

The Gazette  of India

EXTRAORDINARY
PART II—Section 1
PUBLISHED BY AUTHORITY

No. 29] NEW DELHI, MONDAY, MAY, 24, 1954

MINISTRY OF LAW

New Delhi, the 24th May, 1954.

The following Act of Parliament received the assent of the President on the 21st May, 1954 and is hereby published for general information:—

THE MUSLIM WAKFS ACT, 1954

No. 29 OF 1954

[21st May, 1954]

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

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

CHAPTER I
PRELIMINARY

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

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

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

Provided that in respect of any of the States of Bihar, Delhi, Uttar Pradesh and West Bengal, no such notification shall be issued except on the recommendation of the State Government concerned.

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

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer, to which the Durgah Khawaja Saheb Act, 1936 (XXIII

of 1936) and the Durgah Khawaja Saheb (Emergency Provisions) Act, 1950 (XVII of 1950), apply.

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 established for the benefit of the Muslim community;

(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 section 9;

(d) “Commissioner” means a Commissioner of Wakfs appointed under section 4 and includes any additional or assistant commissioner of wakfs;

(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 naib-mutawalli, khadim, mujawar, sajjad-nishin, 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 administering any wakf property as such;

(g) “net income” means the total income less any revenue, cess, rates and taxes payable to the Government or any local authority;

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

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

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

(i) “prescribed” 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;

(l) “wakf” means the permanent dedication by a person professing Islam of any movable or immovable property for any

purpose recognised by the Muslim law as pious, religious or charitable and includes—

- (i) a wakf by user;
- (ii) mashrut-ul-khidmat; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable;

and “wakif” means any person making such dedication;

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

CHAPTER II

SURVEY OF WAKFS

4. Preliminary survey of wakfs.—(1) The State Government may, by notification in the Official Gazette, appoint for the State a Commissioner of Wakfs and as many additional or assistant 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 commissioners of wakfs shall perform their functions under this Act under the general supervision and control of the Commissioner of Wakfs.

(3) The Commissioner shall, after making such inquiry as he may consider necessary, submit his report to the State Government containing the following particulars, namely:—

- (a) the number of wakfs in the State, 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 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 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.

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 existing in the State containing such particulars as may be prescribed.

6. Disputes regarding wakfs.—(1) If any question arises whether a particular property is wakf property or not or whether a wakf 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.

(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 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.

7. Recovery of costs of survey.—(1) The total cost of making a survey under this Chapter shall be borne by all the mutawallis in proportion to the income of the property of the wakfs situated in the State, such proportion being assessed by the 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.

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.

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.

(2) The said 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.

10. Composition of the Board.—(1) The Board shall consist of—

(a) eleven members in the case of each of the States specified in Part A of the First Schedule to the Constitution;

(b) seven members in the case of each of the States specified in Part B of the First Schedule to the Constitution; and

(c) five members in the case of each of the States specified in Part C of the First Schedule to the Constitution;

Provided that any State Government may, by notification in the Official Gazette, vary the number of members in the Board and fix such number, not exceeding eleven members, as it thinks fit and in such a case, the Board shall consist of the number of members specified in the notification.

(2) There shall be a Chairman of the Board who shall be elected by the members from amongst themselves.

11. Appointment of members.—The members of the Board shall be appointed by the State Government, by notification in the Official Gazette, from any one or more of the following categories of persons, namely:—

(a) members of the State Legislature and members of Parliament representing the State;

(b) persons having special knowledge of Muslim law and representing associations such as State Jamiat-ul-Ulama-i-Hind (whether such persons are Hanafi, Ahle-Hadis or Shefai) or State Shia Conference;

(c) persons having special knowledge of administration, finance or law;

(d) mutawallis of wakfs situate within the State:

Provided that in no case more than one mutawalli shall be appointed to the Board:

Provided further that in determining the number of Sunni members or Shia members in the Board, the State Government shall have regard to the number and value of Sunni wakfs and Shia wakfs to be administered by the Board.

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;

(d) if he has been convicted of an offence involving moral turpitude;

(e) if he 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.

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 general superintendence of all wakfs in a State 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.

(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;

(b) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were created or intended;

(c) to give directions for the administration of wakfs;

(d) to settle schemes of management for a wakf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) in any case where the objects of the wakf are not evident from any written instrument or the objects for which they were created have ceased to exist, to direct in what manner the income of the wakf or the surplus income thereof shall be utilised; but no such direction shall be given without giving the parties affected an opportunity of being heard.

Explanation.—For the purposes of this clause, the powers of the Board shall be exercised,—

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

(ii) in the case of a Shia wakf, by the Shia members of the Board only:

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

(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of accounts of wakfs;

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any wakf;

(i) to institute and defend suits and proceedings in a court of law relating to wakfs;

(j) to sanction leases of property for more than three years or mortgage or exchange properties according to the provisions of Muslim law:

Provided that no such sanction shall be given unless at least three-fourths of the members of the Board vote in favour of such a transaction;

(k) to administer the Wakf Fund;

(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, wakf properties, accounts or records or deeds and documents relating thereto;

(n) to investigate and determine the nature and extent of wakfs and wakf property; and to cause, whenever necessary, a survey of the wakf properties;

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

(3) Where the Board has settled any scheme of management under clause (d) of sub-section (2) or given any direction under clause (e) of sub-section (2), any person interested in the wakf or affected by such settlement or direction may institute a suit in a civil court of competent jurisdiction for setting aside such settlement or directions and the decision of the civil court thereon shall be final.

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 of such committees shall be determined from time to time by the Board:

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

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

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

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

(a) is or becomes subject to any disqualifications specified in section 13; or

(b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs; or

(c) fails, without excuse sufficient in the opinion of the Board, to attend three consecutive meetings of the Board.

(2) Where the Chairman of the Board is removed under sub-section (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. Secretary and other officers of the Board.—(1) There shall be a Secretary to the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board.

(2) The Secretary shall be the Chief Executive Officer of the Board and shall be under its administrative control.

(3) The Board may appoint such other officers and servants as it may consider necessary for the efficient performance of its functions under this Act.

22. Delegation.—The Board may, by a general or special order in writing, delegate to the Chairman or any other member or to the Secretary or any other officer or servant of the Board, subject to such conditions and limitations (if any) as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.

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

(2) All copies issued under this section shall be certified by the Secretary of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872 (I of 1872).

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

CHAPTER IV

REGISTRATION OF WAKFS

25. Registration.—(1) Every wakf whether created before or after the commencement of this Act shall be registered at the office of the Board.

(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 Board may prescribe and shall contain the following particulars, so far as possible—

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

(b) the gross annual income from such properties;

(c) the amount of land revenue and cesses, and of all rates and taxes annually payable in respect of the wakf properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties;

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

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

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars prescribed by the Board.

(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 (Act V of 1908) for the signing and verification of pleadings.

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

(7) On receipt of an application for registration, the Board may, before the registration of the wakf, make such inquiries as it 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 Board 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.

26. Register of wakfs.—The Board shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely:—

(a) the class of the wakf;

(b) the name of the mutawalli;

(c) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage;

(d) particulars of all wakf properties and all title deeds and documents relating thereto;

(e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;

(f) such other particulars as may be prescribed.

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.

28. Power to cause registration of wakf and to amend register.—The Board may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself cause the wakf to be registered or may at any time amend the register of wakfs.

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

(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 Board.

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.—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.

32. Submission of accounts of wakfs.—Before the 1st day of May next following the date on which the application referred to in section 25 has been made and thereafter before the 1st day of May in every year, every mutawalli of a wakf shall prepare and furnish to the

Board a full and true statement of accounts, in such form and containing such particulars as may be prescribed by the Board, of all moneys received or expended by the mutawalli on behalf of the wakf during the period of twelve months ending on the 31st day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf:

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

33. Audit of accounts of wakfs.—(1) The accounts of wakfs submitted to the Board under section 32 shall be audited and examined annually or at such other intervals as the Board may determine by an auditor appointed by the Board.

(2) The auditor shall submit his report to the Board and the report of the auditor shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

The costs of the audit of the accounts of a wakf shall be paid from the Wakf Fund.

34. Board to pass orders on auditor's report.—The Board shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

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

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

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

- (a) to carry out the directions of the Board;
- (b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board;
- (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.

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

38. Power of the Board to pay dues in case of default by mutawalli.—(1) Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board 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 Board after giving the mutawalli concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

39. Creation of reserve fund.—For the purpose of making provision for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the wakf property and for the preservation of the wakf property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a wakf.

40. Extension of time.—The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

41. Penalties.—(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;

(g) to pay the contributions payable under section 46;

(h) to discharge any public dues; or

(i) to do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the court that there was reasonable cause for his failure, be punishable with fine which may extend to one thousand rupees.

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

(3) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

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

43. Removal of mutawallis.—(1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli—

(a) has been convicted more than once of an offence punishable under section 41; or

(b) has been convicted of an offence of criminal breach of trust or any other offence involving moral turpitude.

(2) Where a committee is appointed by the Board to act as a mutawalli for managing or administering any wakf property and the committee, in the opinion of 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, the Board may supersede the committee and appoint any other person or committee to act as the mutawalli of the wakf property.

(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) or sub-section (2), unless it has held an inquiry into the matter in the prescribed manner and the decision has been taken by a majority of not less than three-fourths of the members of the Board.

(5) Where a mutawalli has been removed from his office under sub-section (1) or sub-section (2), the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer thereof duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property; and the order of the Board shall be deemed to be a decree of a civil court and shall be executed by the civil court as if it had passed the decree.

44. Application for inquiry.—Any person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

45. Inquiry by the Board.—(1) The Board may, either on an application received under section 44 or on its own motion, institute an inquiry into any matter relating to a wakf and shall hold the inquiry in such manner as may be prescribed or authorise any person in this behalf to hold the inquiry.

(2) For the purposes of any inquiry under this Act, the Board or any person authorised by it in this behalf shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) for enforcing the attendance of witnesses and production of documents.

CHAPTER VI

FINANCE OF THE BOARD

46. Annual contributions payable to the Board.—(1) The mutawalli of every wakf shall pay annually to the Board such contribution not exceeding five per cent. of the net annual income of such of its property as is situate in the State as the Board may, subject to the sanction of the State Government, from time to time, determine:

Provided that no such contribution shall be payable by the mutawalli of a wakf of which the net annual income does not exceed one hundred rupees.

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

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

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

(4) The contribution payable under sub-section (1) in respect of a wakf shall, subject to the prior payment of any dues 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.

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.

48. Wakf Fund.—(1) All moneys received by the Board under section 46 and all other moneys realised by the Board under this Act shall form a fund to be called the Wakf Fund.

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

(3) The Wakf Fund shall be applied to—

(a) repayment of any loan incurred under section 47 and payment of interest thereon;

(b) payment of the cost of audit of the Wakf Fund and the accounts of wakfs;

(c) payment of the salary and allowances of the Secretary and staff of the Board;

(d) payment of travelling allowances to the Chairman, members, Secretary and staff of the Board;

(e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act.

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

49. Budget of the Board.—The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

50. Accounts of the Board.—The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be prescribed.

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

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

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

52. State Government to pass orders on auditor's report.—The State Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

53. Sums certified due recoverable as arrears of land revenue.—(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 in the same manner as an arrear of land revenue.

54. No financial liability of Government.—The State Government shall not be liable for any expenditure incurred in connection with the administration of this Act.

CHAPTER VII

JUDICIAL PROCEEDINGS

55. 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 (XX of 1863) and in section 92 of the Code of Civil Procedure, 1908 (Act V of 1908), relating to any wakf 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.

(2) No suit to obtain any of the reliefs referred to in sub-section (1) relating to a wakf shall be instituted by any person or authority other than the Board without the consent in writing of the Board:

Provided that no such consent shall be required for the institution of a suit against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules or orders made thereunder.

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

57. Notice of suits, etc., by courts.—(1) In every suit or proceeding relating to a title to wakf property or the right of a mutawalli, the court 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 or taxes due to the Government or any local authority, notice shall be given to the Board by the court, collector or other person under whose order the sale is notified.

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

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

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

(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 (I of 1894) 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 without giving an opportunity to the Board to be heard shall be declared void, if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

59. 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 Board may appear and plead as a party to the suit or proceeding.

60. Bar to compromise of suits by or against mutawallis.—No suit or proceeding in any court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the 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, the Board may apply to the court for an order directing the mutawalli to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of the act.

(2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the wakf and the mutawalli wilfully fails to discharge such duties, the 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.

CHAPTER VIII

MISCELLANEOUS

62. Directions by the Central Government.—(1) The Central Government may call for any report or information from the Government of any State with respect to the functioning of the Board in that State and after considering such report or information, the Central Government may issue such directions on questions of policy to be followed by the Board as it may think fit.

(2) In the performance of its functions under this Act, the Board shall be guided by the directions issued under sub-section (1).

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.

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, the State Government may, by notification in the Official Gazette, supersede the Board for such period as may be specified in the notification:

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

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

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all property vested in the Board shall, during the period of supersession, vest in the State Government.

(3) On the 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 section 11.

65. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against 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.

66. The Commissioner, auditor, etc., to be deemed to be public servants.—The Commissioner, 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).

67. 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 foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the particulars which a list of wakfs published under sub-section (2) of section 5 may contain;

(b) the conditions and restrictions subject to which the Board may transfer any property;

(c) the regulation of the functions of the Board;

(d) the terms and conditions of service of the Secretary of the Board;

(e) the manner in which any inquiry may be held under this Act;

(f) the powers vested in a civil court which may be exercised by the Board or the Commissioner or any other person while holding an inquiry under this Act;

(g) the form in which a register of wakfs may be maintained and the further particulars which it may contain;

(h) the form in which, and the time within which, the budget of the Board may be prepared and submitted by the Board and approved by the State Government;

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

68. Power to make regulations.—(1) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder for carrying out its functions under this Act.

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

(a) the time and place of the meetings of the Board and the number of members required to form a quorum at its meetings;

(b) the procedure and conduct of business 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;

(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.

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

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

(2) Section 5 of 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);

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

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

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

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

K. Y. BHANDARKAR,
Secy. to the Govt. of India.