

WAKF ACT, 1954

29 of 1954

[21st May, 1954]

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STATEMENT OF OBJECTS AND REASONS "The management of Wakfs though it vests immediately in a mutawalli is a subject which requires the supervision of the State. The need for supervision has been felt, and in addition to various enactments dealing with the subject of the charitable endowments, the Mussalman Wakf Act, 1923 (No. 42 of 1923), was enacted for the whole of India. This Act merely provides for the submission of audited accounts by the Mutawallis, to the District Judges. This Act did not prove of much practical value. The Mussalman Wakf (Bombay Amendment) Act, 1935 (XVIII of 1935) amended the Mussalman Wakf Act, 1923 (42 of 1923). The Bengal Wakf Act, 1934 (XIII of 1934) was enacted to create a machinery for the supervision of wakfs in Bengal. The U. P. followed suit and the United Provinces Muslim Wakfs Act, 1936 (XIII of 1936) was passed creating a Central Wakf Board. Similarly Bihar also passed a legislation almost on the same lines. The working of these Acts has brought out the necessity of some amendments. Further many of the States have got no Act for the purpose. It is, therefore, necessary that one uniform and consolidated legislation may be passed by the Centre, which may be adopted as a model Act by the various States. It is with this view that the present Bill is introduced."- Gaz. of Ind., 1952, Pt. II- Sec. 2, page 285. Amending Act 30 of 1959.- Prior to the reorganisation of States on the 1st November, 1956, the Wakf Act, 1954, was brought into force in certain States only and Boards of Wakfs had also been set up for some of them. The Act was not, however, brought into force in all the States. On account of the reorganisation of States, certain difficulties have arisen in the working of this Act. Some of the Boards established under the Act have, since 1st November, 1956, been functioning in respect of two or more States, while in some other cases there is more than one Board functioning in the same State. This is not a satisfactory arrangement. It is, therefore, necessary to reconstitute such Boards as intra-State bodies. It is accordingly proposed to empower the Central Government to make, wherever necessary, suitable orders for the reconstitution of these Boards and for division of their assets and liabilities. In regard to the composition of the Boards, the Act makes a distinction between Part A States, Part B States and Part C

States. This distinction no longer holds good. It is, therefore, proposed to provide that each Board, when it is constituted for any of the States or the Union Territory of Delhi, should have eleven members while the Board for any other Union Territory, should have five members only. 2. In some of the States, the Act is in force in certain parts only and it is proposed to empower the Central Government to bring the Act into force in the remaining part of such States. If, however, for any reason it is not found feasible to bring the Act into force in the remaining part of any such State and establish a Board for the whole of the State, it would at least be desirable to have a Board for such part or parts of the State where the Act is already in force. Under the Act, as it stands at present, it is not permissible for a State Government to form a Board for a part of a State only. It is, therefore, proposed to empower a State Government to establish a Board for a part of a State also in such cases. 3. The present Bill seeks to achieve these objects.-Gaz. of Ind., 3-8-1959, Pt. II, S. 2, Ext., P. 579. Amending Act 34 of 1964.- The Wakf Act, 1954 was enacted to provide for the better administration and supervision of wakfs. The Act was amended in 1959 for the limited purpose of removing certain difficulties arising out of reorganisation of States. Experience of the working of the Act over the last ten years has revealed certain difficulties. It is, therefore, proposed to amend the Act to remove these difficulties and to ensure better administration of wakfs by mutawallis, 2. The main features of the Bill are: (i) The definition of beneficiary in regard to objects of public utility is being broadened to cover all objects obtained by Muslim law. Endowments made by non-Muslims for support of certain Muslim religious and pious institutions will also come under the purview of the Act. (ii) A Central Wakf Council is proposed to be established. (iii) A provision is being made to enable the establishment of separate Sunni and Shia Boards in any State in which the Shia Wakfs constitute in number more than fifteen per cent. of the total number of wakfs In that State or the income of the property of Shia wakfs in that State or the income of the property of Shia wakfs constitutes more than fifteen per cent. of the income of all the wakfs in the State. (iv) To check mutawallis from alienating wakf properties, a specific provision is being made to clarify that alienations without the sanction of the Board will be invalid. As a further step in this direction, it is also being provided that where mutawallis illegally alienate properties already determined as wakf properties, the Board can recover possession by issuing certificates

to Collector. A right of appeal to the district Court against the order of the Collector is also being provided for. (v) Authority is being conferred on the Board to remove mutawallis on some additional grounds not mentioned in section 43 and to assume direct management of wakfs for a period not exceeding five years in cases where no suitable mutawallis are available. 3. The notes on clauses explain in detail the various changes proposed to be made,-Gaz. of Ind., D/- 22-4-1964, Pt. II, S. 2, Ext., P. 317. Amending Act 38 of 1969.- Chapter II of the Wakfs Act, 1954, provides for the survey of wakf properties existing in a State at the date of the commencement of the Act. The survey of all wakfs existing in a State takes quite a long time with the result that the finalisation of the list of all wakfs in a State takes several years. The whole object of the said chapter is to provide for an authoritative list of wakfs in a State and to provide for speedy and final disposal of all disputes relating to the character of such wakfs or to the property of such wakfs. On a strict reading of the provisions of Chapter II of the Wakf Act, 1954, it would however appear that the provisions of the Chapter do not permit the publication of more than one list of wakfs in respect of a State. This would mean that where two or more lists are published in a State, such lists are invalid in law. Unless, therefore, such lists are validated, the entire survey work accomplished in the State concerned may become infructuous. It is, therefore, proposed to amend the Act to permit the publication of different lists of wakfs in respect of different parts of a State and to validate all previous cases of publication of different lists of wakfs in respect of different parts of a State. At the same time, in order to ensure that such validation does not prejudicially affect any person, it is proposed to confer on the persons concerned a right to institute within a period of one year from the date of commencement of the proposed legislation. suits for modification of the lists so validated. 2. It is proposed to avail of the present opportunity to give effect to certain amendments which were sought to be made in the Act by the Wakf (Amendment) Bill, 1965, which was passed by the Rajya Sabha in 1966, but which lapsed on the dissolution of the Third Lok Sabha. These are explained below:- (i) Under the Wakf Act, 1954, the contribution payable by Mutawallis and others to the State Board of Wakfs has to be calculated with reference to the net annual income of the wakfs. Section 3(9) of the Act provides that net income means "the total income less any revenue, cess, rates and taxes payable to the Government or any local authority." The intention has always been

that in computing net annual income, no deductions other than those expressly provided for in the definition of net income should be permitted. But a contrary view was taken by the Kerala High Court. Further doubts have been expressed as to whether donations and offerings made to a wakf form part of its income. It has thus become necessary to make the position clear and to validate the contribution already realised. Accordingly, it is proposed to substitute a new definition of "net annual income" for the definition of "net income" contained in the said Section 3 (9).

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

3. The Bill seeks to achieve the above objects.-Gaz. of Ind., 17-5-1969, Pt. II, S. 2, Ext" P. 492. Amending Act 69 of 1984:- The Wakf Act, 1954 (29 of 1954) provides for the better administration and supervision of wakfs. The working of the Wakf Boards established under the Wakf Act is, however, not satisfactory and in most cases these Boards have failed to achieve the very purpose for which they have been established. Further, the financial position of most of these Boards is also not happy. The question of toning up the administration of wakfs so as to protect and properly manage wakf properties by taking necessary measures including legislation, has been engaging the attention of the Central Government, A Committee known as the Wakf Inquiry Committee was accordingly constituted by the Central Government for the purpose of evaluating the working of the Wakf Act and for making an inquiry into the administration of wakfs at all levels in respect of States to which the provisions of the Wakf Act are applicable.

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

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

(i) to ensure uniformity of the wakf legislation throughout India and in particular, in the State or part of the State in which the Act is not in force; (ii) The Wakf Board shall consist of eleven members, of which two shall be members of Parliament to be elected from amongst themselves by the Muslim members elected to Parliament from that State, two shall be elected by the Muslim members of the State Legislature from amongst themselves, the Wakf Commissioner, who shall be the ex officio Member-Secretary, and six other Muslim members to be nominated by the State Government from amongst the different categories of persons specified in section 10. The Chairman of the Wakf Board shall be elected by the members thereof from amongst themselves. The Wakf Commissioner shall not, however, be elected as the Chairman; (iii) to provide for the appointment of Wakf Commissioners in the States from amongst persons professing Islam, who are holding any post in the Government of the concerned State in the senior scale of the Judicial Service of the State or any post in the senior scale of any Administrative Service in the State. (iv) to enlarge the Powers of the State Government with regard to the control and supervision of Wakfs; (v) to strengthen the provisions of accounting and audit of the accounts of the mutawallis and to make it obligatory for the Wakf Commissioner to carry out at least once in two years a detailed inspection of the wakfs in the State having an annual income of not less than twelve thousand rupees; (vi) to impose restrictions with regard to the alienation of wakf property: (vii) to provide for the appointment of Tribunals for the speedy determination of the disputes, question or other matters relating to wakfs: every such Tribunal is to consist of one person who shall be a member of the State Judicial Service holding a rank not below than that of a District Judge or of a Civil Judge, First Class; (viii) to bring all wakfs alal-aulad within the purview of the Act, and to provide that a wakf by user shall not cease to be a wakf by reason of non-user for any length of time; (ix) imposing restriction on the powers of mutawallis to grant leases of immovable properties of the wakf. It has been provided that no lease or sub- lease of any immovable property for any period exceeding three years shall be made and that lease or sub-lease exceeding a period of one year but not exceeding a period of three years shall be void unless it is made with the previous sanction of the Board; (x) Wakf Commissioner shall be empowered to frame schemes for the proper administration of Wakfs and to take over, in certain cases, the direct management

of wakfs; (xi) The Central Government is also being empowered- (a) to lay down general principles and policies of wakf administration in so far as they relate to the secular activities of the wakfs: (b) to co-ordinate the functions of the Central Wakf Council, the Wakf Commissioners and the Boards, in so far as they relate to their secular functions of the wakf; (c) to review administration of the secular activities of the wakfs generally and to suggest improvements, if any; The other amendments proposed in the Bill are of a minor, incidental and consequential nature, 4. The Notes on clauses appended to the Bill explain in detail the various amendments proposed therein and the background under which those amendments have been proposed,-Gaz. of India, 10-5-1984, Pt. II, S. 2, Ext., P. 62 (No. 34).

CHAPTER 1

PRELIMINARY

1. Short title, extent and commencement :-

(1) This Act may be called THE WAKF ACT, 1954.

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

(3) It shall come into force in a State to which this Act extends on such date as the Central Government may, by notification¹ in the Official Gazette, appoint in this behalf for that State; and different dates may be appointed for different States:

²["Provided that, as soon as may be, after the commencement of the Wakf (Amendment) Act, 1984, the Central Government may, by notification in the Official Gazette, appoint a date on which the provisions of this Act, as amended by the Wakf (Amendment) Act, 1984, shall come into force in the States of Uttar Pradesh and West Bengal and in those parts of the States of Gujarat and Maharashtra in which the provisions of this Act do not apply, and different dates may be appointed for different States or for different areas, and for the different provisions of this Act, as so amended, and, on and from the date so appointed, the corresponding law, applicable to wakfs, in force in that State or in any part thereof, or, as the case may be, in such area, shall cease to operate, and, on such cesser, such corresponding law shall be deemed to have been repealed by an Act enacted by the Legislature of that State, but such cesser shall not affect the previous operation of such corresponding law and subject thereto, anything done or any action taken in exercise

of any power conferred by or under any such corresponding law shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act, as amended by the Wakf (Amendment) Act, 1984, as if this Act, as so amended, were in force on the date on which such thing was done or action was taken:"]

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

1. Substituted for the words "established for the benefit of Muslim Community" by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 2 (10-10-1964).
2. Substituted for the word "Section 9", by the Wakf (Amendment) Act, 1964 (34 of 1964).
3. Omitted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (i) (Not yet enforced).

2. Application of the Act :-

Save as otherwise expressly provided under this Act, this Act shall apply¹ to all wakfs whether created before or after the commencement of this Act:

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer, to which the Durgah Khawaja Saheb Act, 1936 and² [the Durgah Khawaja Saheb Act, 1955, applies.]

1. Substituted for the words "established for the benefit of Muslim Community" by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 2 (10-10-1964).
2. Substituted for the word "Section 9", by the Wakf (Amendment) Act, 1964 (34 of 1964).

3. Definitions :-

In this Act, unless the context otherwise requires,-

- (a) "beneficiary" means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility¹ [sanctioned by the Muslim law];
- (b) "benefit" does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli:

(c) "Board" means a Board of Wakfs established under ²[sub-section (1), or as the case may be, sub-section (1A) of section 9];

³[(d) ** ** * ** * **;]

⁴[(dd) "Council" means the Central Wakf Council established under section 8A ;]

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

(f) "mutawalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a competent authority to be the mutawalli of a wakf and includes any ⁵[person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mejawar, sajjadanishin, amin, or other person appointed by a mutawalli to perform the duties of a mutawalli and, save as otherwise provided in this Act, ⁶[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;]

⁷[(g) "net annual income", in relation to a wakf, means the net annual income determined in accordance with the provisions of the Explanations to sub-section (1) of section 46 .]

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

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

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

(i) "prescribed", ⁸[except in Chapter II-A], means prescribed by rules made by the State Government under this Act and includes the regulations made by the Board under this Act;

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

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

9[(ka) "Survey Commissioner" means the Survey Commissioner of Wakfs appointed under sub-section (1) of section 4 and includes any additional or assistant survey Commissioner of Wakfs;

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

(l) "wakf" means the permanent dedication by a person professing Islam **10**[or any other person] of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes-

(i) a wakf user **11**[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;]

12[(ii) grants (including mashrut-ul-khidmat **13**[muafies, khairati, qazi services, madad-mash]) for any purpose recognised by Muslim Law as pious, religious or charitable; and]

14["(iii) a wakf-alal-aulad;";]

15["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;";]

16 [(la) "Wakf Commissioner" means the Wakf Commissioner appointed under sub-section (1) of section 21 ;]

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

1. Substituted for the words "established for the benefit of Muslim Community" by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 2 (10-10-1964).

2. Substituted for the word "Section 9", by the Wakf (Amendment) Act, 1964 (34 of 1964).

3. Omitted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (i) (Not yet enforced).

4. Inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 9

(10-10-1964).

5. Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (ii) (a).
6. Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (ii) (b).
7. Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (iii).
8. Inserted by Wakf (Amendment) Act, 1964, S. 2 (10-10-1964).
9. Inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (iv) (Not yet enforced).
10. Inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (v) (a).
11. Inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (v) (b).
12. Substituted for the word "mashruf-ul-khidmat" by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 2 (10-10-1964).
13. Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (v) (c) (Not yet enforced).
14. Substituted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (v) (d).
15. Proviso added by Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (v) (e).
16. Inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 3 (vi).

CHAPTER 2

SURVEY OF WAKFS

4. Preliminary survey of wakfs :-

(1) The State Government may, by notification in the Official Gazette, appoint for the State a ¹[Survey Commissioner] of Wakfs and as many additional or assistant ²[Survey Commissioners] of wakfs as may be necessary for the purpose of making a survey of wakf properties existing in the State at the date of the commencement of this Act.

(2) All additional and assistant ²[Survey Commissioners] of wakfs shall perform their functions under this Act under the general supervision and control of the ¹[Survey Commissioner] of Wakfs.

(3) The ¹[Survey Commissioner] shall, after making such inquiry as he may consider necessary, submit his report ⁶[in respect of wakfs existing at the date of commencement of this Act in the State or any part thereof,] to the State Government containing the following particulars, namely:-

(a) the number of wakfs ⁷[in the State, or as the case may be, any

part thereof,] showing the Shia wakfs and Sunni wakfs separately;

(b) the nature and objects of each wakf;

(c) the gross income of the property comprised in each wakf;

(d) the amount of land revenue, cesses, rates and taxes payable in respect of such property;

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and

(f) such other particulars relating to each wakf as may be prescribed.

(4) The¹ [Survey Commissioner] shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

(a) summoning and examining any witness;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any court or office;

(d) issuing commissions for the examination of any witness or accounts;

(e) making any local inspection or local investigation;

(f) any other matter which may be 'prescribed.

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

[(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).]

1. Chapter IIA consisting of Ss. 8A to 8D inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 4 (10-10-1964).
2. Words 'of the properties' and 'of the property' omitted by by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 8 (2-12-1969).
6. For Central Wakf Council Rules, 1965, Sec Gaz. of Ind., 1965, Pt. II, S. 3 (i), p. 595.
7. Substituted for the words "in two.....following" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 9 (not yet enforced).

5. Publication of list of wakfs :-

(1) On receipt of a report under sub- section (3) of section 4 , the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish, in the Official Gazette, a list of wakfs ¹[² [in the State, or as the case may be, the part of the State, whether i n existence at the commencement of this Act or coming into existence thereafter] to which the report relates and] containing such particulars as may be prescribed.

1. Chapter IIA consisting of Ss. 8A to 8D inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 4 (10-10-1964).
2. Words 'of the properties' and 'of the property' omitted by by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 8 (2-12-1969).

6. Disputes regarding wakfs :-

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

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

²[Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969, such suit may be entertained by the civil court within the period of one year from such commencement.]

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

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

(3) The **4** [Survey Commissioner] shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

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

[(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).],

1. Chapter IIA consisting of Ss. 8A to 8D inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 4 (10-10-1964).

2. Words 'of the properties' and 'of the property' omitted by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 8 (2-12-1969).

3. For Central Wakf Council Rules, 1965, Sec Gaz. of Ind., 1965, Pt. II, S. 3 (i), p. 595.

4. Substituted for the words "in two.....following" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 9 (not yet enforced).

6A. Power of Tribunal to determine disputes regarding wakfs :-

(1) If, after the commencement of the Wakf (Amendment) Act, 1984, any question arises whether a particular property specified as

wakf property in a list of wakfs published under sub-section (2) of 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 reopen such question.

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

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

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

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or

commenced in a civil court under sub-section (1) of section 6 , before the commencement of the Wakf (Amendment) Act, 1984, or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, Proceeding or appeal, as the case may be.]

7. Recovery of costs of survey :-

(1) The total costs of making a survey ¹[including the cost of ²[publication of list or lists of wakfs]] under this Chapter shall be borne ³[by all the mutawallis of the Wakfs the net annual income whereof exceeds one hundred rupees, in proportion to the net annual income accruing in the State to such wakfs,] such proportion being assessed by the ⁴ [Survey Commissioner].

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

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

1. Chapter IIA consisting of Ss. 8A to 8D inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 4 (10-10-1964).

2. Words 'of the properties' and 'of the property' omitted by by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 8 (2-12-1969).

3. For Central Wakf Council Rules, 1965, Sec Gaz. of Ind., 1965, Pt. II, S. 3 (i), p. 595.

4. Substituted for the words "in two.....following" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 9 (not yet enforced).

8. Chapter II not to apply to certain States :-

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

CHAPTER 2A

CENTRAL WAKF COUNCIL

8A. Establishment and constitution of the Central Wakf Council :-

(1) For the purpose of advising it, on matters concerning the

working of Boards and the due administration of wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.

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

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

8B. Finances of the Council :-

(1) Every Board shall pay from its Wakf Fund annually to the Council such contribution as is equivalent to one per cent of the aggregate of the net annual income ¹[* * *] of the wakfs in respect of which contribution is payable under subsection (1) of section 46 :

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

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

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

1. Words 'of the properties' and 'of the property' omitted by the Wakf (Amendment) Act, 1969 (38 of 1969), S. 8 (2-12-1969).

8C. Accounts and audit :-

(1) The Council shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be prescribed by rules made by the Central

Government.

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

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

8D. Power of Central Government to make rules :-

(1) The Central Government may, by notification in the Official Gazette, make rules¹ to carry out the purposes of this Chapter.

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

(a) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council;

(b) control over and application of the Central Wakf Fund;

(c) the form and manner in which accounts of the Council may be maintained.

(3) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or ² [in two or more successive sessions, and if, ' before the expiry of the session immediately following the session or the successive sessions aforesaid] in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

1. For Central Wakf Council Rules, 1965, SecGaz. of Ind., 1965, Pt. II, S. 3 (i), p. 595.

2. Substituted for the words "in two.....following" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 9 (not yet enforced).

9. Incorporation :-

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

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

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

["(3) It shall be lawful for the Board to so reorganise its administrative set-up in the State as to ensure better administration of the wakfs in the State,"]

1. Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 11 (Not yet enforced).

10. Composition of the Board :-

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

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

means of a single transferable vote in such manner as may be prescribed:

Provided that where the number of Muslim members elected to Parliament from a State, or, as the case may be, the Union territory of Delhi, is only one, or where the number of Muslim members elected to a State Legislature is only one, the Muslim member who has been elected to Parliament from the State or the Union territory of Delhi, as the case may be, and the Muslim member who has been elected to the State Legislature, shall become, by virtue of such election, member of the Board and remainder of the 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.

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

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

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

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

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

11. . :-

NR>[* * * * *]

12. Term of office :-

The members of the Board shall hold office for five years:

Provided that a member shall, notwithstanding the expiration of his term of office, continue to hold office until the appointment of his successor is notified in the Official Gazette.

13. Disqualifications for being appointed, or for continuing as a member of the Board :-

A person shall be disqualified for being appointed, or for continuing as, a member of the Board-

(a) if he is not a Muslim and is less than twenty-one years of age;

(b) if he is found to be a person of unsound mind;

(c) if he is an undischarged insolvent;

¹ a[(d) if he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence:

(e) if he has been, on a previous occasion,-

(i) removed from his office as a member or as a mutawalli, or

(ii) removed by an order of a competent court or tribunal from any position of trust, either for mismanagement or for corruption.".]

1. Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 13 (Not yet enforced).

14. Meetings of the Board :-

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

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

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

15. Functions of the Board :-

(1) Subject to any rules that may be made under this Act, the ¹[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] in the Board established for the State, and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

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

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

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be-

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;

3["(b) to ensure that the income and other property of a wakf are applied to the objects and for the purposes for which that wakf was created or intended;"]

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

4[(d) * * * * *;]

5[(e) to direct-

(i) the utilization of the surplus income of a wakf consistently with the objects of the wakf:

(ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of a wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object which shall be similar, **6**[or nearly similar, to the original object, or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community']

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.]

Explanation.-For the purposes of this clause, the powers of the Board **7**[shall be exercised under sub-section (1)]

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

(ii) in the case of a Shia wakf, by the Shia members of the Board only: Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that its power should not be exercised by

such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause,

8[(f) * * * * *]

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

9[(h) * * * * *]

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

10[(j) to sanction in accordance with the Muslim law, any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange **11**[or lease, in accordance with the provisions of this Act:]]

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

(k) to administer the Wakf Fund;

12[(l) * * * * *]

[(m) * * * * *]

[(n) * * * * *]

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

(3) Where the Board has **13**[* * * * *] given any direction under clause (e) of sub-section (2), any person interested in the wakf **14**[or affected by such direction] may institute a suit in a civil court of competent jurisdiction for **15** [setting aside such directions] and the decision of the civil court thereon shall be final.

1. Substituted for the words "general superintendence of all wakfs in a State shall vest" by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14 (a) (i). (Not yet enforced).

2. Inserted by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14(a)(ii).

3. Substituted by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14 (b) (i).

4. Omitted by the Wakf (Amendment) Act, 1984 (68 of 1984), S.

14 (b) (ii).

5. Substituted for certain words by The Wakf (Amendment) Act, 1964 (34 of 1964), S. 7 (10-10-1964).

6. Substituted for the words "or as nearly as practicable similar, to the original object", by The Wakf (Amendment) Act, 1984 (69 of 1984), S. 14 (b) (iii). (Not yet enforced)

7. Substituted for the words "shall be exercised", by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14 (b) (iv).

8. Omitted by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14 (b) (v).

9. Omitted by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14 (b) (v).

10. Substituted for former clause (j) by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 7 (10-10-1964).

11. Substituted for the words, figures and letter "or lease, as required by section 36A" by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14(b)(vi).

12. Omitted by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14 (b) (vii).

13. Omitted by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14 (c) (i).

14. Substituted for the words "or affected by such settlement or direction" by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14 (c) (ii).

15. Substituted for the words "setting aside such settlement or direction", by the Wakf (Amendment) Act, 1984 (68 of 1984), S. 14 (c) (iii).

15A. Power to develop urban land which is wakf property :-

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

of the use of such land.

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

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

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

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

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

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

(a) the specified urban land is wakf property and is not in the possession of the mutawalli of the wakf and no process of acquisition of such land has been commenced under any law for the

time being in force relating to the acquisition of land and that such land has not vested in the State under any law for the time being in force relating to land reforms;

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

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

(d) the proposed development of the specified urban land for such land uses is in accordance with the land uses specified in the Master Plan or other Plan as aforesaid, or, where there is no such Plan, has been approved by the local or other statutory authority aforesaid;

(e) the proposed development of the specified urban land for such land uses is not likely to prejudicially affect any ancient monument within the meaning of the Ancient Monuments Preservation Act, 1904, or any ancient monument or archaeological site and remains which have been declared to be of national importance under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 ; and

(f) the mutawalli does not have any objection to the proposed development of land uses and is either unwilling to execute, or if willing, does not have the means of executing, the proposed work within the time specified in the notice issued to him, the State Government may take over the management of the specified urban land for such period, not being more than five years or such longer period not being more than fifteen years in the aggregate as the State Government may, from time to time, specify by notification in the Official Gazette, and shall thereafter, entrust the management of the specified urban land to the Board, for the purposes of making such development of the land uses as are specified in sub-section (1), and may also authorise the Board to remove, from the specified urban land, any building or structure standing thereon, the removal of which is, in the opinion of the State Government, necessary for the purpose of executing any work for the development of the land uses of such specified urban land:

Provided that the Board shall, during the course of management of the specified urban land, carry on work for the development of such

land for the land uses specified in sub-section (1), under the direction, control and supervision of the State Government:

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

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

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

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

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

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

(9) The Board may execute any work for the development of the

land uses of the specified urban land from its own finances, but where its own finances are not sufficient, it shall be lawful for the Board to raise the necessary finances on the security of the specified urban land.

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

(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.]

15B. Powers of inspection by Wakf Commissioner or persons authorised by him :-

(1) With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any wakf or wakf property, the Wakf Commissioner, or any other person authorised by him in writing in this behalf, may inspect all movable and immovable properties which are wakf properties, and all records, correspondence, plans, accounts and other documents relating thereto:

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

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

(3) Where, after any such inspection, it appears that the concerned 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. Recovery of the amount determined under section 15B

:-

Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 15B, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Wakf Commissioner shall take such steps as he may think fit for the recovery of possession of the

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

15D. Conditional attachment by Tribunal :-

(1) Where the Wakf Commissioner is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of section 15B to make any payment, with intent to defeat or delay the execution of the said order,-

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

(b) is about to remove the whole or any part of his property from the jurisdiction of the Wakf Commissioner, he may apply to the Tribunal for the conditional attachment of the said property or such part thereof as he may think necessary.

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

(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. ".]

OBJECTS AND REASONS "The Committee feel that it should be clearly brought out that the main function of the Board is to ensure that the income and property of the wakf are applied to the objects and for the purposes for which the wakf was created or intended and that in performing its functions, the Board should act in conformity with the directions of the Wakif. It is also necessary to provide that when the Board settles any scheme of management for a wakf or directs in accordance with the cy pres doctrine in what manner the income of a wakf or surplus income thereof should be utilised, an opportunity should be given to the parties affected to represent their cases before the Board, Moreover, the aggrieved parties should have the liberty to file a civil suit for setting aside the decision of the Board. When the Board has to decide in accordance with the cy pres doctrine how the income or surplus .income of a wakf should be utilised, the functions of the Board should be exercised- (i) in the case of a Shia Wakf, by the Shia members of the Board only; and (ii) in the case of a Sunni wakf, by the Sunni members of the Board only. The Committee feel that there may be some Boards where there may not be an adequate number of Shia members or Sunni members and in such a case, the Board may co-opt persons who are Shias or Sunnis, as the case may be, to be temporary members of the Board for exercising its powers for the aforesaid purpose only. In order that the Board may have effective control over the administration of wakfs the Committee consider that the Board should be given power to scrutinise and approve the budgets submitted to it by mutawallis. The Board should also arrange for the auditing of accounts of wakfs. These provisions have accordingly been incorporated in this clause."-S.C.R. (1954).

16. Committees of the Board :-

(1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs.

(2) The constitution, functions and duties ¹ [and the term of office] of such committees shall be determined from time to time by the Board:

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

1. Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 16. (Not yet enforced).

17. Resignation of Chairman and members :-

The Chairman or any other member may resign his office by writing under his hand addressed to the State Government:

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

18. Removal of Chairman and members :-

(1) The State Government may by notification in the Official Gazette, remove the Chairman of the Board or any member thereof if he-

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

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

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

(2) Where the Chairman of the Board is removed under sub-section (1) he shall also cease to be a member of the Board.

19. Filling of a vacancy :-

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

20. Vacancies amongst members or defect in the constitution not to invalidate acts or proceedings of the Board :-

No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst, its members or any defect in the constitution thereof.

21. Appointment of Wakf Commissioner and his term of office, etc :-

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

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

Provided further that where a common Board has been established under section 66F for two or more States, the power to appoint a Wakf Commissioner for such States shall vest in the Central Government, and the Wakf Commissioner, appointed by the Central Government, as far as may be, in accordance with the provisions of this section, shall function as the Wakf Commissioner in respect of each of the States for which such common Board has been established.

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

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

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

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

shall, subject to the provisions of this sub-section, be eligible for reappointment for a like term.

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

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

(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.]

21A. Removal of the Wakf Commissioner :-

(1) If at any time it appears to the State Government that the Wakf Commissioner is unsuitable for his office or has been guilty of misconduct or neglect of duties, which renders his removal from the office of Wakf Commissioner necessary in the public interest, the State Government may, by notification in the Official Gazette, remove him from such office:

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

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

21B. Powers to make appointments, etc., to vest in the Wakf Commissioner :-

(1) The Wakf Commissioner and the Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of his or its functions under this Act,

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

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

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

21C. Duties and other powers of the Wakf Commissioner :-

(1) Subject to the provisions of this Act and of the rules made thereunder, the functions of the Wakf Commissioner shall include-

(a) investigating the nature and extent of wakfs and wakf properties, and causing whenever necessary, an inventory of wakf properties and calling, from time to time for accounts, returns and informations from mutawallis;

(b) inspecting or causing the making of inspection of, wakf properties, accounts, records or deeds or documents relating thereto;

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

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

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

21D. Power of the Wakf Commissioner not to implement orders or resolutions of the Board in certain cases :-

Where the Wakf Commissioner considers that an order or resolution passed by the Board-

(a) has not been passed in accordance with law; or

(b) is in excess of, or is an abuse of, the powers conferred on the Board by or under this Act or by any other law; or

(c) if implemented, is likely to-

(i) cause financial loss to the Board or to the concerned wakf or to the wakfs generally, or

(ii) cause danger to human life, health or safety, or

(iii) lead to a riot or breach of the peace, or

(d) is not beneficial to the Board or in any wakf or to wakfs

generally, he may, without implementing such order or resolution place the matter before the State Government along with a note pointing out the objections which he has to the order or resolution, as the case may be, and the orders of the State Government thereon shall be final and binding on the Board and the Wakf Commissioner.]

21E. Delegation of powers by the Wakf Commissioner :-

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

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

21F. Construction of reference with regard to exercise of powers by the Wakf Commissioner :-

Any reference in this Act to the exercise of any power by the Wakf Commissioner shall be construed as a reference to the exercise by him of those powers which he is empowered by or under this Act to exercise.]

22. Delegation of powers by the Board :-

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

22A. Wakf Commissioner may exercise powers through Collectors etc :-

Subject to the provisions of this Act and of the rules made thereunder, the Wakf Commissioner may exercise all or any of the powers conferred on him by or under this Act, through the

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

22B. Powers of Wakf Commissioner to inspect records, registers, etc :-

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

23. Inspection of records and issue of copies :-

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

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

²[(3) The powers conferred on the ³[Wakf Commissioner] by subsection (2) may also be exercised by such other officer or officers of the Board as may either generally or specially be ⁴ [authorised in this behalf by the Wakf Commissioner] .]

1. Substituted for the words, "the Board may allow inspection of its proceedings or other records in its custody" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 21 (a) (Not yet enforced).

2. Inserted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 9 (10-10-1964).

3. Substituted for the words "Secretary of the Board" by the Wakf

(Amendment) Act, 1964 (34 of 1964), S. 21 (b).

4. Substituted for the word "authorised in this behalf by the Board" by the Wakf (Amendment) Act, 1964 (34 of 1964), Section 21 (c).

24. Prevention of disqualification for membership of Parliament :-

It is hereby declared that the offices of Chairman and members of a Board shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of Parliament. OBJECTS AND REASONS "The Committee consider it necessary to provide specifically that the office of chairman or member of a Board should not disqualify a person from membership of Parliament. The original Bill contemplated the setting up of a Central Board by the Central Government for the purpose of co-ordinating the activities of State Boards and supervising the functions of the State Boards. (See Chap. III, cls. (28 to 39), of the original Bill.) The Committee have considered the question and are of opinion that it is not necessary to have a Central Board, State Government has been given ample powers to supervise the functioning of Boards in the States, and if a Board, does not perform its functions properly, the Board may also be superseded by an order of the State Government. Power has, however, been given in clause 62 [now S. 62] to the Central Government to call for any information or report in relation to the functioning of State Boards and the Central Government may give directions on questions of policy to be followed by the Boards. The provisions relating to Central Board have, therefore, been omitted."-S.C.R. (1854).

CHAPTER 4

REGISTRATION OF WAKFS

25. Registration :-

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

(2) Application for registration shall be made by the mutawalli:

Provided that such applications may be made by the wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the ¹[Wakf Commissioner] may

prescribe and shall contain the following particulars, so far as possible-

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

(b) the gross annual income from such properties;

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

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

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

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

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars prescribed by the ¹[Wakf Commissioner].

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

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

(6) The ¹[Wakf Commissioner] may require the applicant to supply any further particulars or information that ⁵[he may consider] necessary.

(7) On receipt of an application for registration, the ¹[Wakf Commissioner] may, before the registration of the wakf, make such inquiries [as he thinks fit] in respect of the genuineness and validity of the application and the correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the ¹ [Wakf Commissioner] shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall

hear him if he desires to be heard.

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

[(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.]

1. Section 31 renumbered as sub-section (1) and to sub-section (1) as so renumbered, proviso added by the Wakf (Amendment) Act 1984 (69 of 1984), S. 28 (not yet enforced).

5. Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984).

26. Register of wakfs :-

1[(1)] The **2**[Wakf Commissioner] shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely:-

(a) the class of the wakf;

(b) the name of the mutawalli;

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

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

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

(f) such other particulars as may be prescribed.

1 [(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).]

1. Section 31 renumbered as sub-section (1) and to sub-section (1) as so renumbered, proviso added by the Wakf (Amendment) Act 1984 (69 of 1984), S. 28 (not yet enforced).
2. Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984).

26A. Power of Wakf Commissioner to appoint Executive Officers :-

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

(2) Every Executive Officer appointed under sub-section (1) shall exercise such powers and discharge such duties as pertain only to the administration of the property of the wakf for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Wakf Commissioner:

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

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

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

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

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

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

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

(a) a person may be appointed as the Executive Officer under this section, on a whole-time basis or an apart-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. Powers of the Wakf Commissioner in relation to wakfs which have ceased to exist :-

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

(a) specifying the property and funds pertaining to the wakf and for the recovery of such property or funds so specified;

(b) directing that any property or funds pertaining to the wakf which have been recovered shall be applied or utilised for the renovation of any wakf property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, after obtaining the approval of the Board, to any of the purposes specified in sub-clause (iii) of clause (e) of sub-section (2) of section 15 .

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

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

(a) is wakf property:

(b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and

(c) is not in the occupation of any person who has been authorised by or under any law for the time being in force to occupy such building or other place, may make an order-

(i) directing the recovery of such building or place from any person who may be in unauthorised possession thereof, and

(ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilised, for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of section 15 .]

27. Decision if a property is wakf property :-

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

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

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

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

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

1. Section 31 renumbered as sub-section (1) and to sub-section (1) as so renumbered, proviso added by the Wakf (Amendment) Act 1984 (69 of 1984), S. 28 (not yet enforced).

28. Power to cause registration of wakf and to amend register :-

The **1**[Wakf Commissioner] may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or **2** [may himself] cause the wakf to be registered or may at any time amend the register of wakfs.

1. Section 31 renumbered as sub-section (1) and to sub-section (1) as so renumbered, proviso added by the Wakf (Amendment) Act 1984 (69 of 1984), S. 28 (not yet enforced).

2. Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984).

29. Notification of change in registered wakfs :-

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

notify the change to the ¹[Wakf Commissioner].

(2) In the case of any other change in any of the particulars mentioned in section 25 , the mutawalli shall, within three months from the occurrence of the change, notify such change to the ¹ [Wakf Commissioner].

OBJECTS AND REASONS "An obligation has been imposed on the Inutawallis and others to notify to the Board any change which may take place either in the management of a registered wakf or in any particulars mentioned in the application for registration. This would enable the Board to keep the Register of Wakfs up-to-date. "- S.C.R. (1954).

1. Section 31 renumbered as sub-section (1) and to sub-section (1) as so renumbered, proviso added by the Wakt (Amendment) Act 1984 (69 of 1984), S. 28 (not yet enforced).

30. Savings :-

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

CHAPTER 5

MUTAWALLIS AND WAKF ACCOUNTS

31. Budget :-

¹[(1)] Every mutawalli of a wakf shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and submit it to the Board for approval.

¹ [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.]

[(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.]

1. See foot-note under S. 36E.

31A. Duties of Wakf Commissioner to prepare budget for wakfs under the direct management of the Board :-

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

(2) While submitting the budgets under sub-section (1), the Wakf Commissioner shall also prepare a statement giving details of the increase, if any, in 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 section 34 and section 35 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

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

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

32. Submission of accounts of wakfs :-

1[(1) Every mutawalli shall keep regular accounts.]

1 [(2)] Before the 1st day of May next following the date on which the application referred to in section 25 has been made and thereafter before the 1st day of May in every year, every mutawalli of a wakf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be prescribed by the Board, of all moneys received or expended by the mutawalli on behalf of the wakf during the period of twelve months ending on the 31st day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf:

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

1. See foot-note under S. 36E.

33. Audit of accounts of wakfs :-

1[(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 or at such other intervals as may be

prescribed and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of the auditors;

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

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

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

1 [(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.]

1. See foot-note under S. 36E.

34. Board to pass orders on auditors report :-

1 [(1)] The Board shall examine the auditor's report [or where the auditor's report is submitted after the commencement of the Wakf (Amendment) Act, 1984, the Wakf Commissioner shall examine such report] and may call for the explanation of any person in regard to any matter mentioned therein, and [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 .]

1 [(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 .]

1. See foot-note under S. 36E.

35. Sums certified due recoverable as arrears of land revenue :-

(1) Every sum certified to be due from any person by an auditor in his report under section 33 unless such certificate is modified or cancelled by an **1** [order of the Board or the Wakf Commissioner or the Tribunal as the case may be] made under section 34 , and

every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board,

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

1. See foot-note under S. 36E.

36. Duties of mutawallis :-

It shall be the duty of every mutawalli-

(a) to carry out the directions ¹ [directions made by-

(i) the Board, or

(ii) the Wakf Commissioner, in accordance with the provisions of this Act or of any rule or order made thereunder];

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

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

(d) to discharge all public dues; and

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

1. See foot-note under S. 36E.

36A. Alienation of wakf property without sanction of Board to be void :-

". .-

(1) Notwithstanding anything contained in the wakf deed, any gift, sale, exchange or hypothecation of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or hypothecation is effected with the prior sanction of the Board.

(2) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1)

and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is-

(i) necessary or beneficial to the wakf;

(ii) consistent with the objects of the wakf;

(iii) the consideration thereof is reasonable and adequate:

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

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

(3) The utilisation or investment of the amount realised by the sale, exchange or hypothecation of any property shall be made by the mutawalli subject to the approval of the Board, and where any amount has been raised 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.".]

36B. Recovery of wakf property transferred in contravention of section 36A :-

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

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

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

(a) by giving or tendering the order or by sending it by post to the person for whom it is intended; or

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

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

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

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

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

the purpose and deliver it to the board.

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

36C. Restriction on purchase of property on behalf of the wakf :-

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

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

36D. Removal of encroachments from wakf property :-

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

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

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Wakf Commissioner is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an

order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

Explanation.-In this section and in section 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. Enforcement of the order made under section 36D :-

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 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.]

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

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

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

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

37. Mutawalli entitled to pay certain costs from income of wakf property :-

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

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

(1) Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority,¹[the Board or where such refusal or failure occurs after the commencement of the Wakf (Amendment) Act, 1984 the Wakf Commissioner] may discharge the dues from the Wakf Fund and may recover the amount so paid from the wakf property and may also recover damages not exceeding twelve and a half per cent. of the amount so paid.

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the² [Board or as the case may be, the Wakf Commissioner] after giving the mutawalli concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

1. Substituted for the words "Board" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 36 (a) (not yet enforced).

2. Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984),

S. 36 (b).

40. Extension of time :-

¹ [The Wakf Commissioner may, if he is satisfied] that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

1. Substituted for the words "the Board may if it is satisfied", by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 38 (not yet enforced).

41. Penalties :-

(1) If a mutawalli fails-

(a) to apply for the registration of a wakf;

(b) to furnish statements of particulars or accounts or returns as required by this Act;

(c) to supply information or particulars as required by the Board;

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

(e) to deliver possession of any wakf property, if ordered by the Board or the court;

(f) to carry out the directions of the Board;

¹[(g) * * * *]

(h) to discharge any public dues; or

(i) to do any other act which he is lawfully required to do by or under this Act; he shall, unless he satisfies the court that there was reasonable cause for his failure, be punishable with ²[fine which may extend to two thousand rupees.]

³[(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.]:

(2) No court shall take cognizance of an offence punishable under this Act save upon complaint ⁴[made by the Board or the Wakf Commissioner or an officer duly authorised by the Board or the Wakf Commissioner.]

(3) No court inferior that of a ⁵[Metropolitan Magistrate a Judicial Magistrate of the first class] shall try any offence punishable under this Act.

⁶[(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.]

⁶ [(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.]

1. Clause (g) omitted by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 12 (10-10-1964).

2. Substituted for the words "fine which may extend to one thousand rupees", by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 39 (a) (not yet enforced).

3. Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 39 (b).

4. Substituted for the words "made by the Board or an officer duly authorised by the Board" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 39 (c).

5. Substituted for the words "presidency magistrate or a magistrate of the first class" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 39(d).

6. Inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 39 (e).

41A. Mutawalli not to spend any money belonging to a wakf for defending himself :-

'[. .- No Mutawalli shall spend any money out of the funds of the wakf, of which he is the mutawalli, for meeting any costs, charges or expenses which are, or may be, incurred by him, in relation to any suit, appeal or any other proceeding for, or incidental to, his removal from office or for taking any disciplinary action against himself.],

41B. Power of Board to determine by whom costs etc. shall be paid :-

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

42. Power to appoint mutawallis in certain cases :-

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

43. Removal of mutawallis :-

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

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

¹[(b) has been convicted of an offence of criminal breach of trust or any other offence involving ²[moral turpitude and such conviction has not been reversed and he has not been granted full pardon with respect to such offence]

³[(c) * * * *]

(d) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the

functions and discharge the duties of a mutawalli; or

3[(e) * * * * *]

5[(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.]

6[(2) * * * * *],

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

(4) No action shall be taken by the Board under sub-section (1) **7**[* * * * *,] unless it has held an inquiry into the matter in the prescribed manner and the decision has been taken by a majority of not less than **8**[two-thirds] of the members of the Board.

9[(4A) A mutawalli who is aggrieved by an order passed under any of the Clauses (d) to (1) 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.]

10 [(4B) Where any inquiry under sub-section (4) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interests of the wakf, by an order suspend such mutawalli until the conclusion of the inquiry:

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

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

(5) Where a mutawalli has been removed from his office under sub-section (i) ⁶[* * * *] the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer thereof duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property; and the order of the Board shall be deemed to be a decree of a civil court and shall be executed by the civil court as if it had passed the decree.

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

OBJECTS AND REASONS "It is open to a Board to constitute a civil suit for the removal of a mutawalli. Apart from this, the Committee feel that the powers of a Board to remove a mutawalli by an executive order, should be restricted. This power should be exercised only when some Court has found the mutawalli guilty of an offence. It has, therefore, been suggested that a mutawalli may be removed by an executive order of the Board only if such mutawalli has been convicted more than once of an offence punishable under section 41 or has been convicted of an offence Of criminal breach of trust or any other offence involving moral

turpitude. Where a committee of management has been appointed by the Board for performing the functions of a mutawalli, the Board has been empowered to supersede the committee, if the committee does not properly perform its functions. Before taking any action for the removal of a mutawalli the Board must hold an inquiry into the matter and the decision should be taken by a majority of not less than three-fourths of the members of the Board. The Committee also consider that when a mutawalli is removed from office, the Board should be empowered to direct the mutawalli to deliver possession of the wakf property to the Board or to any authorised person. If the mutawalli fails to deliver possession under the orders of the Board, the order of the Board should be executable as a decree of civil Court. It should also be made clear that the removal of a mutawalli from his office should not affect his personal rights, if any. Provision has accordingly been made."-S.C.R. (1954).

1. Substituted for former Cl. (b) by Wakf (Amendment) Act, 1964, S. 13 (10-10-1964).
2. Substituted for the words "moral turpitude" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 41 (a) (i) (not yet enforced).
3. Clauses (c) and (e) omitted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 41 (a) (ii) and (iii).
5. Clauses (f) to (1) inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 41 (a) (iv).
6. Omitted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 41 (b).
7. Words "or sub-section (2)" omitted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 41 (c) (i).
8. Substituted for the words "three fourths" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 41 (c) (ii).
9. Substituted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 41 (d).
10. Sections 4B and 4C inserted by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 41 (d).
12. Inserted by Wakf (Amendment) Act. 1964 (34 of 1964), S. 13 (10-10-1964).

43A. Assumption of direct management of certain wakfs by the Board :-

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

(2) The State Government may, on its own motion or on the

application of any person interested in the wakf, call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

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

(a) the details of the income of the wakf for the year immediately preceding the year under report;

(b) the steps taken to improve the management and income of the wakf;

(c) the period during which the wakf has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the wakf to the mutawalli or any committee of management during the year; and

(d) such other matters as maybe 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.]

43B. Powers of appointment and removal of mutawalli when to be exercised by the State Government :-

Whenever a deed of wakf or any decree or order of a court or any scheme of management of any wakf provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the wakf, then notwithstanding anything contained in such deed of wakf, decree, order or scheme, the powers aforesaid shall be exercisable by the State Government.]

43C. Supervision and supersession of Committee of Management :-

(1) Whenever the supervision or management of a wakf is vested in any committee appointed by the wakif, then, notwithstanding anything contained in this Act, such committee shall continue to

function until it is superseded by the Board or until the expiry of such term as may be specified by the wakif, whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and of the Wakf Commissioner, and abide by such 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.]

43D. Matters which an order for removal of mutawalli or committee shall contain :-

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

43E. Duty of mutawalli or committee to deliver possession of records, etc :-

(1) Where any mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee, as the case may be, who or which has been so removed

from office (hereinafter in this section referred to as the removed mutawalli or removed committee, as the case may be) shall hand over charge and deliver possession of the records, accounts and all properties of the wakf (including cash) to the successor mutawalli or the successor committee, as the case may be, within one month from the date specified in the order whereby the removed mutawalli or removed committee has been directed to hand over charge and to deliver possession of records, accounts and all properties of the wakf (including cash), to the successor mutawalli or successor committee, as the case may be.

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

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

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

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

44. Application for inquiry :-

Any person interested in a wakf may make an application to the ¹[Wakf Commissioner] supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the ¹[Wakf Commissioner] is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, ³ [he shall take such action thereon as he thinks fit.]

1. Substituted for the word "Board" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 44 (1) (not yet enforced).

3. Substituted for the words "it shall take such action thereon as it thinks fit" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 44 (ii) (not yet enforced).

45. Inquiry by the Board :-

¹[(1) The ²[Wakf Commissioner] may, either on an application received under section 44 or on ³[his own motion], (a) hold an enquiry in such manner as may be prescribed; or (b) authorise any person in this behalf to hold an inquiry, into any matter relating to a wakf and take such action ⁴[as he thinks fit].

(2) For the purposes of any inquiry under this Act, ⁵[the Wakf Commissioner or any person authorised by him] in this behalf shall have the same powers as are vested in a civil court under the Code

of Civil Procedure, 1908 for enforcing the attendance of witnesses and producing of documents.

6 [(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 .]

1. Substituted for the former sub-section (1) by Wakf (Amendment) Act, 1964 (34 of 1964), S. 15 (10-10-1964).

2. Substituted for the word "Board" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 45 (a) (i) (not yet enforced).

3. Substituted for the words "its own motion", by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 45 (a) (ii) (not yet enforced).

4. Substituted for the words "as it thinks fit", by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 45 (a) (iii) (not yet enforced).

5. Substituted for the words "the Board or any person authorised by it", by the Wakf (Amendment) Act, 1984 (69 of 1984). Section 45 (b) (not yet enforced).

6. Inserted, by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 45 (c) (not yet enforced).

CHAPTER 6

FINANCE OF THE BOARD

46. Annual contributions payable to the Board :-

1 [(1) The mutawalli of every wakf, the net annual income of which is not less than one thousand rupees, shall pay annually, out of the net annual income derived by the wakf, such contribution, not exceeding six per cent of such annual income as may be prescribed, to the Board for the services rendered by such Board to the wakf.

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

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

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

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

(a) maintenance of, or repairs to, irrigation works, which shall not

include the capital cost of irrigation;

(b) seeds or seedlings;

(c) manure;

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

(e) maintenance of, or repairs to, irrigation, works, cultivation;

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

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

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

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

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

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

(b) deposits made as security by employees, lessees, or contractors and other deposits, if any;

(c) withdrawals from banks or of investments;

(d) amounts recovered towards costs awarded by courts;

(e) sale proceeds of religious books and publications where such sales are undertaken as an unremunerative enterprise with a view to propagating religion;

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

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

(g) voluntary contributions received in cash or kind for a specific

service to be performed by the wakf and expended on such service;

(h) audit recoveries.

Explanation 2.- In determining the net annual income for the purposes of this section, only the net profit derived by any wakf from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income;]

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

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

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

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

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

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

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

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

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of the Wakf (Amendment) Act, 1984, the Wakf Commissioner may, within five years from the last date of the year to which such 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.]

1. Substituted by Wakf (Amendment) Act, 1984 (69 of 1984), S.

51 (not yet enforced).

46A. Power of Wakf Commissioner to direct banks, etc., to make payment :-

(1) Notwithstanding anything contained in any other law for the time being in force, the Wakf Commissioner if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom, any money belonging to a wakf is deposited, to pay the contribution, leviable under section 46, out of such money, as may be standing to the credit of the wakf in such bank or may be deposited with such person, or out of the monies which may, from time to time, be received by such bank or other person for or on behalf of the wakf by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall, when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

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

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

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

46B. Deduction of contribution from perpetual annuity payable to the wakf :-

(1) Every authority empowered to disburse any perpetual annuity payable to a wakf under any law relating to the abolition of zamindaries or 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.]

47. Power of the Board to borrow :-

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

47A. Mutawalli not to lend or borrow moneys without sanction :-

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

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

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

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

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

through the person to whom such property was lent.]

48. Wakf Fund :-

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

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

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

(3) The Wakf Fund shall be applied to-

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

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

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

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

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

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

1. Substituted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 51 (not yet enforced).

49. Budget of the Board :-

1 [(1)] The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State

Government.

1 [(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.]

1. Substituted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 51 (not yet enforced).

50. Accounts of the Board :-

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

51. Audit of accounts of the Board :-

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

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify **1** [whether the accounts of every wakf under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify] all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor

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

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

1. Substituted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 51 (not yet enforced).

52. State Government to pass orders on auditors report :-

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

53. Sums certified due recoverable as arrears of land revenue :-

(1) Every sum certified to be due from any person by an auditor in his report under section 51 unless such certificate is modified or cancelled by an order of the State Government made under section 52 , and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the State Government.

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

54. No financial liability of Government :-

Omitted by the Wakf (Amendment) Act, 1964, S. 18 (34 of 1964).

CHAPTER 7

MISCELLANEOUS

55. Appointment, powers and jurisdiction of Tribunals :-

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

define the local limits of the area in relation to which each Tribunal appointed by it shall exercise jurisdiction under this Act.

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

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

Provide 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.

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

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

(7) The decision of the Tribunal shall be final and binding upon the parties to 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 .

(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.]

55A. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision :-

Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a wakf for wakf property it shall hold its proceedings as expeditiously 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.]

55B. Amendment of decisions :-

Clerical or arithmetical mistakes in any decision or order of a Tribunal or any error arising therein from any accidental slip or omission may at any time be corrected by the Tribunal by which

such decision was given or order was made, either on its own motion or on the application of any of the parties to the proceeding, and, whenever any such correction is made, a copy of the decision or order, as so corrected, shall be furnished to each of the parties who were present before the Tribunal at the time of making such correction, and, where any party was not so present, shall be sent to such party by registered post.]

55C. Bar of jurisdiction of civil courts in respect of matters determined by Tribunal :-

No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by, or under, this Act to be determined by a Tribunal.]

55D. Appointment of a receiver in certain cases :-

Notwithstanding anything contained in the Code of Civil Procedure, 1908 , or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced-

(a) by or on behalf of a Board-

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

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

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

(b) by a mutawalli to recover possession of immovable property, which is wakf property, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board, and which is in the possession of the defendant, the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property such amount as the court may consider to be necessary for further prosecution of the suit.]

55E. Bar to the enforcement of right on behalf of

unregistered wakfs :-

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

55F. Bar to the challenge of the validity of any notification, etc :-

Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any civil court.]

56. Notice of suits by parties against the Board :-

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

57. Notice of suits, etc., by court :-

(1) In every suit or proceeding relating to ¹ [title to, or possession of, wakf property] [or the right of a muta- walli or beneficiary, the court or Tribunal] shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any wakf property is notified for sale in execution of

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

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

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

1. Substituted for the words "Board" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 55 (not yet enforced).

58. Proceedings under the Land Acquisition Act, 1894 :-

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

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

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

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under section 31 or Section 32 of the Land Acquisition Act, 1894 [or under the corresponding provisions of the other law referred to in

sub-section (1)] without giving an opportunity to the Board to be heard.

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

1. Substituted for the words "Board" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 55 (not yet enforced).

59. Board to be made a party to a suit or proceeding regarding a wakf on its application :-

In any suit or proceeding in respect of a wakf or any wakf property by or against a stranger to the wakf or any other person, the ¹ Wakf Commissioner] may appear and plead as a party to the suit or proceeding.

1. Substituted for the words "Board" by Wakf (Amendment) Act, 1984 (69 of 1984), S. 55 (not yet enforced).

60. Bar to compromise of suits by or against mutawallis :-

No suit or proceeding in any Court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the Board.

61. Power to make application to the court in case of failure of mutawalli to discharge his duties :-

(1) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim Law as pious, religious and charitable and the mutawalli fails to perform such act ¹[the Wakf Commissioner may apply] to the court for an order directing the mutawalli ² [to pay to the Wakf Commissioner or to any person authorised by the Wakf Commissioner] in this behalf the amount necessary for the performance of the act.

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

1. Substituted for the words "the Board may apply" by Wakf (Amendment) Act, 1984, S. 59 (not yet enforced).

2. Substituted for the words "to pay to the Board or to any person authorised by the Board" by the Wakf (Amendment) Act, 1984 (69 of 1984), S. 59 (not yet enforced).

61A. Power of appellate authority to entertain appeal after the expiry of the specified period :-

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

CHAPTER 8

MISCELLANEOUS

62. Powers of Central Government to regulate the secular activities of wakfs :-

(1) For the purpose of regulating the secular activities of wakfs, the Central Government shall have the following powers and functions, namely-

(a) to lay down general principles and policies of wakf administration in so far as they relate to the secular activities of the wakfs;

(b) to co-ordinate the functions of the Central Wakf Council, the Wakf Commissioners and the Board, in so far as they relate to their secular functions.

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

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

63. Directions by the State Government :-

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

63A. Annual report by the State Government :-

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

63B. Powers of revision of the State Government :-

(1) Save as otherwise provided in this Act, the State Government may either on its own motion or on an application made to it by a mutawalli or any other person interested in the wakf, call for and examine the record of the Board or Wakf Commissioner, as the case may be, in respect of any proceeding (not being a proceeding relating to a matter in respect of which a suit has been instituted, appeal has been filed or application has been made to a court or any proceeding arising out of an application made to the Tribunal or an appeal to the State Government as provided by this Act), to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed in such proceedings, and if in any case, it appears to the State Government that any such decision or order should be modified, annulled, reversed or remitted to the Board for reconsideration, the State Government may pass orders accordingly:

Provided that no such order shall be made except after giving to the person who is likely to be prejudicially affected thereby a reasonable opportunity of making his representations against the proposed action.

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

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

communicated to the applicant.]

64. Power to supersede the Board :-

(1) If the State Government is of opinion that the Board is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, ¹ [or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under section 62 or the State Government under section 63 , or if the State Government is satisfied on a consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the wakfs in the State,] the State Government may, by notification in the Official Gazette, supersede the Board for such period as may be specified in the notification:

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

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

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

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

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

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

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Board in the manner provided in section 10 and Section 11 .

1. For rules in Lakshadweep Union Territory, see Gaz. of Ind., 1965, Pt. II, S. 3 (i), p. 598; for Rules in Mysore(now Karnataka) State, see Mys. Govt. Gaz., 1964, Pt. IV, S. 2-C (i), p.420; for Rules in Pondicherry, see Pondi. Gaz., 17-3- 1972, Ext, (No. 3); for Rules in Andhra Pradesh, see A. P. Gaz., 1856, Pt. I, (R. S.),p. 331; for rules in Assam, see Assam Gaz., 1962, Pt. II-A, p. 1768; in Gujarat, see Guj. Gaz., 1963, Pt. IV-A, p. 31; in Kerala, see Ker. Gaz., 1966, Pt. I, S. IV (Supp.) No. 18, G. 820 and Ker. Gaz., 1967, Pt. I, S. IV, No. 37; in Madhya Pradesh, see M. P., Gaz., 1960, Pt. IV (Ga), p.987 [30-11-19611; in Maharashtra (Marathwada area), see Maha. Gaz., 1961, Pt. IV-A, p. 617; in Orissa, see On. Gaz., 16-3-1961, Ext. (No.220); in Punjab, see Punj. Gaz., 1964, Pt. in (L.S.), pp. 165-181. In Rajasthan, see Raj. Gaz., 1964, Pt. IV (Ga), p. 435 (6); in Tamil Nadu, see Ft. St. Geo. Gaz., 1959, Pt. I, Supp., p. 665.

65. Protection of action taken in good faith :-

No suit or other legal proceeding shall lie against the Board or ¹ [the Wakf Commissioner or the Survey Commissioner) or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

1. For rules in Lakshadweep Union Territory, see Gaz. of Ind., 1965, Pt. II, S. 3 (i), p. 598; for Rules in Mysore(now Karnataka) State, see Mys. Govt. Gaz., 1964, Pt. IV, S. 2-C (i), p.420; for Rules in Pondicherry, see Pondi. Gaz., 17-3- 1972, Ext, (No. 3); for Rules in Andhra Pradesh, see A. P. Gaz., 1856, Pt. I, (R. S.),p. 331; for rules in Assam, see Assam Gaz., 1962, Pt. II-A, p. 1768; in Gujarat, see Guj. Gaz., 1963, Pt. IV-A, p. 31; in Kerala, see Ker. Gaz., 1966, Pt. I, S. IV (Supp.) No. 18, G. 820 and Ker. Gaz., 1967, Pt. I, S. IV, No. 37; in Madhya Pradesh, see M. P., Gaz., 1960, Pt. IV (Ga), p.987 [30-11-19611; in Maharashtra (Marathwada area), see Maha. Gaz., 1961, Pt. IV-A, p. 617; in Orissa, see On. Gaz., 16-3-1961, Ext. (No.220); in Punjab, see Punj. Gaz., 1964, Pt. in (L.S.), pp. 165-181. In Rajasthan, see Raj. Gaz., 1964, Pt. IV (Ga), p. 435 (6); in Tamil Nadu, see Ft. St. Geo. Gaz., 1959, Pt. I, Supp., p. 665.

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

". .-

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

66A. Special provision for reorganisation of certain Boards

:-

(. .-

(1) Where on account of the reorganisation of States ¹[under any law providing for reorganisation of States] the whole or any part of a State in respect of which a Board was, immediately before the ²[the date of such reorganisation], functioning has been transferred on that day, to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that ³[it should be reconstituted as an intra-State Board] for the whole or any part of that State, the State Government may frame a scheme for such dissolution or ⁴ [such reconstitution] including proposals regarding the transfer of the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.

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

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

(a) the dissolution of the Board;

(b) the [reconstitution] in any manner whatsoever of the Board including the establishment, where necessary, of a new Board;

(c) the area in respect of which the reconstituted Board or new Board shall function and operate;

(d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and

the terms and conditions of such, transfer;

(e) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;

(f) the transfer or re-employment of any employee of the Board to, or by, any such transferee and [subject to the provisions of law providing for the reorganisation of the concerned State] the terms and conditions of service applicable to such employees after such transfer or re-employment;

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

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

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

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

1. Substituted for certain words by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 22 [10-10-1964].

2. Clause (d) omitted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 66 (1).

3. Words "approved by the State Government", omitted by Wakf (Amendment) Act, 1964, S. 22 [10-10-1964].

4. Substituted for Clause (n) by Wakf (Amendment) Act, 1984 (69 of 1984), Section 66 (ii) (not yet enforced).

66B. Special provision for establishment of Board for part of a State :-

FNR>[. .-

(1) Where on account of the territorial changes brought about by ¹ [any law providing for the reorganisation of any State, this Act is, as from the date on which that law comes into force, applicable] only to any part or parts of a State but has not been, brought into force in the remaining part thereof, then, notwithstanding anything contained in this Act; it shall be lawful for the Government of the

State to establish one or more Boards for such part or parts in which this Act is in force and in such a case, any reference in this Act to the word "State" in relation to a Board shall be construed as a reference to that part of the State for which the Board is established.

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

1. Substituted for certain words by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 22 [10-10-1964].

66C. Application of Act to properties given or donated by persons not professing Islam for support of certain wakfs :-

Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a wakf being-

(a) a mosque, idgah, imambara, dargah, khangah or a maqbara;

(b) a Muslim graveyard;

(c) a choultry or a musafarkhana, then such property shall be deemed to be comprised in that wakf and be dealt with in the same manner as the wakf in which it is so comprised.]

66D. Powers of Board and Wakf Commissioner to require copies of documents, etc., to be furnished :-

Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board, or the Wakf Commissioner to require any person having the custody of any record, register, report or other document relating to a wakf or any immovable property which is 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.]

66E. Institution of suit or legal proceedings in certain cases

:-

Notwithstanding anything contained in any other law for the time being in force, no suit or other legal proceeding in respect of the administration or management of 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.]

66F. Power of Central Government to constitute common Boards :-

(1) Where the Central Government is satisfied that by reason of-

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

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

(iii) the 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.]

66G. Period of limitation for recovery of wakf properties to be thirty years :-

Notwithstanding anything contained in the Limitation Act, 1963 , the period of limitation for any suit for possession of immovable property comprised in any wakf or possession of any interest in such property shall be a period of thirty years and such period shall begin to run when the possession of the defendant becomes adverse to the plaintiff.]

66H. Special provision as to evacuee wakf properties :-

The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of Section 2 of the Administration of Evacuee Property Act, 1950 which immediately before it became such evacuee property within the said meaning was property comprised in 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-

(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.]

67. Power to make Rules :-

(1) The State Government may, by notification in the Official Gazette ¹, make rules to carry out the ²[purposes of this Act, other than those of Chapter II-A].

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

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

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

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

³[(d) * * * * * ;]

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

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

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

(h) the form in which, and the time within which, the budget of the Board may be prepared and submitted by the Board ⁴[* * *];

(i) the manner in which the accounts of the Wakf Fund may be kept and audited and the contents of the auditor's report;

(j) the payment of moneys into the Wakf Fund, the investment, custody and disbursement of such moneys;

(k) the circumstances under which, and the terms and conditions on which, the Board may be allowed to borrow;

(l) the circumstances in which, and the conditions subject to which,

the Board may reduce or remit the contribution payable in respect of a wakf;

(m) the procedure to be followed in the recovery of any sum due under this Act as an arrear of land revenue;

5 [(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 maybe 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.".]

1. For rules in Lakshadweep Union Territory, see Gaz. of Ind., 1965, Pt. II, S. 3 (i), p. 598; for Rules in Mysore(now Karnataka) State, see Mys. Govt. Gaz., 1964, Pt. IV, S. 2-C (i), p.420; for Rules in Pondicherry, see Pondi. Gaz., 17-3- 1972, Ext, (No. 3); for Rules in Andhra Pradesh, see A. P. Gaz., 1856, Pt. I, (R. S.),p. 331; for rules in Assam, see Assam Gaz., 1962, Pt. II-A, p. 1768; in Gujarat, see Guj. Gaz., 1963, Pt. IV-A, p. 31; in Kerala, see Ker. Gaz., 1966, Pt. I, S. IV (Supp.) No. 18, G. 820 and Ker. Gaz., 1967, Pt. I, S. IV, No. 37; in Madhya Pradesh, see M. P., Gaz., 1960, Pt. IV (Ga), p.987 [30-11-1961]; in Maharashtra (Marathwada area), see Maha. Gaz., 1961, Pt. IV-A, p. 617; in Orissa, see On. Gaz., 16-3-1961, Ext. (No.220); in Punjab, see Punj. Gaz., 1964, Pt. in (L.S.), pp. 165-181. In Rajasthan, see Raj. Gaz., 1964, Pt. IV (Ga), p. 435 (6); in Tamil Nadu, see Ft. St. Geo. Gaz., 1959, Pt. I, Supp., p. 665.

2. Substituted for certain words by the Wakf (Amendment) Act, 1964 (34 of 1964), S. 22 [10-10-1964].

3. Substituted for Clause (n) by Wakf (Amendment) Act, 1984 (69 of 1984), Section 66 (ii) (not yet enforced).
4. Words "approved by the State Government", omitted by Wakf (Amendment) Act, 1964, S. 22 [10-10-1964].
5. Clause (d) omitted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 66 (1).

67A. Rules made by the Central Government to be laid before Parliament :-

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

68. Power to make regulations :-

1 _

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

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

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

(b) the procedure and conduct of business at the meetings of the Board;

(c) the constitution and functions of committees of the Board and the procedure for transaction of business at the meetings of such committees;

(d) the allowances or fees to be paid to the Chairman or members of the Board or members of committees;

(e) terms and conditions of service of the officers, and servants of

the Board;

(f) the form of application for registration of wakfs, further particulars to be contained therein and the manner and place of registration of wakfs;

(g) further particulars to be contained in the register of wakfs,

(h) the books to be kept at the office of the Board;

(i) the form in which, and the time within which, the budgets of wakfs may be prepared and submitted by the mutawallis and approved by the Board;

(j) the manner in which the accounts of wakfs may be kept and audited and the contents of the auditor's report;

(k) the method of calculating the income of a wakf for the purpose of levying contributions under this Act;

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

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

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

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

1. For Regulations in: (i) Andhra Pradesh, see A. P. Gaz., 1964, Pt. II, p. 15; (ii) in Marathwada (Maharashtra) see Maha. Gaz" 1968, Pt. IV-C, p. 926; (iii) in Orissa, see Orissa Gaz"1961, Ext. (No. 596); (iv) in Punjab, see Punj. Gaz. 1967, Pt. III, p.604; (v) in Rajasthan, see Raj. Govt. Gaz., 5-11-1964, Pt. IV (Ga), p.435 (6).

69. Repeal and savings :-

(1) The following enactments, namely:-

(1) The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810;

(2) [* * *] the Religious Endowments Act, 1863;

(3) The Charitable Endowments Act, 1890 .

2 [(3A) On and from the commencement of the Wakf (Amendment)

Act, 1984, sections 92 and s.93 of the Code of Civil Procedure, 1908 .]

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

(5) The Mussalman Wakf Act, 1923 ; shall not apply to any wakf to which this Act applies.

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

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

1. Words "section 5 of" omitted by Wakf (Amendment) Act, 1964 (S4 of 1964), S. 23 (10-10-1964).

2. Inserted by Wakf (Amendment) Act, 1984 (69 of 1984), S. 68 (not yet enforced).

70. Removal of difficulties :-

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

SCHEDULE 1

LIST OF AMENDMENTS

1. . :-

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

2. . :-

In S. 11, (a) for clause (b), the following clause shall be substituted, namely- "(b) persons having knowledge of Muslim law and representing in the case of a Sunni Board of Wakfs, associations such as State Jamiat-ul-Ulma-i-Hind (Whether such persons are Hanafi, Ahle-Hadis or Shefai) and in the case of a Shia

Board of Wakfs, associations such as State "Shia Conference;"; and
(b) the second proviso shall be omitted.

3. . :-

In clause (e) of sub-section (2) of S. 15, the explanation shall be omitted.

4. . :-

For S. 27, the following section shall be substituted,- "27. Decision
it a property is a, Wakf property.-

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

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