

WAKF ACT 1954

THE [WAKF ACT, 1954](#)

ACT NO. 29 OF 1954 1*

[21st May, 1954.]

An Act to provide for the better administration and supervision of wakfs. BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:-

CHAP PRELIMINARY CHAPTER I PRELIMINARY

Short title, extent and commencement.

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 2* as the Central Government may, by notification in the Official Gazette, appoint in this behalf for that State; and different dates may be appointed for different States: Provided that in respect of any of the States of Bihar, 3*** Uttar Pradesh and West Bengal, no such notification shall be issued except on the recommendation of the State Government concerned: 4*[Provided further that where on account of the territorial changes brought about by the [States Reorganisation Act, 1956](#), (37 of 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 ----- 1 Supplemented by Madras Act 19 of 1961. The Act has been extended to Pondicherry by Act 26 of 1968, s. 3 and Sch. 2 15th January 1955--Ajmer, Andaman and Nicobar Islands, Coorg, **Hyderabad**, Kutch, Madhya Bharat, Madras, Mysore, Patiala and East Punjab States Union, Tripura and Vindhya Pradesh--Notification No. SRO 53, dated the 4th January, 1955, Gazette of India, Extraordinary, Pt. II, Sec. 3, p. 7; 1st February, 1955--Assam and Travancore-Cochin, 1st April 1955-- Andhra and Rajasthan--Notification No. SRO 282. dated the 22nd January, 1955, Gazette of India, Extraordinary, 1955, Pt. II, Sec. 3, p. 199; 20th December, 1955--Bhopal--Notification No. SRO 3696, dated the 20th December, 1955, Gazette of India, Extraordinary, Pt. II, Sec. 3. p. 2501; 1st June, 1958--Orissa--Notification No. G.S.R. 428, dated the 23rd May, 1958, Gazette of India, Pt. II, Sec. 3(i), p. 319. 1st October. 1962--Union territory of Delhi--Notification No. G.S.R. 1283, dated the 24th September, 1962, Gazette of India, Pt. II, Sec. 3(i), p. 1464. 12th April, 1973--Bihar--Notification No. G.S.R. 197(E), dated the 7th April, 1973, Gazette of India, Extraordinary, Pt. II, Sec. 3(i), p. 539. 3 The word "Delhi," omitted by Act 30 of 1959, s. 2. 4 Ins. by s. 2, ibid. Am. in Kerla by kerla Act 18 of 1972. Am. in Bihar by Bihar Act 3 of 1975. Am. in Mysore by Mysore Act 52 of 1976. 104 Official Gazette, bring this Act into force in the remaining part of that State with effect from such date 1* as may be specified in the notification.]

Application of the Act. 2.Application of the Act. Save as otherwise expressly provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act: Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer, to which 2*[the Durgah Khawaja Saheb Act, 1955, (36 of 1955.) applies].

Definitions. 3. Definitions. In this Act, unless the context otherwise requires,-- (a) "beneficiary" means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility 3*[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

4*[subsection (1), or as the case may be, under sub-section (1A) of section 9]; (d) "Commissioner" means a Commissioner of Wakfs appointed under section 4 and includes any additional or assistant commissioner of wakfs; 5*[(dd) "Council" means the Central Wakf Council established under section 8A;] -----

----- 1 10th October, 1959--In the remaining parts of Punjab-- Notification No. G.S.R. 1126, dated the 1st October, 1959, Gazette of India, 1959, Pt. II, Sec. 3(i), p. 1401. 1st November, 1959--In the remaining part of Rajasthan-- Notification No. G.S.R. 1204, dated the 26th October, 1959, Gazette of India, 1959, Pt. II Sec. 3(i), p. 1500. 1st January, 1960--In the remaining part of Madhya Pradesh. vide Notification No. G.S.R. 40, dated the 2nd January, 1960, Gazette of India, 1960, Pt. II Sec. 3(i), p. 46. 1st December, 1961--In the remaining part of Mysore, vide Notification No. G.S.R. 1431, dated the 20th November, 1961, Gazette of India, Pt. II, Sec. 3(i), p. 1761. 20th November, 1967--In that part of the Union territory of Himachal Pradesh in which it is not already in force; vide S.O. 4062, dated the 8th November, 1967, Gazette of India, Pt. II, Sec. 3(ii), p.

3 Subs. by Act 34 of 1964, s. 2, for "established for the benefit of the Muslim community".

4 Subs. by s. 2, *ibid.*, for "section 9". 5 Ins. by s. 2, *ibid.* 105 (e) "member" means a member of the Board and includes the Chairman; (f) "mutawalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a competent authority to be the mutawalli of a wakf and includes any naib-mutawalli, khadim, mujawar, sajjadanishin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and, save as otherwise provided in this Act, any person or Committee for the time being managing or administering any wakf property as such; 1*[(g) "net annual income", in relation to a wakf, means the gross income thereof from all sources in a year excluding only-- (i) land revenue, cess, rates and taxes payable to the Government or any local authority; and (ii) donations given or offerings made with a specific direction that they shall form part of the corpus of the wakf: Provided that the interest or income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;] (h) "person interested in a wakf" means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes,-- (i) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khangah, maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf; (ii) the wakif and any descendant of the wakif and the mutawalli; (i) "prescribed", 2*[except in Chapter IIA], means prescribed by rules made by the State Government under this Act -----

----- 1 Subs. by Act 38 of 1969, s. 3, for the former clause (with retrospective effect). 2 Ins. by Act 34 of 1964, s. 2. 106 and includes the regulations made by the Board under this Act; (i) "Shia wakf" means a wakf governed by Shia law; (k) "Sunni wakf" means a wakf governed by Sunni law; (l) "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes-- (i) a wakf by user; 1[(ii) grants (including mashrut-ul-khidmat) for any purpose recognised by the Muslim law as pious, religious or charitable; and] (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable; and "wakif" means any person making such dedication; (m) "wakf deed" means any deed or instrument by which a wakf has been created and

includes and valid subsequent deed or instrument by which any of the terms of the original dedication have been varied.

CHAP SURVEY OF WAKFS CHAPTER II SURVEY OF WAKF

Preliminary survey of wakfs.

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

(2) All additional and assistant commissioners of wakfs shall perform their functions under this Act under the general supervision and control of the Commissioner of Wakfs.

(3) The Commissioner shall, after making such inquiry as he may consider necessary, submit his report 2*[in respect of wakfs existing -----
----- 1 Subs. by s. 2, ibid., for sub-clause (ii). 1 Ins. by Act 38 of 1969, s. 4 (with retrospective effect). 107 at the date of the 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 1*[in the State, or as the case may be, any part thereof], showing the Shia wakfs and Sunni wakfs separately; (b) the nature and objects of each wakf; (c) the gross income of the property comprised in each wakf; (d) the amount of land revenue, cesses, rates and taxes payable in respect of such property; (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and (f) such other particulars relating to each wakf as may be prescribed.

(4) The commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure. 1908 (5 of 1908) in respect of the following matters, namely :-- (a) summoning and examining any witness; (b) requiring the discovery and production of any document; (c) requisitioning any public record from any court or office; (d) issuing commissions for the examination of any witness or accounts; (e) making any local inspection or local investigation; (f) any other matter which may be prescribed.

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

Publication of list of wakfs.

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 2*[existing in the State, or as the case may be, the part of the State -----

----- 1 Subs. by Act 38 of 1969, s. 4, for "in the State" (with retrospective effect). 2 Subs. by s. 5, *ibid.*, for "existing in the State" (with retrospective effect). 108 to which the report relates, and] containing such particulars as may be prescribed.

Disputes regarding wakfs.

6. Disputes regarding wakfs. (1) If any question arises 1*[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 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, (38 of 1969.) such suit may be entertained by the civil court within the period of one year from such commencement.]

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

(3) The Commissioner shall not be made a party to any suit under

sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

(4) The list of wakfs published under sub-section (2) of section 5 shall, unless it is modified in pursuance of a decision of the civil

court under sub-section (1), be final and conclusive.

Recovery of costs of survey.

7. Recovery of costs of survey. (1) The total cost of making a survey 3*[including the cost of 4*[publication of the list or lists of wakfs]] under this Chapter shall be borne 4*[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 Commissioner. -----

----- 1 Subs. by Act 38 of 1969, s. 6, for certain words (with retrospective effect). 2 Ins. by s. 6, *ibid.* 3 Ins. by Act 34 of 1964, s. 3. 4 Subs. by Act 38 of 1969, s. 7, for certain words. 108A

(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.

Chapter II not to apply to certain States. 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.

CHAP CENTRAL WAKF COUNCIL 1*[CHAPTER IIA CENTRAL WAKF COUNCIL 8A. Establishment and constitution of the 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. The ter 8B. Finances of the Council.

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 2* of the wakfs in respect of which contribution is payable under sub-section

(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 2* of the wakf in respect of which such remission has been granted shall not be taken into account.

----- 1 Ins. by Act 34 of 1964, s. 4. 2
Certain words omitted by Act 38 of 1969, s. 8. 109

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

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central Wakf Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit. 8C. Accounts and audit.

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.

8D. Power of Central Government to make rules. (1) The Central Government may, by notification in the Official Gazette, make rules 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 1*[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.] -----

----- 1 Subs. by Act 4 of 1986, s. 2 and sch. (w.e.f. 15.5.1986) 110

CHAP ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

CHAPTER II ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

Incorporation.

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 the 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 and for 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) 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.

Composition of the Board.

10. Composition of the Board [(1) The Board shall consist of-- (a) eleven members, in the case of a State and the Union territory of Delhi ; and (b) five members, in the case of any other Union territory.]

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

Appointment of members. 11. Appointment of members. The members of the Board shall be appointed by the State Government, by notification in the Official Gazette, from any one or more of the following categories of persons, namely :- (a) members of the State Legislature and members of Parliament representing the State ; (b) persons having 1* knowledge of Muslim law and representing associations such as State Jamiat-ul- Ulama-i-Hind ----- 1 Ins. by Act 34 of 1964, s. 5. 2 Subs. by s. 5, ibid., for "The said Board".

3 Subs. by Act 30 of 1959, s. 3, for sub-section (1). 4 The word "special" omitted by Act 34 of 1964, s. 6. 111 (whether such persons are Hanafi, Ahle-Hadis or Shafai) or State Shia Conference ; (c) persons having 1*** knowledge of administration, finance or law ; (d) mutawallis of wakfs situate within the State : Provided that in no case more than one mutawalli shall be appointed to the Board : Provided further that in determining the number of Sunni members or Shia members in the Board, the State Government shall have regard to the number and value of Sunni wakfs and Shia wakfs to be administered by the Board.

Term of office. 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.

Disqualifications for being appointed, or for continuing as, a member of the Board. 13. Disqualifications for being appointed, or for continuing as, a member of the Board. A person shall be disqualified for being appointed, or for continuing as, a member of the Board-- (a) if he is not a Muslim and is less than twenty-one years of age ; (b) if he is found to be a person of unsound mind ; (c) if he is an undischarged insolvent ; (d) if he has been convicted of an offence involving moral turpitude ; (e) if he has, on any previous occasion, been removed from the office of a member or has been removed by order of a competent court from any position of trust either for mis-management or corruption.

Meetings of the Board.

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, ----- 1 The word "special" omitted by Act 34 of 1964, s. 6. 112 the chairman or, in his absence, any other person presiding shall have a second or casting vote.

Functions of the Board.

15. (1) Functions of the Board. Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established for the State ; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended : Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakif, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Muslim law.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be-- (a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf ; (b) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were created or intended ; (c) to give directions for the administration of wakfs ; (d) to settle schemes of management for a wakf : Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard ; (e) 1*[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, or as nearly as practicable similar, to the original object : Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.] -----

----- 1 Subs. by Act 34 of 1964, s. 7, for certain words. 113 Explanation.--For the purposes of this clause, the powers of the Board shall be exercised,-- (i) in the case of a Sunni wakf, by the Sunni members of the Board only ; and (ii) in the case of a Shia wakf, by the Shia members of the Board only : Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that its power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause ; (f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of accounts of wakfs ; (g) to appoint and remove mutawallis in accordance with the provisions of this Act ; (h) to take measures for the recovery of lost properties of any wakf ; (i) to institute and defend suits and proceedings in a court of law relating to wakfs ; 1*[(j) to sanction in accordance with the Muslim law, any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, as required by section 36A : Provided that no such sanction shall be given unless at least two-thirds of the members of the Board vote in favour of such transaction ;] (k) to administer the Wakf Fund ; (l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may, from time to time, require ; (m) to inspect, or cause inspection of, wakf properties, accounts or records or deeds and documents relating thereto ; (n) to investigate and determine the nature and extent of wakfs and wakf property ; and to cause, whenever necessary, a survey of the wakf properties ; -----

----- 1 Subs. by Act 34 of 1964, s. 7, for cl. (j). 114 (o) generally do all such acts may be necessary for the due control, maintenance and administration of wakfs.

(3) Where the Board has settled any scheme of management under

clause (d) of sub-section (2) or given any direction under clause (e)

of sub-section (2), any person interested in the wakf or affected by such settlement or direction may institute a suit in a civil court of competent jurisdiction for setting aside such settlement or directions and the decision of the civil court thereon shall be final.

Committees of the Board.

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

(2) The constitution, functions and duties of such committees shall be determined from time to time by the Board : Provided that it shall not be necessary for the members of such committees to be members of the Board.

Resignation of Chairman and members. 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.

Removal of Chairman and members.

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.

Filling of a vacancy. 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. 115

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

Secretary and other officers of the Board.

21. Secretary and other officers of the Board. (1) There shall be a Secretary to the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board.

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

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

Delegation. 22. Delegation. The Board may, by a general or special order in writing, delegate to the Chairman or any other member or to the Secretary or any other officer or servant of the Board 1*[or any committee thereof], subject to such conditions and limitations (if any) as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.

Inspection of records and issue of copies.

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

(2) All copies issued under this section shall be certified by the Secretary of the Board in the manner provided in section 76 of the [Indian Evidence Act, 1872](#). (1 of 1872.)

2*[(3) The powers conferred on the Secretary by sub-section (2) may also be exercised by such other officer or officers of the Board as may either generally or specially be authorised in this behalf by the Board.]

Prevention of disqualification for membership of Parliament. 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. ----- 1 Ins. by Act 34 of 1964, s. 8. 2 Ins. by s. 9, *ibid.* 116

CHAP REGEISTRATION OF WAKFS

CHAPTER IV REGISTRATION OF WAKFS

Registration.

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

(2) Application for registration shall be made by the mutawalli : Provided that such applications may be made by the wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may prescribe and shall contain the following particulars, so far as possible-- (a) a description of the wakf properties sufficient for the identification thereof ; (b) the gross annual income from such properties ; (c) the amount of land revenue and cesses, and of all rates and taxes annually payable in respect of the wakf properties ; (d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties ; (e) the amount set apart under the wakf for-- (i) the salary of the mutawalli

and allowances to individuals ; (ii) purely religious purposes ; (iii) charitable purposes ; and (iv) any other purposes ; (f) any other particulars prescribed by the Board.

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

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

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

(7) On receipt of an application for registration, the Board may, before the registration of the wakf, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and the correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the Board shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

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

Register of wakfs. 26. Register of wakfs. The Board shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely :-- (a) the class of the wakf ; (b) the name of the mutawalli ; (c) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage ; (d) particulars of all wakf properties and all title deeds and documents relating thereto ; (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration ; (f) such other particulars as may be prescribed.

Decision if a property is wakf property.

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.

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

Notification of change in registered wakfs.

29. Notification of change in registered wakfs. (1) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may, notify the change to the Board. 118

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

Savings. 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.

CHAP MUTAWALLIS AND WAKF ACCOUNTS

CHAPTER V MUTAWALLIS AND WAKF ACCOUNTS

Budget. 31. Budget. Every mutawalli of a wakf shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and submit it to the Board for approval.

Submission of accounts of wakfs.

32. Submission of accounts of wakfs. 1*[(1) Every mutawalli shall keep regular accounts.]

2*[(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.

Audit of accounts of wakfs.

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

(2) The auditor shall submit his report to the Board and the report of the auditor shall, among other things, specify all cases of irregular, -----
----- 1 Ins. by Act 34 of 1964, s. 10.

2 S. 32 re-numbered as sub-section (2) of that section by s. 10. ibid. 119 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 costs of the audit of the accounts of a wakf shall be paid from the Wakf Fund.

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

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

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

(2) If such payment is not made in accordance with the provisions

of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

Duties of mutawallis. 36. Duties of mutawallis. It shall be the duty of every mutawalli- (a) to carry out the directions of the Board ; (b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board ; (c) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto ; (d) to discharge all public dues ; and (e) to do any other act which he is lawfully required to do by or under this Act. 36A. Transfer of immovable property of wakfs. 1*[36A. Transfer of immovable property of wakfs. Notwithstanding anything contained in the wakf deed, no transfer of any immovable property of a wakf by way of-- (i) sale, gift, mortgage or exchange ; or -----
----- 1 Ins. by Act 34 of 1964, s. 11. 120 (ii) lease for a period exceeding three years in the case of agricultural land, or for a period exceeding one year in the case of non-agricultural land or building, shall be valid without the previous sanction of the Board. 36B. Recovery of wakf property transferred in contravention of section 36A. 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 the 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-

section (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.]

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

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

mutawalli. (1) Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board may discharge the dues from the Wakf Fund and may recover the amount so paid from the wakf property and may also recover damages not exceeding twelve and a half per cent. of the amount so paid.

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

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

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

Penalties.

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; 122 (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* * * * (h) to discharge any public dues; or (i) to do any other act which he is lawfully required to do by or under this Act, he shall, unless he satisfies the court that there was reasonable cause for his failure, be punishable with fine which may extend to one thousand rupees.

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

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

Power to appoint mutawallis in certain cases. 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.

Removal of mutawallis.

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 2*[(b) has been convicted of an offence of criminal breach of trust or any other offence involving moral turpitude; or (c) misappropriates or deals improperly with the properties of the wakf; or (d) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him -----
----- 1 CI. (g) omitted by Act 34 of 1964, s. 12. 2 Subs. by s. 13, ibid., for cl. (b). 123 unfit to perform the functions and discharge the duties of a mutawalli; or (e) has failed to pay, without reasonable excuse, for two consecutive years, the contribution payable by him under section 46.]

(2) Where a committee is appointed by the Board 1*[or any person or authority not being a court of law] to act as a mutawalli for managing or administering any wakf property and the committee, in the opinion of the Board, is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, the Board may supersede the committee and appoint any other person or committee to act as the mutawalli of the wakf property.

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

(4) No action shall be taken by the Board under sub-section (1)

or sub-section (2), unless it has held an inquiry into the matter in the prescribed manner and the decision has been taken by a majority of not less than three-fourths of the members of the Board. 1*[(4A) A mutawalli who is aggrieved by an order passed under any

of the clauses (c) to (e) of sub-section (1) or under sub-section (2) may, within one month from the date of the receipt by him of the order, appeal against the order to the State Government and the decision of the State Government on such appeal shall be final and shall not be questioned in any court of law.]

(5) Where a mutawalli has been removed from his office under sub-

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

1*[(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.] ----- 1 Ins. by Act 34 of 1964, s. 13. 124 43A. Assumption of direct management of certain wakfs by the Board. 1*[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 under section 42 or under sub-section (2) of section 43, the Board may, by notification in the Official Gazette, assume direct management of the wakf for such period or periods, not exceeding in the aggregate five years, as may be specified in the notification.

(2) Notwithstanding anything contained in section 33, the accounts of every wakf under the direct management of the Board shall be audited annually by an auditor to be appointed by the Board, from among chartered accountants in practice within the meaning of the [Chartered Accountants Act, 1949](#).] 38 of 1949.

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

Inquiry by the Board.

45. Inquiry by the Board. 2*[(1) The Board may, either on an application received under section 44 or on its own motion- (a) hold an inquiry 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 as it thinks fit.]

(2) For the purposes of any inquiry under this Act, the Board or any person authorised by it in this behalf shall have the same powers as are vested in a civil court under the Code

of Civil Procedure, 1908 (5 of 1908.) for enforcing the attendance of witnesses and production of documents.

CHAP FINANCE OF THE BOARD

CHAPTER VI FINANCE OF THE BOARD

Annual contributions payable to the Board.

46. Annual contributions payable to the Board. (1) The mutawalli of every wakf shall pay annually to the Board such contribution not exceeding 3*[six] per cent. of the 4*[net annual income accruing in the State to the wakf] as -----
----- 1 Ins. by Act 34 of 1964, s. 14.

2 Subs. by s. 15, *ibid.*, for sub-section (1) 3 Subs. by s. 16, *ibid.*, for "five". 4 Subs. by Act 38 of 1969, s. 9. for certain words (with retrospective effect). 124A the Board may, subject to the sanction of the State Government, from time to time, determine: Provided that no such contribution shall be payable by the mutawalli of a wakf of which the net annual income does not exceed one hundred rupees.

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

(3) The mutawalli of a wakf may realise the contributions payable

by him under sub-section (1) from the various persons entitled to receive any pecuniary or other material benefits from the wakf, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of the benefits receivable by such person bears to the entire net annual income of the wakf: Provided that if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the

contribution under sub-section (1), and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

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

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

Power of the Board to borrow. 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.

Wakf Fund.

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. -----]

1 Subs. by Act 34 of 1964, s. 17, for sub-section (1). 124B (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.

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

Accounts of the Board. 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.

Audit of accounts of the Board.

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

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to 124C 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.

State Government to pass orders on auditor's report. 52. State Government to pass orders on auditor's report. The State Government shall examine the auditor's report and may call

for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

Sums certified due recoverable as arrears of land revenue. 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.

NO financial liability of Government. 54. [No financial liability of Government.] Repealed by the Wakf (Amendment) Act, 1964 (34 of 1964.), s. 18.

CHAP JUDICIAL PROCEEDINGS

CHAPTER VII JUDICIAL PROCEEDINGS

Institution of suits under section 92 of the Code of Civil Procedure, 1908. 1*[55. Institution of suits under section 92 of the Code of Civil

Procedure, 1908. (1) A suit to obtain any of the reliefs mentioned in section 92 of the Code of Civil Procedure, 1908, (5 of 1908.) relating to any wakf may, notwithstanding anything to the contrary contained in that section, be instituted by the Board without obtaining the consent referred to therein.

(2) No suit to obtain any of the reliefs referred to in section 92 of the Code of Civil Procedure, 1908, relating to any wakf shall be instituted by any person or authority other than the Board without the consent in writing of the Board and for the institution of any such suit, it shall not be necessary to obtain the consent referred to in that section, notwithstanding anything contained therein: Provided that nothing in this sub-section shall apply in relation to any such suit against the Board.] -----

----- 1 Subs. by Act 34 of 1964, s. 19, for s. 55. 124D

Notice of suits by parties against the Board. 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.

Notice of suits, etc., by courts.

57. Notice of suits, etc., by courts. (1) In every suit or proceeding relating to a wakf property or the right of a mutawalli, the court shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

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

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

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

Proceedings under the Land Acquisition Act, 1894.

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

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

(3) When the Board has appeared under the provisions of

subsection (1) or sub-section (2), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 (1 of 1894.) without giving an opportunity to the Board to be heard.

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

Board to be made a party to a suit or proceeding regarding a wakf on its application. 59. Board to be made a party to a suit or proceeding regarding a wakf on its application. In any suit or proceeding in respect of a wakf or any wakf property by or against a stranger to the wakf or any other person, the Board may appear and plead as a party to the suit or proceeding.

Bar to compromise of suits by or against mutawallis. 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.

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

mutawalli to discharge his duties. (1) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, the Board may apply to the court for an order directing the mutawalli to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of the Act.

(2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the wakf and the mutawalli willfully 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. CHAP MISCELLANEOUS CHAPTER VIII MISCELLANEOUS

Directions by the Central Government.

62. Directions by the Central Government. 1*[(1) The Central Government may issue such directions, as it may think fit, on questions of policy to be followed by a Board and for issuing such directions it may call for any periodic or other report or information from any Board through the Government of the State concerned.] -----

1 Subs. by Act 34 of 1964, s. 20 for sub-section (1). 125

(2) In the performance of its functions under this Act, the Board

shall be guided by the directions issued under sub-section (1).

Directions by the State Government. 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.

Power to supersede the Board.

64. Power to supersede the Board. (1) If the State Government is of opinion that the Board is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, the State Government may, by notification in the Official Gazette, supersede the Board for such period as may be specified in the notification: Provided that before issuing a notification under this sub- section, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,-- (a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members; (b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and (c) all property vested in the Board shall, during the period of supersession, vest in the State Government.

(3) On the expiration of the period of supersession, specified in

the notification issued under sub-section (1), the State Government may-- (a) extend the period of supersession for such further period as it may consider necessary; or (b) reconstitute the Board in the manner provided in section 10 and section 11.

Protection of action taken in good faith. 65. Protection of action taken in good faith. No suit or other legal proceeding shall lie against the Board or the Commissioner or any other person duly appointed under this 126 Act in respect of anything which is in good faith done or intended to be done under this Act.

The Commissioner, auditor, etc., to be deemed to be public servants. 66. The Commissioner, auditor, etc., to be deemed to be public servants. (45 of 1860.) The Commissioner, every auditor, every officer and servant of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 66A. Special provision for reorganisation of certain Boards. 1*[66A. Special provision for reorganisation of certain Boards.

(1) Where on account of the reorganisation of States under the [States Reorganisation Act, 1956](#), (37 of 1956.) the whole or any part of a State in respect of which a Board was, immediately before the 1st day of November, 1956, 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 it should be reconstituted and reorganised 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 such reconstitution and reorganisation, as the case may be, 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 and reorganisation in any manner what-so-ever 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; ---

----- 1 Ins. by Act 30 of 1959, s. 4. 126A (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 employees of the Board to, or by, any such transferee and subject to the provisions of section 111 of the [States Reorganisation Act, 1956](#), (37 of 1956.) 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 there under 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. 66B. Special provision for establishment of Board for part of a State. 66B. Special provision for establishment of Board for part of a

State. (1) Where on account of the territorial changes brought about by the [States Reorganisation Act, 1956](#), (37 of 1956.) this Act is, as from the 1st day of November, 1956, 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.] 126B 66C. Application of Act to properties given or donated by persons not professing Islam for support of certain wakfs. 1*[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.]

Power to make rules.

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

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

sub-section (2) of section 5 may contain; (b) the conditions and restrictions subject to which the Board may transfer any property; (c) the regulation of the functions of the Board; (d) the terms and conditions of service of the Secretary of the Board; (e) the manner in which any inquiry may be held under this Act; (f) the powers vested in a civil court which may be exercised by the Board or the Commissioner or any other person while holding an inquiry under this Act; (g) the form in which a register of wakfs may be maintained and the further particulars which it may contain; (h) the form in which, and

the time within which, the budget of the Board may be prepared and submitted by the Board 3*; ----- 1 Ins. by Act 34 of 1964, s. 21. 2 Subs. by s. 22, ibid. for "purposes of this Act". 3 The words "and approved by the State Government" omitted by s. 22, ibid 127 (i) the manner in which the accounts of the Wakf Fund may be kept and audited and the contents of the auditor's report; (j) the payment of moneys into the Wakf Fund, the investment, custody and disbursement of such moneys; (k) the circumstances under which, and the terms and conditions on which, the Board may be allowed to borrow; (l) the circumstances in which, and the conditions subject to which, the Board may reduce or remit the contribution payable in respect of a wakf; (m) the procedure to be followed in the recovery of any sum due under this Act as an arrear of land revenue; (n) any other matter which has to be, or may be, prescribed.

Power to make regulations.

68. Power to make regulations. (1) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made there under 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; 128 (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. 68A. Laying of rules and regulations before State Legislature. 3*["68A. Laying of rules and regulations before State Legislature. Every rule made under section 67 and every regulation made under section 68 shall be laid, as soon as may be after it is made, before the State Legislature."]

Repeal and savings.

69. Repeal and savings. (1) The following enactments, namely;--

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

(2) 1* The [Religious Endowments Act, 1863](#); (20 of 1863.)

(3) The [Charitable Endowments Act, 1890](#); (6 of 1890.)

(4) The Charitable and Religious Trusts Act, 1920; (14 of 1920.)

(5) The Mussalman Wakf Act, 1923; (42 of 1923.) shall not apply to any wakf to which this Act applies.

(2) If, immediately before the commencement of this Act in any State, there is in force in that State any law which corresponds to

this Act [other than an enactment referred to in sub-section (1)] that corresponding law shall stand repealed: Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such things was done or action was taken.

Removal of difficulties. 2*[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. -----

----- 1 The words and figure "Section 5 of" omitted by Act 34 of 1964, s.

3 Ins. by Act 4 of 1986, s. 2 and Sch. (w.e.f. 15.5.1986). 128A SCHE LIST OF AMENDMENTS THE SCHEDULE

[See section 9 (1A)]

LIST OF AMENDMENTS

1. In sub-section (2) of section 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 section 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- Ulama-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;"; (b) the second proviso shall be omitted.

3. In clause (e) of sub-section (2) of section 15, the Explanation shall be omitted. 4. For section 27, the following section shall be substituted, namely:-- Decision if a property is wakf property.

"27. (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 shall refer the question to a civil court of competent jurisdiction.

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