

# ACT No. XII OF 1938.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 8th April, 1938.)

An Act to amend the Durgah Khawaja Saheb Act, 1936.

XXIII of 1936. **W**HEREAS it is expedient to amend the Durgah Khawaja Saheb Act, 1936, for the purposes hereinafter appearing; It is hereby enacted as follows :—

1. This Act may be called the Durgah Khawaja Saheb (Amendment) Act, 1938. Short title.

XXIII of 1936. 2. In sub-clause (d) of clause (4) of section 2 of the Durgah Khawaja Saheb Act, 1936 (hereinafter referred to as the said Act), the words "in India" shall be omitted. Amendment of section 2, Act XXIII of 1936.

3. For section 5 of the said Act the following section shall be substituted, namely :— Amendment of section 5, Act XXIII of 1936.

"5. (1) The Committee shall consist of twenty-five members, who shall be Hanafi Muslims, namely :— Composition of Committee.

- (a) the Sajjadanashin for the time being, *ex-officio*, or his nominee;
- (b) the Mutawalli for the time being, *ex-officio*, or his nominee;
- (c) two elected from among their own number by members of the Khadim community who are recorded as voters in the register of voters for the Ajmer Municipal Committee;
- (d) five elected from among their own number by Muslims (other than members of the Khadim

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Khadim community) who are recorded as voters in the register of voters for the Ajmer Municipal Committee ;

(e) eleven, not being persons residing within the limits of the Ajmer Municipality, elected in the following manner, namely :—

(i) three by the Muslim members of the Central Legislature ;

(ii) one by the Muslim members of the Provincial Legislature of Madras ;

(iii) one by the Muslim members of the Provincial Legislature of Bombay ;

(iv) one by the Muslim members of the Provincial Legislature of Bengal ;

(v) one by the Muslim members of the Provincial Legislature of the United Provinces ;

(vi) one by the Muslim members of the Legislative Assembly of the Punjab ;

(vii) one by the Muslim members of the Provincial Legislature of Bihar ;

(viii) one by the Muslim members of the Legislative Assembly of the North-West Frontier Province ; and

(ix) one by the Muslim members of the Legislative Assembly of Sind ;

(f) one nominated by His Exalted Highness the Nizam of Hyderabad and Berar ; and

(g) four Sajjadanashins of the shrines of the Chishti order of Sufis co-opted by the members of the Committee referred to in clauses (a) to (f).

(2) No person shall be qualified to be a member of the Committee if—

(a) he cannot read and write Urdu ; or

(b) he has been convicted by a Criminal Court of any offence involving moral turpitude, and

sentenced

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sentenced to imprisonment for a period exceeding three months :

Provided that the Central Government may, by special order, declare that any person disqualified under this clause shall cease to be so disqualified.

(3) No person shall be disqualified for election to the Committee under clause (e) of sub-section (1) by reason only of the fact that he is not a member of the Legislature or Legislative Assembly concerned.

(4) If any authority or body entitled to elect, nominate or co-opt a member fails to do so within six months, the Central Government may nominate a member to fill the vacancy from among persons qualified to be elected, nominated or co-opted in respect of the vacancy."

4. Sections 6, 7 and 8 of the said Act shall be omitted.

Repeal of sections 6, 7, and 8, Act XXIII of 1936.

5. For section 9 of the said Act the following section shall be substituted, namely :—

Amendment of section 9, Act XXIII of 1936.

"9. (1) Members of the Committee, other than those referred to in clauses (a) and (b) of sub-section (1) of section 5, shall hold office for five years from the date of their election, nomination or co-option ; and casual vacancies among such members shall be filled by election, nomination or co-option, as the case may be, by the authority which elected, nominated or co-opted the member whose place is to be filled.

Term of office of members and casual vacancies.

(2) The term of office of a member elected, nominated or co-opted to fill a casual vacancy shall continue for so long only as the member whose place has been filled would have been entitled to hold office if the vacancy had not occurred."

6. In

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Amendment of  
section 10, Act  
XXIII of 1936.

6. In sub-section (1) of section 10 of the said Act, for the words, letters, brackets and figure "except those who are elected under items (a), (b) and (c) of section 5" the following shall be substituted, namely :—

"other than those referred to in clauses (a) to (c) of sub-section (1) of section 5".

Amendment of  
section 11, Act  
XXIII of 1936.

7. For sub-section (3) of section 11 of the said Act the following sub-section shall be substituted, namely :—

"(3) The Committee shall exercise its powers of administration, control and management of the Durgah Endowment through the Mutawalli, who shall be the Manager of the Durgah Endowment."

Amendment of  
section 12, Act  
XXIII of 1936.

8. In section 12 of the said Act,—

(a) after the words "such duties as may" the words "subject to such conditions, if any, as the Committee may impose," shall be inserted ; and

(b) the words "subject to the confirmation by the Committee" shall be omitted.

Amendment of  
section 14, Act  
XXIII of 1936.

9. For section 14 of the said Act the following section shall be substituted, namely :—

"14. In the case of elections under clause (c) or clause (d) of sub-section (1) of section 5, the Chief Commissioner, and, in the case of elections under clause (e) of the said sub-section, the Presidents of both Chambers of the Legislature concerned, acting together, or the President of the Legislative Assembly concerned, as the case may be, may make rules to provide for—

(i) the procedure for such elections ; and

(ii) the decision of election disputes."

Amendment of  
section 16, Act  
XXIII of 1936.

10. For section 16 of the said Act the following section shall be substituted, namely :—

Board of  
Arbitration.

"16. (1) Any dispute arising between the Committee on the one part and the Sajjadanshin,  
the

the Mutawalli and any Khadim, or any of them, on the other part, relating to the privileges of the Sajjadanashin, the Mutawalli or such Khadim, shall, at the request of either party to the dispute, be referred to a Board of Arbitration consisting of—

- (i) a nominee of the Committee ;
- (ii) a nominee of the other party to the dispute ;  
and
- (iii) a person who holds or has held the office of, or is acting or has acted as, a District Judge, to be appointed by the Chief Commissioner,

and the decision of the Board shall be final and shall not be questioned in any Court.

- (2) No suit shall lie in any Court in respect of any matter which is required by sub-section (1) to be referred to a Board of Arbitration."

**11.** In section 18 of the said Act, for the words Amendment of section 18, Act XXIII of 1936. "The Durgah Committee shall not be empowered to use the property, movable and immovable" the words "The Committee shall not use the property, movable or immovable" shall be substituted.

**12.** In section 19 of the said Act, before the words Amendment of section 19, Act XXIII of 1936. "Durgah Endowment", where they occur the second time, the word "the" shall be inserted.

**13.** For section 20 of the said Act the following section shall be substituted, namely :— Amendment of section 20, Act XXIII of 1936.

"20. (1) The accounts of the Durgah shall be audited every year by an auditor holding Audit of accounts and annual report. a certificate granted under sub-section (1) of section 144 of the Indian Companies Act, 1913.

- (2) The Committee shall every year prepare a report on the administration of the Durgah, which, together with the accounts of the Durgah and the report of the auditor thereon, shall be published in the Gazette of India."