

THE WAKF (AMENDMENT) ACT, 1984

No. 69 OF 1984

[10th October, 1984.]

An Act further to amend the Wakf Act, 1954.

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

1. (1) This Act may be called the Wakf (Amendment) Act, 1984.

Short
title
and
commence-
ment.

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

29 of 1954.

2. In section 1 of the Wakf Act, 1954 (hereinafter referred to as the principal Act), in sub-section (3), for the first proviso, the following proviso shall be substituted, namely:—

Amend-
ment
of sec-
tion 1.

“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may be, in such area, shall cease to operate, and, on such cesser, such corresponding law shall be deemed to have been repealed by an Act enacted by the Legislature of that State, but such cesser shall not affect the previous operation of such corresponding law, and subject thereto,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.”

Amend
ment
of sec-
tion 3.

3. In section 3 of principal Act,—

(i) clause (d) shall be omitted;

(ii) in clause (f),—

(a) after the words "to be the mutawalli of a wakf and includes any", the words "person who is a mutawalli of a wakf by virtue of any custom or who is a" shall be inserted;

(b) for the words "any person or Committee for the time being managing or administering any wakf property as such", the words "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" shall be substituted;

(iii) for clause (g), the following clause shall be substituted, namely:—

"(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;"

(iv) after clause (k), the following clauses shall be inserted, namely:—

"(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;"

(v) in clause (l),—

(a) in the opening portion, after the words "person professing Islam", the words "or any other person" shall be inserted;

(b) in sub-clause (i), after the words "a wakf by user", the words "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" shall be inserted;

(c) in sub-clause (ii), after the words "mashrut-ul-khidmat", the words "muafies, khairati, qazi services, madad-mash" shall be inserted;

(d) for sub-clause (iii), the following sub-clause shall be substituted, namely:—

"(iii) a wakf-alal-aulad;"

(e) to clause (l), the following proviso shall be added, namely:—

“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;”;

(vi) after clause (l), the following clause shall be inserted, namely:—

‘(la) “Wakf Commissioner” means the Wakf Commissioner appointed under sub-section (1) of section 21;’.

4. In section 4 of the principal Act,—

(i) for the word “Commissioner”, wherever it occurs, the words “Survey Commissioner” shall be substituted;

(ii) for the word “commissioners”, wherever it occurs, the words “Survey Commissioners” shall be substituted;

(iii) after sub-section (5), the following sub-section shall be inserted, namely:—

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

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

5. In section 5 of the principal Act, in sub-section (2), for the words “existing in the State, or as the case may be, the part of the State”, the words “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,” shall be, and shall be deemed always to have been, substituted.

6. In section 6 of the principal Act,—

(a) in sub-section (1), the following *Explanation* shall be inserted at the end, namely:—

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

Amend-
ment
of sec-
tion 4.

Amend-
ment
of sec-
tion 5.

Amend-
ment
of section 6.

by notice served on him in that behalf during the course of the relevant inquiry under section 4.;

(b) in sub-section (3), for the word "Commissioner", the words "Survey Commissioner" shall be substituted;

(c) after sub-section (4), the following sub-section shall be inserted, namely:—

"(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)."

7. After section 6 of the principal Act, the following section shall be inserted, namely:—

"6A. (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 section 5 is wakf property or not, or whether a wakf specified in such list is a Shia Wakf or a Sunni Wakf, the Board 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 re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5) no proceeding under this section in respect of any 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.

(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.

Insertion of new section 6A.

Power of Tribunal to determine disputes regarding wakfs.

(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."

8. In sub-section (1) of section 7 of the principal Act, for the word "Commissioner", the words "Survey Commissioner" shall be substituted.

Amendment of section 7.

9. In sub-section (3) of section 8D of the principal Act, for the words "in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following", the words "in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid" shall be substituted.

Amendment of section 8D.

10. After sub-section (2) of section 9 of the principal Act, the following sub-section shall be inserted, namely:—

Amendment of section 9.

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

11. For section 10 of the principal Act, the following section shall be substituted, namely:—

Substitution of section 10.

10. (1) The Board shall, in the case of a State, as also in the case of the Union territory of Delhi, consist of—

Composition of the Board.

(a) four members, of whom two shall be elected from among themselves by such of the Muslim members of Parliament as have been elected thereto from that State or the Union territory of Delhi, as the case may be, and the other two shall be elected from among themselves by such of the Muslim members of the State Legislature as have been elected thereto, and such election shall be held in accordance with the system of proportional representation by means of a single transferable vote in such manner as may be prescribed:

Provided that where the number of Muslim members elected to Parliament from a State, or, as the case may be, the Union territory of Delhi is only one, or where the number of Muslim members elected to a State Legislature is only one, the Muslim member who has been elected to Parliament from the State or the Union territory of Delhi, as the case may be, and the Muslim member who has been elected to the State Legislature, shall become, by virtue of such election, member of the Board and the remainder of the membership of the Board under this clause shall be filled up by the State Government by appointing suitable persons as members of the Board:

Provided further that where no Muslim has been elected from the State 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.

19 of 1966.

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

(a) five members, to be appointed by the Central Government from amongst the categories of persons specified in clause (b) of sub-section (1), and, for this purpose, the provisions of the said clause shall apply to the composition of the Board under this sub-section as they apply to the composition of the Board under sub-section (1);

(b) one mutawalli to be appointed by the Central Government; and

(c) the Wakf Commissioner, who shall be, *ex officio*, Member-Secretary of the Board.

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

12. Section 11 of the principal Act shall be omitted.

13. In section 13 of the principal Act, for clauses (d) and (e), the following clauses shall be substituted, namely:—

“(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;

Omission
of sec-
tion 11.

Amend-
ment of
section 13.

(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.”

14. In section 15 of the principal Act,—

Amend-
ment
of sec-
tion 15.

(a) in sub-section (1),—

(i) for the words “general superintendence of all wakfs in a State shall vest”, the words “general superintendence of all wakfs in a State in relation to all matters, except those which are expressly required by this Act to be dealt with by the Wakf Commissioner, shall vest” shall be substituted;

(ii) after the proviso, the following *Explanation* shall be inserted, namely:—

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;

(b) in sub-section (2),—

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

“(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;”;

(ii) clause (d) shall be omitted;

(iii) in sub-clause (iii) of clause (e), for the words “or as nearly as practicable similar, to the original object”, the words “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” shall be substituted;

(iv) in the *Explanation*, for the words “shall be exercised”, the words “shall be exercised under sub-section (1)” shall be substituted;

(v) clauses (f) and (h) shall be omitted;

(vi) in clause (j), for the words, figures and letter “or lease, as required by section 36A”, the words “or lease, in accordance with the provisions of this Act” shall be substituted;

(vii) clauses (l), (m) and (n) shall be omitted;

(c) in sub-section (3),—

(i) the words, brackets, letter and figure “settled any scheme of management under clause (d) of sub-section (2) or” shall be omitted;

(ii) for the words "or affected by such settlement or direction", the words "or affected by such direction" shall be substituted;

(iii) for the words "setting aside such settlement or directions", the words "setting aside such directions" shall be substituted.

Inser-
tion of
new sec-
tions 15A,
15B, 15C
and 15D.

Power
to deve-
lop urban
land
which
is wakf
property.

15. After section 15 of the principal Act, the following sections shall be inserted, namely:—

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

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

(a) the local or other statutory authority to state, whether the intended development of the use of 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 my objection to the proposed development of land uses and is either unwilling to execute, or if willing, does not have the means of executing, the proposed work within the time specified in the notice issued to him,

the State Government may take over the management of the specified urban land for such period, not being more than five years or such longer period not being more than fifteen years in the aggregate, as the State Government may, from time to time, specify by notification in the Official Gazette, and shall thereafter, entrust the management of the specified urban land to the Board, for the pur-

of 1904.

4 of 1958.

poses 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-section (2), shall, unless it was made in good faith and for valuable consideration in the due course of management of the specified urban land, be void.

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

(12) The Board shall, after the recovery of all expenses and charges referred to in sub-section (11), or upon the expiry of the period specified under sub-section (4), whichever is earlier, restore 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.

Powers of inspection by Wakf Commissioner or persons authorised by him.

15B. (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 mutawalli or any officer or other employee who is working under him or had been working under him in the past, had misappropriated, misapplied, or fraudulently retained, any money or other wakf property, or had incurred irregular, 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.

15C. 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 of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under section 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.

Recovery of the amount determined under section 15B.

15D. (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,—

Conditional attachment by Tribunal.

(a) is about to dispose of the whole or any part of his property; or

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

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

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

(3) The Tribunal may direct the mutawalli 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."

Amendment of section 16.

16. In sub-section (2) of section 16 of the principal Act, after the words "functions and duties", the words "and the term of office" shall be inserted.

Substitution of section 21.

17. For section 21 of the principal Act, the following section shall be substituted, namely:—

Appointment of Wakf Commissioner and his term of office, etc.

"21. (1) There shall be in each State a Wakf Commissioner who shall be the Chief Executive Officer of the Board.

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

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

Provided further that where a common Board has been established under section 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 re-appointment for a like term.

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

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

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

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

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

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

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

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

18. After section 21 of the principal Act, the following sections shall be inserted, namely:—

Inser-
tion of
new sec-
tions 21A,
21B, 21C,
21D, 21E
and
21 F.

Removal
of the
Wakf
Commis-
sioner.

"21A. (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 subsection (1) of section 21 as the Wakf Commissioner.

Powers to
make
appoint-
ments,
etc.,
to vest in
the Wakf
Commis-
sioner.

21B. (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.

Duties
and
other
powers
of the
Wakf
Commis-
sioner.

21C. (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.

21D. 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 to any wakf or to wakfs generally,

he may, without implementing such order or resolution place the matter before the State Government alongwith 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.

21E. (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.

21F. 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.”

Power of the Wakf Commissioner not to implement orders or resolutions of the Board in certain cases.

Delegation of powers by the Wakf Commissioner.

Construction of reference with regard to exercise of powers by the Wakf Commissioner.

Substitution of section 22.

19. For section 22 of the principal Act, the following section shall be substituted, namely:—

Delegation of powers by the Board.

“22. 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.”

Insertion of new sections 22A and 22B.

20. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Wakf Commissioner may exercise powers through Collectors, etc.

“22A. 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.

Powers of Wakf Commissioner to inspect records, registers, etc.

22B. 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.”

Amendment of section 23.

21. In section 23 of the principal Act,—

(a) in sub-section (1), for the words “The Board may allow inspection of its proceedings or other records in its custody”, the words “The Wakf Commissioner may allow inspection of the proceedings of the Board or other records in his custody” shall be substituted;

(b) in sub-section (2), for the words “Secretary of the Board”, the words “Wakf Commissioner” shall be substituted;

(c) in sub-section (3),—

(i) for the word “Secretary”, the words “Wakf Commissioner” shall be substituted;

(ii) for the words "authorised in this behalf by the Board", the words "authorised in this behalf by the Wakf Commissioner" shall be substituted.

22. In section 25 of the principal Act,—

(a) for the word "Board", wherever it occurs, the words "Wakf Commissioner" shall be substituted;

(b) in sub-section (6), for the words "it may consider", the words "he may consider" shall be substituted;

(c) in sub-section (7), for the words "as it thinks fit", the words "as he thinks fit" shall be substituted;

(d) after sub-section (8), the following sub-sections shall be inserted, namely:—

"(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."

23. Section 26 of the principal Act shall be renumbered as sub-section (1) of that section, and

(a) in sub-section (1) as so renumbered, for the word "Board", the words "Wakf Commissioner" shall be substituted;

(b) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(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)."

24. After section 26 of the principal Act, the following sections shall be inserted, namely:—

"26A. (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

Amendment of section 25.

Amendment of section 26.

Insertion of new sections 26A and 26B.

Power of Wakf Commissioner to appoint Executive Officers.

to the administration of the property of the wakf for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Wakf Commissioner:

Provided that the Executive Officer who is appointed for a wakf having a gross annual income of not less than sixty thousand rupees, shall ensure that the budget of the wakf is submitted, the accounts of the wakf are regularly maintained, and the yearly statement of accounts are submitted positively within such time as the Wakf Commissioner may specify.

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

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

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

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

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

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

(a) a person may be appointed as the Executive Officer under this section on a whole-time basis or on a part-time basis;

(b) a person may be appointed as an Executive Officer in an honorary capacity, that is to say, without payment of salary 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.

26B. (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.”.

25. After sub-section (2) of section 27 of the principal Act, the following sub-section shall be inserted, namely:—

“(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

Powers of the Wakf Commissioner in relation to wakfs which have ceased to exist.

Amendment of section 27.

regard to such property and, if after such inquiry, the Board is satisfied that such property is wakf property, call upon the trust or society, as the case may be, either to register such property under this Act as wakf property or show cause why such property should not be so registered:

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

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

Amendment
of section
28.

26. In section 28 of the principal Act,—

(a) for the word "Board", the words "Wakf Commissioner" shall be substituted;

(b) for the words "may itself", the words "may himself" shall be substituted.

Amendment
of section
29.

27. In section 29 of the principal Act, for the word "Board", at both the places where it occurs, the words "Wakf Commissioner" shall be substituted.

Amendment
of section
31.

28. Section 31 of the principal Act shall be renumbered as sub-section (1) thereof, and—

(a) to sub-section (1), as so renumbered, the following proviso shall be added, namely:—

"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) after sub-section (1), as so renumbered, the following sub-section shall be inserted, namely:—

"(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."

Insertion
of new
section
31A.

29. After section 31 of the principal Act, the following section shall be inserted, namely:—

Duties of
Wakf
Commissioner to
prepare
budget for
wakfs
under
the direct
manage-
ment of
the
Board.

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

(2) While submitting the budgets under sub-section (1), the Wakf Commissioner shall also prepare a statement giving details of the increase, if any, in the income of each wakf under the direct management of the Board and the steps which have been

taken for its better management and the results accruing therefrom during the year.

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

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

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

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

(7) Where any wakf is under the direct management of the Board, such administrative charges as may be specified by the Wakf Commissioner shall be payable by the wakf to the Board:

Provided that the Wakf Commissioner shall not collect, except with the previous approval of the State Government, more than ten per cent. of the gross annual income of the wakf under the direct management of the Board as administrative charges payable to the Board."

30. In section 33 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(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;

(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

Amend-
ment
of sec-
tion 33.

or at such other intervals as may be prescribed and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of the auditors;

(d) the accounts of a wakf having a net annual income exceeding five thousand rupees, shall be audited by the State Examiner of Local Funds or by any other officer designated for the purpose by the State Government and every such audit shall be made annually or at such other intervals as may be prescribed:

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

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The cost of the audit of the accounts of a wakf shall be met from the funds of that wakf:

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

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

Amend-
ment
of sec-
tion 34.

31. Section 34 of the principal Act shall be renumbered as sub-section (1) thereof, and—

(a) in sub-section (1), as so renumbered,—

(i) after the words “auditor’s report,”, the words, brackets and figures “or where the auditor’s report is submitted after the commencement of the Wakf (Amendment) Act, 1984, the Wakf Commissioner shall examine such report” shall be inserted;

(ii) for the words “shall pass such orders on the report as it thinks fit”, the words, brackets and figures “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” shall be substituted;

(b) after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

“(2) The mutawalli or any other person aggrieved by any order made by the Board or the Wakf Commissioner under

sub-section (1) may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

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

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

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

32. In section 35 of the principal Act, in sub-section (1), for the words "order of the Board", the words "order of the Board, or the Wakf Commissioner or the Tribunal, as the case may be," shall be substituted.

Amendment of section 35.

33. In section 36 of the principal Act,—

(1) in clause (a), for the words "directions of the Board", the words "directions made by—

Amendment of section 36.

(i) the Board, or

(ii) the Wakf Commissioner,

in accordance with the provisions of this Act or of any rule or order made thereunder" shall be substituted;

(2) in clause (b), for the words "required by the Board", the words "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" shall be substituted.

34. For section 36A of the principal Act, the following section shall be substituted, namely:—

Substitution of section 36A.

"36A. (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.

Alienation of wakf property without sanction of Board to be void.

(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 by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the 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.

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

35. After section 36B of the principal Act, the following sections shall be inserted, namely:—

Inser-
tion
of new
sections
36C, 36D,
36E and
36F.

Restric-
tion on
purchase
of pro-
perty
on behalf
of the
Wakf

36C. 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.

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

Removal
of encroa-
chments
from
wakf
property.

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

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

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

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

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

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

Enforce-
ment of
the order
made
under
section
36D.

default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

Restrictions on the powers to grant lease of wakf property.

36F. (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 granting sanction for the making or renewal of lease under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

Amendment of section 38.

36. In section 38 of the principal Act,—

(a) in sub-section (1), for the word "Board", the words, brackets and figures "the Board, or where such refusal or failure occurs after the commencement of the Wakf (Amendment) Act, 1984, the Wakf Commissioner", shall be substituted;

(b) in sub-section (2), for the word "Board", the words "Board, or, as the case may be, the Wakf Commissioner" shall be substituted.

Amendment of section 39.

37. In section 39 of the principal Act, for the words "the Board may direct the creation and maintenance, in such manner as it may think fit", the words "the Wakf Commissioner may direct the creation and maintenance, in such manner as he may think fit" shall be substituted.

Amendment of section 40.

38. In section 40 of the principal Act, for the words "The Board may, if it is satisfied", the words "The Wakf Commissioner may, if he is satisfied" shall be substituted.

Amendment of section 41.

39. In section 41 of the principal Act,—

(a) in sub-section (1), for the words "fine which may extend to one thousand rupees", the words "fine which may extend to two thousand rupees" shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(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,

he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to five thousand rupees.”;

(c) in sub-section (2), for the words “made by the Board or an officer duly authorised by the Board”, the words “made by the Board or the Wakf Commissioner or by an officer duly authorised by the Board or the Wakf Commissioner” shall be substituted;

(d) in sub-section (3), for the words “presidency magistrate or a magistrate of the first class”, the words “Metropolitan Magistrate or a Judicial Magistrate of the first class” shall be substituted;

(e) after sub-section (3), the following sub-sections shall be inserted, namely:—

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

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

40. After section 41 of the principal Act, the following sections shall be inserted, namely:—

“41A. 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.

Insertion of new sections 41A and 41B.

Mutawalli not to spend any money belonging to a wakf for defending himself.

Power of Board to determine by whom costs, etc., shall be paid.

Amendment of section 43.

41B. 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."

41. In section 43 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (b), for the words "moral turpitude", the words "moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence," shall be substituted;

(ii) clause (c) shall be omitted;

(iii) clause (e) shall be omitted;

(iv) after clause (e), as so omitted, the following clauses shall be inserted, namely:—

"(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) sub-section (2) shall be omitted;

(c) in sub-section (4),—

(i) the words, brackets and figure "or sub-section (2)" shall be omitted;

(ii) for the word "three-fourths", the word "two-thirds" shall be substituted;

(d) for sub-section (4A), the following sub-section shall be substituted, namely:—

"(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";

(e) after sub-section (4A), the following sub-sections shall be inserted, namely:—

"(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.";

(f) in sub-section (5), the words, brackets and figure "or sub-section (2)" shall be omitted.

42. For section 43A of the principal Act, the following section shall be substituted, namely:—

"43A. (1) Where no suitable person is available for appointment as a mutawalli of a wakf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the wakf, the Board may, by notification in the Official Gazette, assume direct management of the wakf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

(2) The State Government may, on its own motion or on the application of any person interested in the wakf, call for the records of any case for the purpose of satisfying itself as to the correct-

5 of 1908.

Substitution of section 43A.

Assumption of direct management of certain wakfs by the Board.

ness, 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."

43. After section 43A of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 43B to 43F.

Powers of appointment and removal of mutawalli when to be exercised by the State Government.

Supervision and supersession of Committee of Management.

"43B. 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.

43C. (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 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 (2) may, within sixty days from the date of the order, make an application to the Tribunal for the adjudication of the matter:

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

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

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

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

Provided further that any member aggrieved by any order for his removal from the membership of the committee, may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal, and the Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.

Matters which an order for removal of mutawalli or committee shall contain.

43D. 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.

Duty of mutawalli or committee to deliver possession of records, etc.

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

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

(a) certified copy of the order appointing such successor mutawalli or successor committee, and

(b) a certificate issued by the Wakf Commissioner specifying such failure, or obstruction,

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

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

(3) Where the removed mutawalli or any member of the removed committee, omits or 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).

43F. (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.

Power of Wakf Commissioner to frame scheme for the administration of a wakf.

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

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

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

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

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

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

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

Amend-
ment of
section
44.

44. In section 44 of the principal Act,—

(i) for the word "Board", at both the places where it occurs, the words "Wakf Commissioner" shall be substituted;

(ii) for the words "it shall take such action thereon as it thinks fit", the words "he shall take such action thereon as he thinks fit" shall be substituted.

Amend-
ment
of sec-
tion 45.

45. In section 45 of the principal Act,—

(a) in sub-section (1),—

(i) for the word "Board", the words "Wakf Commissioner" shall be substituted;

(ii) for the words "its own motion", the words "his own motion" shall be substituted;

(iii) for the words "as it thinks fit", the words "as he thinks fit" shall be substituted;

(b) in sub-section (2), for the words "the Board or any person authorised by it", the words "the Wakf Commissioner or any person authorised by him" shall be substituted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

"(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."

Amend-
ment
of sec-
tion 46.

46. In section 46 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The mutawalli of every wakf, the net annual income of which is not less than one thousand rupees, shall pay

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

Explanation 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 a year after deducting therefrom, the following, namely:—

(i) the land revenues paid by it to the Government, including cesses paid to local authorities;

(ii) the rates, taxes and licence fees, if any, paid by it to the Government or any local authority;

(iii) expenditure incurred for all or any of the following purposes, namely:—

(a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;

(b) seeds or seedlings;

(c) manure;

(d) purchase, and maintenance, of agricultural implements;

(e) purchase, and maintenance, of cattle for cultivation;

(f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

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

(iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent. of the annual rent derived therefrom, or the actual expenditure, whichever is less;

(v) sale proceeds of immovable properties or rights relating to, or arising out of, immovable properties, if such proceeds are re-invested to earn income for the wakf:

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

(a) advances and deposits recovered and loans taken or recovered;

(b) deposits made as security by employees, 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) audit recoveries.

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

(b) in sub-section (2), for the words "any particular wakf", the words "any mosque or orphanage or any particular wakf" shall be substituted;

(c) after sub-section (5), the following sub-sections shall be inserted, namely:—

"(6) Where, after the commencement of the Wakf (Amendment) Act, 1984, the mutawalli of a wakf fails to submit a return of the net annual income of the wakf within the time specified 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 escaped assessment relates, serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act in the first instance."

47. After section 46 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 46A and 46B.

"46A. (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.

Power of Wakf Commissioner to direct banks, etc., to make payment.

(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.

Deduction of contribution from perpetual annuity payable to the wakf.

46B. (1) Every authority empowered to disburse any perpetual annuity payable to a wakf under any law relating to the abolition of zamindaries or jagirs, or laying 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."

Insertion of new section 47A.

48. After section 47 of the principal Act, the following section shall be inserted, namely:—

Mutawalli not to lend or borrow moneys without sanction

"47A. (1) Notwithstanding anything contained in a deed of wakf, no mutawalli, Executive Officer or other person in charge of the administration of a wakf shall lend any money belonging to the wakf or any wakf property or borrow any money for the purposes of the wakf except with the previous sanction of the Wakf Commissioner.

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

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

(a) to recover an amount equal to the amount which has been so lent, or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;

(b) to recover the possession of the wakf property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent."

49. Section 49 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

Amendment of section 49.

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

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

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

50. In sub-section (2) of section 51 of the principal Act, after the words “auditor shall, among other things, specify”, the following words shall be inserted, namely:—

Amendment of section 51.

“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”.

51. For section 55 of the principal Act, the following section shall be substituted, namely:—

Substitution of section 55. Appointment, powers and jurisdiction of Tribunals.

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

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

(3) Where any application made under sub-section (1) relates to any wakf property which falls within the territorial limits of the

jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

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

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

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

5 of 1908.

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

5 of 1908.

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 provisions of the Code of Civil Procedure, 1908.

5 of 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."

52. After section 55 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 55A to 55F.

“55A. Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall, as soon as practicable, on the conclusion of the hearing of such matter, give its decision in writing under its signature and furnish a copy of such decision to each of the parties who were present before it at the time of the decision and, where any party was not present at the time aforesaid, send a copy of such decision to such party by registered post.

Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.

55B. 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.

Amendment of decisions.

55C. 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.

Bar of jurisdiction of civil courts in respect of matters determined by Tribunal.

55D. 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—

Appointment of a receiver in certain cases.

(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.

Bar to the enforcement of right on behalf of unregistered wakfs.

55E. (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 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.

Bar to the challenge of the validity of any notification, etc.

55F. 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."

Amendment of section 57.

53. In sub-section (1) of section 57 of the principal Act,—

(a) for the words "title to wakf property", the words "title to, or possession of, wakf property" shall be substituted;

(b) for the words "or the right of a mutawalli, the court", the words "or the right of a mutawalli or beneficiary, the court or Tribunal" shall be substituted.

Amendment of section 58.

54. In section 58 of the principal Act,—

(a) in sub-section (1),—

(i) after the words and figures "Land Acquisition Act, 1894", the words "or under any other law for the time being in force relating to the acquisition of land or other property" shall be inserted;

(ii) the following *Explanation* shall be inserted at the end, namely:—

"*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.";

1 of 1894. (b) in sub-section (3), after the words and figures "Land Acquisition Act, 1894", the words, brackets and figure "or under the corresponding provisions of the other law referred to in sub-section (1)" shall be inserted;

1 of 1894. (c) in sub-section (4), after the words and figures "Land Acquisition Act, 1894", the words, brackets and figure "or under the corresponding provisions of the other law referred to in sub-section (1)" shall be inserted.

55. In section 59 of the principal Act, for the word "Board", the words "Wakf Commissioner" shall be substituted. Amendment of section 59.

56. In section 61 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "the Board may apply", the words "the Wakf Commissioner may apply" shall be substituted;

(ii) for the words "to pay to the Board or to any person authorised by the Board", the words "to pay to the Wakf Commissioner or to any person authorised by the Wakf Commissioner" shall be substituted;

(b) in sub-section (2), for the word "Board", the words "Wakf Commissioner" shall be substituted. Amendment of section 61.

57. In Chapter VII of the principal Act, after section 61, the following section shall be inserted, namely:—

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

Insertion of new section 61A.

Power of appellate authority to entertain appeal after the expiry of the specified period.

58. For section 62 of the principal Act, the following section shall be substituted, namely:—

"62. (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;

Substitution of section 62.

Powers of Central Government to regulate the secular activities of wakfs.

(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."

Insertion of new sections 63A and 63B.

59. After section 63 of the principal Act, the following sections shall be inserted, namely:—

Annual report by the State Government.

"63A. 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.

Powers of revision of the State Government.

63B. (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."

60. In sub-section (1) of section 64 of the principal Act, after the words "or has exceeded or abused its powers", the words and figures "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" shall be inserted.

Amendment of section 64.

61. In section 65 of the principal Act, for the words "the Commissioner", the words "the Wakf Commissioner or the Survey Commissioner" shall be substituted.

Amendment of section 65.

62. For section 66 of the principal Act, the following section shall be substituted, namely:—

Substitution of section 66.

"66. (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.

Wakf Commissioner, members of Board, etc., to be deemed to be public servants.

45 of 1860.

(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."

45 of 1860.

63. In section 66A of the principal Act,—

Amendment of section 66A.

(a) in sub-section (1),—

(i) for the words and figures "under the States Reorganisation Act, 1956", the words "under any law providing for reorganisation of States" shall be substituted;

37 of 1956.

(ii) for the figures, letters and words "1st day of November, 1956", the words "the date of such reorganisation" shall be substituted;

(iii) for the words "it should be reconstituted or reorganised as an intra-State Board", the words "it should be reconstituted as an intra-State Board" shall be substituted;

(iv) for the words "such reconstitution and reorganisation, as the case may be", the words "such reconstitution" shall be substituted;

(b) in sub-section (3),—

(i) in clause (b), for the words "reconstitution and reorganisation", the word "reconstitution" shall be substituted;

(ii) in clause (f), for the words and figures "subject to the provisions of section 111 of the States Reorganisation Act, 1956", the words "subject to the provisions of law providing for the reorganisation of the concerned State" shall be substituted. 37 of 1956.

Amendment of section 66B.

64. In sub-section (1) of section 66B of the principal Act, for the words and figures "the States Reorganisation Act, 1956, this Act is, as from the 1st day of November, 1956, applicable", the words "any law providing for the reorganisation of any State, this Act is, as from the date on which that law comes into force, applicable" shall be substituted. 37 of 1956.

Insertion of new sections 66D to 66H.

65. After section 66C of the principal Act, the following sections shall be inserted, namely:—

Powers of Board and Wakf Commissioner to require copies of documents, etc., to be furnished.

"66D. 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 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.

Institution of suit or legal proceedings in certain cases.

66E. 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 a 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.

Power of Central Government to constitute common Boards.

66F. (1) Where the Central Government is satisfied that by reason of—

(i) the smallness of the Muslim population in two or more States,

(ii) the slender resources of the wakf in such States, and

(iii) the 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 such common Board shall be located.

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

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

(a) all powers vested in the State Government under any deed of wakf or any provision of law for the time being in force relating to wakfs, shall become transferred to, and vested in, the Central Government and, thereupon, 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 such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.

36 of 1963.

66G. 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.

Period of limitation for recovery of wakf properties to be thirty years.

31 of 1950.

66H. 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 any wakf and, in particular, any entrustment (whether by transfer of any documents 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—

Special provision as to evacuee wakf properties.

31 of 1950.

(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.”.

Amend-
ment of
section 67.

66. In sub-section (2) of section 67 of the principal Act,—

(i) clause (d) shall be omitted;

(ii) for clause (n), the following clauses shall be substituted, namely:—

“(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 (3) 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;

(zf) rules regulating the conduct of business by, and affairs of, the common Board under clause (c) of sub-section (3) of section 66F;

(zg) any other matter which is required to be, or may be, prescribed."

67. After section 67 of the principal Act, the following section shall be inserted, namely:—

"67A. 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."

Insertion
of new
section
67A.

Rules
made
by the
Central
Govern-
ment to
be laid
before
Parlia-
ment.

68. In section 69 of the principal Act, in sub-section (1), after clause (3), the following clause shall be inserted, namely:—

"(3A) On and from the commencement of the Wakf (Amendment) Act, 1984, sections 92 and 93 of the Code of Civil Procedure, 1908;"

Amend-
ment
of sec-
tion 69.