may be prescribed.

83. **Recovery of dues by distress.**—The contribution payable under Section 34 and every sum recoverable under this Act may be recovered by the Board by means of distress and sale of movable or immovable property belonging to the person liable for payment, or by the appointment of a Receiver of Waqfs property in accordance with rules framed by the State Government in this behalf.

84. **No liability on State Government.**—The State Government shall not be liable for any expenditure incurred in connection with the administration of this Act.

85. **Repeals and savings.**—(1) Nothing in any other enactment, which is inconsistent with the provisions of this Act shall apply to any waqfs to which this Act applies.

(2) The U. P. Muslim Waqfs Act, 1936 (U. P. Act XIII of 1936) as amended from time to time, and the Husainabad Endowment Act, 1878, are hereby repealed :

[1][The following enactments are also hereby repealed in their application to any waqf to which this Act applies—

1. Ins. by Section 18 of U. P. Act No. 28 of 1971. (w. e. f. Oct. 31, 1971).

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"(1) the Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810 (XIX of 1810) ;

(2) the Religious Endowments Act, 1863 (XX of 1863) ;

(3) the Charitable Endowments Act, 1890 (VI of 1890) ;

(4) the Charitable and Religious Trusts Act, 1920 (XIV of 1920)".

rovided that this repeal shall not affect the operation of those Acts in o any suit or proceeding pending in any court or to an appeal or an ion in revision against any order that may be passed in such suit or ding and subject thereto, anything done or any action taken in exercise wers conferred by or under those Acts shall, unless otherwise expressly red by any provision of this Act, be deemed to have been done or taken xercise of the powers conferred by or under this Act as if this Act were in e on the day on which such thing was done or action was taken.

U. P. MUSLIM WAQFS (AMENDMENT) ACT, 1974

(U. P. ACT NO. XI OF 1974)

Note.—Sections 2 to 8 incorporated in the principal Act.

9. **Transitory provisions.**—Notwithstanding anything contained in the principal Act, or in any judgment, decree or order of any court—

(i) the nominations of members for the Sunni Central Board of Waqfs and the Shia Central Board of Waqfs made by the State Government by G. O. No. 40 (70)—68, dated August 12, 1969 and both G. Os. bearing [illegible] 1970 shall stand rescinded ;

(ii) any election made or purporting to have been made under clause (i) or clause (iii) of sub-section (1) of Section 11 or under clause (iii) of sub-section (1) of Section 12 of the principal Act before the commencement of the Uttar Pradesh Muslim Waqfs (Amendment) Ordinance, 1974 shall stand cancelled ;

(iii) any co-options made or purporting to have been made under clause (v) of sub-section (1) of Section 11 or under clause (iv) of sub-section (1) of Section 12 of the principal Act before the commencement of the Uttar Pradesh Muslim Waqfs (Amendment) Ordinance, 1974, shall stand cancelled ;

(iv) the State Government shall re-constitute each Board by notification under Section 14 of the principal Act as soon as may be after its members and the President are elected, nominated or co-opted, as the case may be.

10. **Power to remove difficulty.**—If any difficulty arises in regard to the reconstitution of the Sunni Central Board of Waqfs or the Shia Central Board of Waqfs in accordance with the principal Act as amended by this Act, the State Government may by order make such provision or give such direction as appears to it to be necessary or expedient for removing the difficulty :

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THE ACQUISITION OF CERTAIN AREA AT AYODHYA ACT, 1993

ACT NO. 33 OF 1993

[3*rd April*, 1993.]

An Act to provide for the acquisition of certain area at Ayodhya and for matters connected therewith or incidental thereto.

WHEREAS there has been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, situated in village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

AND WHEREAS the said dispute has affected the maintenance of public order and harmony between different communities in the country;

AND WHEREAS it is necessary to maintain public order and to promote communal harmony and the spirit of common brotherhood amongst the people of India;

AND WHEREAS with a view to achieving the aforesaid objectives, it is necessary to acquire certain areas in Ayodhya;

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

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(*1*) This Act may be called the Acquisition of Certain Area at Ayodhya Act, 1993.

(*2*) It shall be deemed to have come into force on the 7th day of January, 1993.

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

(*a*) "area" means the area (including all the buildings, structures or other properties comprised therein) specified in the Schedule;

(*b*) "authorised person" means a person or body of persons or trustees of any trust authorised by the Central Government under section 7;

(*c*) "Claims Commissioner" means the Claims Commissioner appointed under sub-section (*2*) of section 8;

(*d*) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

ACQUISITION OF THE AREA IN AYODHYA

3. Acquisition of rights in respect of certain area.—On and from the commencement of this Act, the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government.

4. General effect of vesting.—(*1*) The area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, including lands, buildings, structures, shops of whatever nature or other properties and all other rights and interests in, or arising out of, such properties as were immediately before the commencement of this Act in the ownership, possession, power or control of any person or the State Government of Uttar Pradesh, as the case may be, and all registers, maps, plans, drawings and other documents of whatever nature relating thereto.

(*2*) All properties aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction, decree or order of any court or

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(*2*) The Central Government shall, for the purpose of deciding the claim of the owner or any person having a claim against the owner under sub-section (*1*), by notification in the Official Gazette, appoint a Claims Commissioner.

(*3*) The Claims Commissioner shall regulate his own procedure for receiving and deciding the claims.

(*4*) The owner or any person having a claim against the owner may make a claim to the Claims Commissioner within a period of ninety days from the date of commencement of this Act:

Provided that if the Claims Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of ninety days, the Claims Commissioner may entertain the claim within a further period of ninety days and not thereafter.

9. Act to override all other enactments.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act or any decree or order of any court, tribunal or other authority.

10. Penalties.—Any person who is in charge of the management of the area and fails to deliver to the Central Government or the authorised person any asset, register or other document in his custody relating to such area or, as the case may be, authenticated copies of such register or document, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees or with both.

11. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or the authorised person or any of the officers or other employees of that Government or the authorised person for anything which is in good faith done or intended to be done under this Act.

12. Power to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(*2*) 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.

13. Repeal and saving.—(*1*) Subject to the provisions of sub-section (*2*), the Acquisition of Certain Area at Ayodhya Ordinance, 1993 (Ord. 8 of 1993), is hereby repealed.

(*2*) Notwithstanding anything contained in the said Ordinance,—

(*a*) the right, title and interest in relation to plot No. 242 situated in village Kot Ramchandra specified against Sl. No. 1 of the Schedule to the said Ordinance shall be deemed never to have been transferred to, and vested in, the Central Government;

(*b*) any suit, appeal or other proceeding in respect of the right, title and interest relating to the said plot No. 242, pending before any court, tribunal or other authority, shall be deemed never to have abated and such suit, appeal or other proceeding (including the orders or interim orders of any court thereon) shall be deemed to have been restored to the position existing immediately before the commencement of the said Ordinance;

(*c*) any other action taken or thing done under that Ordinance in relation to the said plot No. 242 shall be deemed never to have been taken or done.

(*3*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

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(1)	(2)	(3)	(4)	(5)	(6)
		185	0	7	5
		186	0	6	10
		187	0	7	0
		188	0	18	15
		189	0	14	0
		190	0	4	0
		191	4	6	14
		192	0	7	0
		193	0	12	0
		194	4	19	0
		195	0	5	0
		196	0	5	0
		197	0	5	0
		198	0	3	0
		199	0	12	0
		200	2	0	0
		204 (part) Bounded by plot No. 222 on South, Plot No. 205 on West and plot No. 231 on East.	0	3	0
		205	0	10	0
		206	0	5	0
		207	0	19	0
		208	0	5	0
		209	1	11	0
		210	0	8	0
		211	0	13	0
		212	0	4	14
		213	1	19	15
		214	0	6	0
		215	0	2	5
		216	0	6	0
		217	0	11	0

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(1)	(2)	(3)	(4)	(5)	(6)
2.	Village Avadhkhas,	1104	0	11	17
	Pargana Haveli Avadh,	1105	0	7	14
	tehsil Faizabad Sadar,	1106	0	6	2
	District Faizabad, Uttar Pradesh.	1107	0	14	14
		1108	0	4	3
		1109	0	3	0
		1110	0	4	5
		1111	0	12	15
		1112	0	5	8
		1113	0	5	10
		1114	0	0	10
		1115	0	1	10
		1116	0	3	10
		1117	0	9	12
		1118	1	1	17
		1119	0	7	14
		1120	0	13	15
		1121	0	3	0
		1122	0	8	0
		1123	0	8	0
		1124	0	9	10
		1125	0	6	6
		1126	0	4	15
		1127	0	11	4
		1128	1	12	6
		1129	0	5	9
		1130	0	5	0
		1132	1	3	5
		1133	0	4	15
		1134	0	4	0
		1135	0	1	0
		1136	0	9	0
		1143	0	4	5
		1144	0	5	15
		1145	0	0	15
		1146	0	3	0
		1147	0	5	0
		1148	0	7	15
		1149	0	6	10
		1166	0	6	0

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(1)	(2)	(3)	(4)	(5)	(6)
		(part)			
		Bounded by plot No. 1248 on North, Plot No. 1246 on South and Plot No. 1291 on East/Road.			
		1248	1	7	10
		1249	0	0	13
		1250	0	7	7
		1251	0	8	0
		1252	0	9	0
		1253	0	12	10
		1254	0	4	0
		1255	0	2	0
		1256	0	2	0
		1257	0	2	10
		1258	0	2	5
		1259	0	1	10
			27	00	11
3.	Village Jalwanpur, Pargana Haveli Avadh, tehsil Faizabad Sadar, District Faizabad, Uttar Pradesh.				
		1	0	3	5
		2	1	1	0
		3	0	0	5
		4	1	9	15
		5	0	0	10
		6	0	19	0
		7	0	2	15
		8	0	4	15
		9	0	10	10
		10	0	0	10
		11	0	3	0
		12	0	14	5
		13	0	10	0
		14	0	0	10

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