Chapter-IV

Central Wakf Act, 1995 and Its Evaluation
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CENTRAL WAKF ACT, 1995 AND ITS EVALUATION

An Overview

A half-hearted attempt to improve the administration of Wakf properties has been made by the Central Government by enacting the Central Wakf Act, 1995. The important authorities connected with Wakf administration under the Central Wakf Act 1995 are (i) The Central Government, (ii) The State Government, (iii) Central Wakf Council, (iv) Wakf Boards, (v) Chief Executive Officer, (vi) Mutawallis and (vii) Tribunal. These authorities are involved in active participation in the administration of Wakfs. An effort has been made here to make an evaluation of the Act and its authorities.

Prior to enactment of Wakf Act, 1995, the following enactments dealt with the administration and supervision of Wakfs.

(i) Wakf Act, 1954;
(ii) U.P. Wakf Act, 1950;
(iii) Bengal Wakf Act, 1934;
(iv) Bihar Wakf Act, 1937;
(v) Bombay Public Trusts Act, 1950;
(vi) Dargah Khwaja Saheb Act, 1955; and
(vii) Section 92 of the Code of Civil Procedure.

The Wakf Act, 1954, was in force in all States except Bihar, West Bengal and U.P., which had their own corresponding enactments. The Bombay Public Trusts Act, 1950, which, applies equally to endowments of every community is in force in Maharashtra (excluding its Marathwada area) and Gujarat (excluding the Kutch area). Section 112 of the Wakf Act of 1955 has repealed not only the Wakf Act,
1954 but also the State enactments having law corresponding to the 1995 Act. The Dargah Khwaja Saheb Act, 1955 provides for supervision and administration of the endowments of the Durgah of Ajmer.¹

**Wakf Fund by Common Wakf Boards and Rules**

Under the Act, the Central Government is competent to constitute a common Wakf Board for more than one state under certain specified conditions, the Wakf fund of such common Wakf Board, if constituted shall be under the control of such common Wakf Board subject to any rules made by the Central Government.²

**Power to Regulate Secular Activities of Wakf**

The Wakf Act, 1995 empowers the Central Government to regulate secular activities of any Wakf and for this purpose it can lay down general principles and policies of wakf administration in so far as they relate to the secular activities of the Wakfs. The Central Government is also empowered to coordinate the functions of the Central Wakf Council and the Wakf Board relating to secular activities. For this purpose, the Central Government can call for any such periodic or the reports from any Board and may issue suitable directives. The Board has to comply with such directions of the Central Government. For the purpose of this Section, secular activities include social, economic, educational, and other welfare activities.³

**Constitution of Common Wakf Boards**

In the field of Wakf administration, a peculiarity emerged related to the situation, which was created at the time of partition of the country and in the wake of mass migration of Muslims from the Border

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² Wakf Act 1995, Section 77, Sub-Section(3).
³ Ibid. Section 96, Sub-Section (la-c) and (2)
States of Punjab, Rajasthan, Bihar and Bengal, etc. The population of Muslims had undergone a drastic change with the division of certain States. The Muslim population in the States of Punjab, Haryana and Himachal Pradesh were left behind several thousands of Wakfs properties fetching huge income without proper number of Mutawallis to look after their management. This situation was regarded as Chinese puzzle with solution difficult to find. Again, the division of Assam into States of Assam, Meghalaya, Arunachal Pradesh, Mizoram and Nagaland resulted to the problem of Wakf administration because in certain emerging States the Muslim population reduced to such an extent that it was almost undesirable and infeasible to constitute a Wakf Board. Either the Wakf properties were negligible in number or the number of Mutawallis were not sufficient. Therefore, the only way to tackle this situation was to constitute a common Wakf Board for two or more such States as may be considered feasible by the Central Government. The Constitution of inter-State Wakf Board is not objectionable constitutionally also in view of the fact that 'Wakf' is appearing as item No. 44 of the List I read with item 28 of List III of the Seventh Schedule.

The proposal to constitute inter-State Wakf Board was not objected to by the State Government of Orissa, Punjab, Haryana, Gujarat, Rajasthan, Madhya Pradesh, Bihar, Delhi and Maharashtra.\(^4\)

It is against this background that the Central Government was empowered to constitute a common Wakf Board because of smallness of the Muslim population in two or more states or the slender resources of Wakfs in such State and the disproportion between the number of Wakfs/Wakf income and the Muslim population in such states.

The composition of such common Wakf Board shall be same as is mentioned under Sub-Section 7 of Section 14 of the Act relating to Wakf Board in the Union territories. Such common Wakf Board would be constituted after consultation with each of the concerned State and shall include, at least one representative of each of the concerned state, but 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 stand transferred to and vested the Central Government and, thereupon, references in such deed of Wakfs or law to the State Governments, shall be construed as references to the Central Government. Therefore, other provisions of the Wakf Act would apply accordingly.5

**Power to Remove Difficulties**

The Central Government is empowered to remove the difficulty, if any, arising in giving effect to the provisions of this Act and for this purpose the Central Government can issue any order, inconsistent with the provisions of this Act to remove the difficulty. However, no such order shall be made after the expiry of the period of two years from the date of commencement of this Act. Every such order of the Central Government is required to be laid down, as soon as may be after it is made, before each House of Parliament.6

**State Government: Its Role:**

**Appointment of Survey Commissioner, etc.**

The State Government may be notification in the official Gazette, appoint for the State a Survey Commissioner of Wakfs for making a survey of Wakfs existing in the State at the date of commencement of this Act in order to prepare and submit a report to the State

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5. Supra note 2, Section 106, Sub-Section (1-4)
6. Ibid., Section 113.
Government in this regard. Depending upon the exigency of the work, the State Government may appoint as many Additional or Assistant Survey Commissioners, as may be necessary for the work of survey. However, all the additional or Assistant Survey Commissioners would work under the general supervision of the Survey Commissioner of Wakfs.7

The Survey Commissioner of the Wakf has to submit his report to the State Government furnishing the detailed information regarding the number of Wakfs, showing the Shia Wakf and Sunni Wakfs separately; the nature and object of each Wakf; the Gross-income, Land, Revenue, cesses, rates, taxes payable by each Wakf, expenses and other remuneration of the Mutawalli of each Wakf, etc.8

The survey commissioner vested with certain powers of a Civil Court under Code of Civil Procedure for making enquiry. For this purpose, he shall have the powers to summon and examine any witness, require the discovery and production of any document, requisition any public record from any Court or office; issue commission for the examination of witness or accounts.9

If during the course of enquiry, any dispute arises to whether a particular Wakf is a Shia Wakf or Sunni Wakf and if there are clear indications in the Wakf deed as to its nature, such dispute shall be settled based on such Wakf deed.10

The State Government may direct second or subsequent survey of Wakfs, which would be governed by the same procedure.11 However,
restriction is imposed on such second or subsequent survey\textsuperscript{12} that until the expiry of a period of twenty years from the date on which the report relating to immediately previous survey was received such second or subsequent survey should not be made.\textsuperscript{13}

**Constitution and Appointment of Members of Wakf Board**

In the Act 1995, the composition of Wakf Board is drastically changed. It consists of both elected and nominated members who are to be appointed by the State Government by notification in the official Gazette.\textsuperscript{14}

**Removal of Chairperson of Wakf Board**

The State Government may, by notification in the Official Gazette is empowered to remove the chairperson of the Board of any member thereof, if he or she becomes subject to any disqualifications specified in Section 16 of the Wakf Act, 1995 or refuses to act or is incapable of acting or acts in a manner which the State Government considers to be prejudicial to the interest of the Wakfs. However, before taking such action it is necessary for the State Government to hear any explanation that the chairperson or the member may offer. However, such decision should not be based on frivolous or weak grounds and there should be a cogent nexus between the alleged ground and the proposed action of removal. Failure to attend three consecutive meetings without sufficient cause is also a ground for removal. Lastly, if the chairperson is removed from his office, under this Section 20 of the Act, then he ceases to be a member of the Board\textsuperscript{15} also and for this reason, he is included in the definition of ‘member’ under Section 3(h) of the Act.

\textsuperscript{12} Ibid., Section 4, Sub-Section 6
\textsuperscript{13} Ibid.
\textsuperscript{14} Ibid., Section 14
\textsuperscript{15} Ibid., Section 20, Sub-Section (la-c) and (2)
Filling of Vacancies:

When the seat of a member becomes vacant by his removal, resignation, and death or otherwise, the State Government shall appoint a new member 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.\(^\text{16}\)

Assumption of Direct Management of certain Wakf

The Wakf Act, 1995 confers power on the Wakf Board to assume direct management of certain Wakf in case where no suitable person available to be appointed as Mutawalli thereof or where the Board is satisfied that filling up of such vacancy of the Mutawalli is prejudicial to the interest of the Wakf. However, before so deciding the Board has to record in writing the reasons for such decision. Further, the Board has to notify in the official Gazette its decision to assume direct management. The period of such direct management shall not exceed five years in aggregate as may be specified in the notification.\(^\text{17}\)

The State Government is empowered in this regard to call for the records of any case, either on its own motion or on application from any person interested in the Wakf. The State Government may examine such records satisfy itself as to the legality, correctness or propriety of the notification issued by Wakf Board for assuming direct management. The decision of the State Government thereon shall be final and be published the same manner, in the Official Gazette as is laid down in Sub-Section (1) of Section 65.\(^\text{18}\)

The Wakf Board is required to send a detailed report after the close of every financial year to the State Government and such report

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\(^{16}\) Ibid., Section 21.

\(^{17}\) Ibid., Section 65, Sub-Section (1)

\(^{18}\) Ibid., Sub-Section 2
shall contain information about the income of the Wakf and also the reasons as to why it has not been possible to handover the management back to the Mutawalli or any Committee of management during the year under report. The State Government has to examine such report of the Board and pass such order as it may think fit and the Board is obliged to comply with such orders of the Board.

**Appointment and Removal of Mutawalli**

The Wakf Act, 1995 confers power on the State Government to appoint or remove Mutawalli of such Wakf in respect of which the Wakf Board does not have such power because of the order or decree of the Court or due to any scheme of management or any direction contained in the Wakf deed. Therefore, it is laid down that, whenever a Wakf deed, scheme of management of decree or order of a Court provides that the Court or any authority “other than the Wakf Board” may appoint or remove a Mutawalli, or settle or modify scheme of management or otherwise exercise superintendence over Wakf, notwithstanding any such order or direction, such powers shall be exercisable by the State Government.

However, the Standing Committee on Labour and Welfare (1994-95) observed that this provision “gives unlimited powers to the State Government and the Wakf Board are denied any power. The members were of the view that the Wakf Board should also have a say in the appointment and removal of the Mutawalli”. Therefore, in view of the recommendation of the Standing Committee the following Proviso has been added to Section 66, which runs as follows, “provided that where a Board has been established, the State Government shall consult the Board before exercising such powers”.

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20. Supra note 2, Section 77.
Rules to be made for spending Wakf Fund

The Wakf Act, 1995 also requires that all such money received towards the Wakf shall be deposited and accounted for under a separate sub-head. Under sub-Section, 4 of Section 77 various expenses have been described which could be met out of the Wakf fund. However, the State Government shall under the control of the Board subject to any rules make such Wakf fund.

Constitutional of Tribunal

The State Government is empowered to constitute as many Tribunals as it thinks necessary for the determination of any dispute, question or other matter relating to a Wakf or Wakf property under this Wakf Act, 1995. Every such Tribunal shall consist of only one person who shall be a member of the State Judicial Service holding a rank not below the rank of a district, Sessions or Civil judge, Class I.22 The appointment of such Tribunal may be made either by name or by designation and the local limits and jurisdiction of each of such Tribunal shall be specified.

If an application relating to Wakf, which falls within the Territorial limits of the jurisdiction of two or more Tribunals, in that case such application may be made to such Tribunal within whose jurisdiction that applicant actually resides or carries on business of works for grains and other Tribunal having similar jurisdiction shall not entertain such application. However, the State Government is of opinion that it is expedient in the interest of the Wakf, Wakf property or any other person interested in the Wakf, and then it may transfer such application to any other Tribunal having jurisdictions.23

21. Ibid., Section 7, Sub-Section (3)
22. Ibid., Section 83, Sub-Section (1 and 4)
23. Ibid., Sub-Section (2 and 3)
Suppression of Wakf Board

This is a very critical Section, which empowers the State Government to supersede the Wakf Board, take over the entire administration from the Wakf Board, and pass it on to any persons as it thinks proper. Since the action of the State Government under the Section, in effect, is resulting in removing the statutorily constituted Board before the completion of its statutory period of five years, such drastic action can be taken on the following ground, namely:

a) that the Wakf Board is unable to perform, or
b) has persistently made default in the performance of the duty imposed on it by or under this Act, or
c) has exceeded or abused its powers, or
d) has wilfully and without sufficient cause failed to comply with any directions issued by the Central Government under Section 96, or by the State Government under Section 97, or
e) if the State Government is satisfied on consideration of any annual report that the Board’s continuance is likely to be injurious to the interest of the Wakfs in the State.

Thus on the above grounds the State Government may supersede the Wakf Board by notification in the Official Gazette for a period not exceeding six months. However, before the issue of such notification, the State Government shall give a reasonable time to the Board to show cause as to why it should not be superseded and explanation or objection submitted by the Board shall be taken into consideration.

On suppression of the Board by the Government, the person appointed by the Government in this behalf shall now discharge all the functions of the Wakf Board and all properties vested in the Board shall during the period of such suppression vest in the State Government. The State Government is also empowered to extend the period of

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24. Ibid., Section 99.
suppression or reconstitute a new Board in accordance with the manner provided in Section 14 of the Act.

It is pertinent here to refer to an important judgement of the Supreme Court of India interpreting the scope of the State Government's power to supersede Wakf Board under Section 64 of the Wakf Act, 1954. Since the same Section is incorporated and remembered as Section 97 in the Wakf Act, 1995. The judgement by the Supreme Court in *Bihar State Sunni Wakf Board v. State of Bihar* becomes relevant. Thus, "it has been alleged in the Writ Petition that soon after the change of the Government, fabrication of charges and the grounds for suppression of the Board and removal of the chairman started on extraneous and political consideration ... on the basis of these facts, it was contended that on some pretext or the other, baseless allegations were made and undue interference was caused by the respondent Government in day to day affairs of the Board. In about a period of fifteen years, the Board has been superseded twelve times on one plea or the other and it has not been given adequate and proper opportunity to efficiently manage, and administer the functioning of more than 2000 Wakfs in the State of Bihar." Then the Supreme Court examined and interprets the scope of this provision to supersede Wakf Board and said thus; "on plain reading of the said provision, it would be obvious that the opinion of the State Government to supersede the Board is not a subjective opinion. It has to be based on objective findings and for the reasons to be recorded in writing. The persistent default is the performance of the duty imposed on it cannot be gathered by a solitary, irregularity or illegality".

Similarly in another case the Kerala High Court examined the true scope of this provision and the expression used therein such as

“persistent default” and excess or abuse of powers”. Thus, the Kerala High Court in one case\textsuperscript{26} held that “one or two isolated cases of failure to act will not amount to persistent default within the meaning of the Section. Even a single act of disobedience of the direction may, added to certain continuing circumstances depending upon the gravity of matter, indicate persistence on the part of the defaulter”.

**Reorganisation of Wakf Board\textsuperscript{27}**

Section 102 of the Wakf Act, 1995 corresponds to Section 66-A of the old Wakf Act, 1954. Section 66-A was incorporated in the Central Wakf Act, 1954 pursuant to the State Registration Act of 1956. As the prevailing notion in regard to the reorganisation of States at that time was that the State Reorganisation Act of 1956 was the last in the matter of reorganisation of State and no Further,, State reorganisation was envisaged, perhaps this line of thoughts governed the phraseology of Section 66A. Whereas, in fact, this Act was the beginning of a series of reorganisation of State which process is being continued and, therefore, it would not be correct to tag the application of Section 66-A (now Section 102) to the States Reorganisation Act of 1956. This lacuna was not corrected even after several Acts were passed later concerning reorganisation of States.

Instead of confining action following reorganisation of the States, in respect of Wakf Boards to Section 66-A of the Central Wakf Act, 1954 by suitably amending the said Section, action was taken for the continued application of the Central Wakf Act, to the Kutch area under Section 75 of the Bombay Reorganisation Act of 1960 instead of the Inter-State Corporation Act of 1957. Similar action was taken when the erstwhile Punjab State was reorganised. The State Wakf Board in Punjab

\textsuperscript{26} Kerala Wakf Board and another v. State of Kerala, AIR, 1984, p. 57.
\textsuperscript{27} Supra note 2, Section 102.
was treated as an Inter-State Corporation, whereas all such actions, consequent upon the reorganisation of any State should be taken as provided for under Section 66-A and 66-B which are self-contained and fully meet the special requirements of trifurcation or bifurcation of the Wakf Board, as the case may be.

In actual practice, it is noticed that when there is specific provision adequate enough to meet any such contingency under the Wakf Act itself, it would not be advisable to take shelter under another enactment, which does not fully meet all the requirements of the division of assets and liabilities and the distribution of the State etc., of the Boards affected by such reorganisation of the Wakf Boards. Therefore, to meet any future contingency of reorganisation of States, the word "under the State Reorganisation Act, 1956" have been deleted from Section 102 of the Wakf Act, 1995, and this Section 102 would be sufficient to meet all employment of the employees and other matter incidental thereto.

Establishment of Wakf Board for Part of State

Where on account of the territorial change brought about by any law providing for the reorganisation of any State, this act 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 part in which this Act is in force and in such a case any reference in this Act to the Word "State" in relation of a Board shall be construed as a reference to a part of the State for which the Board is established.28

28. Ibid. Section 103, Sub-Section (1)
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 and establish a new Board for the whole of the State. The asset, rights and liabilities of the Board for the part of the State shall vest in the new Board, as the case may be. Under Section 109 of the Act, the State Government is empowered to make rules for carrying out the purposes of the Act.

**Laying of Rules before the Legislature**

The Wakf Board in order to exercise powers vested with it under various Sections of the Act, is empowered to make regulations with the previous sanction of the State Government. Various matters in respect of which the Wakf Board is empowered to make regulations with the previous sanctions of the State Government. Various matters in respect of which the Wakf Board is empowered to make regulations are required to be framed are also enlisted. The general parameters as laid down in respect of the rules are also applicable to such regulations in order to be valid the regulations have to be reasonable.

Every rule framed by the State Government under Section 109 and every regulation framed by the Wakf Board under Section 110 has to be laid before the State Legislature and have published in the Official Gazette.

**Central Wakf Council**

**Constitution of Central Wakf Council and Its Purpose**

The Central Wakf Council owes its origin to the Kazmi Bill of 1952, which proposed the Central Board of Muslim Wakf, to be an

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29. Ibid., Sub-Section (2)
30. Ibid., Section 111.
elected body and the Central Public Trust Council to be a wholly nominated one, neither was meant only to advise the Central Government. Thus, Central Wakf Council originated from the Central Public Trusty Council as recommended by the Kazmi Bill 1952. The provision for the Central Wakf Council was incorporated in the year 1964 by amending the Wakf Act, 1954, for advising the Central Government concerning the working of the Boards and the due administration of Wakfs. A new Chapter II-A inserted which contained Sections 8-A to 8-D. According to Section 8(a), the Central Wakf Council consisted of the Union Minister in-charge of Wakfs as its Chairman along with other twenty members appointed by the Central Government. The qualifications of the members were not prescribed. The Wakf Bill, 1993 retained the same pattern of composition, However, the Standing Committee on Labour and Welfare (1994-95) recommended a more comprehensive composition representatives from different categories based on knowledge, experience and expertise relating to Wakf matters. The Wakf Act, 1995 based on this recommendation, incorporated Section 9. Now, the Central Wakf Council consists of the Union Minister in-charge of Wakf matters as its Chairman and other twenty members are appointed by the Central Government who include three persons to represent Muslim Organisations of All-India character, four persons of national eminence of whom two shall be administrative and financial experts, the members of Parliament of whom two should be from the House of people and one from the Council of States, three Chairpersons of Wakf Board by rotation, two persons who have been judges of the Supreme Court or a High Court, one advocate of national eminence, one person to represent Mutawallis of Wakf having a gross annual income of not

31. Supra note 19, p. 3
less than five lakhs of rupees, and three persons who are eminent scholars in Muslim Law.

**Finance of the Council and Audit of Accounts**

The Central Wakf Council is financed by the contributions from the Wakf Boards which is equivalent to one percent of the aggregate of the net annual income of the Wakfs in respect of which contribution is payable under Sub-Section (1) of Section 72 of the Wakf Act, 1995. If any Wakf Board has remitted or condoned under Sub-Section (2) of Section 72, whole of the contribution for any Wakf registered with it, then such remission shall not be taken into account for the purpose of calculation of one percent contribution by the Wakf Board to the Central Wakf Council, it is not necessary that Wakf Board should actually received the contribution for the Wakfs registered with it as some may be defaulter. Therefore one percent is to be calculated on the basis of the contribution ‘payable’ to the Wakf Board under Section 72(1) and not necessarily paid by the Wakfs.

In addition to one percent contribution from the Wakf Boards, all other money received by the Council as donations, benefaction and grants from a fund which is called Central Wakf Fund. The Central Government is empowered to make rules for the purposes of prescribing the manner in which the accounts shall be audited, procedure for discharging of their functions, filing of vacancies among the members of the Council.

**Evaluation of the Role of the Central Wakf Council**

The Joint Select Committee on the Kazmi Bill, 1952 expressed its opinion that “The constitution of a non-official body at the Central level for the purpose of coordinating Wakf administration is to be considered only as an alternative to the empowering of the Central Government
with powers of coordination through general directives. When once the responsibility for coordination is vested with the Central Government, the establishment of a non-official body becomes, superfluous. Such a body cannot obviously, under such circumstances, be clothed with specific powers and functions without at the same time impinging upon the powers of the Central Government. No wonder that the Tamil Nadu Wakf Board has described the present Central Wakf Council as a fifth-whee to the coach. The Mysore Wakf Board has considered the Council as superfluous body with no specific functions and duties assigned under the Act. The U.P. Sunni Central Board of Wakfs too has significantly cautioned that if the powers of the Council are enlarged, a conflict of jurisdiction is likely to arisen between the council, the Central Government, and the State Government.32

The Wakf Inquiry Committee, too, expressed its opinion on similar lines and even questioned the payment of one percent contribution by the Wakf Board to the Council. Thus, the committee said, “under no circumstances Wakfs in this country which are liable to pay contribution under Section 46 of the Central Wakf Act, 1954 (now Section 72 of the Wakf Act, 1995), be made liable to pay 1% of their net income for the maintenance of the Central Wakf Council as it exists at present.33

Examined from the point of view of services rendered by the Central Wakf Council to the concerned Wakfs in consideration of the payment of contribution by the latter, it was argued that a vast dispensary exists in the actual amount to be paid by the Wakfs with large income and others with little income although the percentage remained the same. Then there is no difference in the matter of services
rendered by the Central Wakf Council to those big and small Wakfs. Such situation was even challenged as being violative of Article 14 of the Constitution. Wherein the Division Bench of the Kerala High Court justifying the levying of uniform license fee i.e., one percent to all and the latitude and flexibility permitted to the legislature. Thus, the Kerala High Court observed. “The inequalities alleged because of some Wakfs having to pay more out of their net income (meaning profits and gains) proportionately than others, it appears to us rise from circumstances which are fortuitous. Alleged inequalities arising from the nature of enjoyment of properties or even the nature of the properties owned by a Wakf cannot be made a ground for supporting the contention that an important such as a fee at a uniform rate on the gross income of the Wakfs taking into account the services rendered to each Wakf to violative of article 14 of the Constitution as we are not able to discern any clear hostile discrimination or the singling out of any class of Wakfs for special or peculiar treatment. The discrimination, if any, as stated already, seems to arise out of fortuitous circumstances”. Thus, the High Court rejected the allegation of discrimination in the matter of uniform contribution of one percent by all the Wakfs.

Further, the nexus between the fee levied and the services rendered by Wakf Board and similar institutions has also been emphasized in the decision of the Supreme Court.35

Positive Contribution of the Council

However, the positive role-played by the Central Wakf Council during recent years in the matter of granting loans to various Wakfs and Wakf Board for the execution of the several developmental projects

on the Wakf lands and Wakf properties cannot be ignored. The annual
reports of the functioning of the Central Wakf Council for the last few
years are quite indicative of the enormous and invaluable contribution
of the Central Wakf Council to the development of the Wakf properties
in the country.

**Wakf Boards**

Section 13 is an enabling Section, which confers powers on the
State Government to establish the Wakf Board. The State Government
may appoint a Board of Wakf with effect from such date as by
notification in the Official Gazette. The State Government is also
competent to constitute separate Wakf Board each for Sunni Wakfs and
Shiah Wakfs, provided that the number of the Shiah Wakfs in any state
is more than fifteen percent of all the Wakfs in the State or the income of
the properties of all the Wakfs in the State is more than fifteen percent
of the total income of properties of all the Wakfs in the State. The State
Government in the Official Gazette can also specify the name of such
Boards.

By virtue of its establishment under the Act, the Wakf Board
becomes a body corporate having perpetual succession and a common
seal with powers 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.

**Constitutional validity of the Wakf Board**

The basic question relating to the validity of the powers of the
Wakf Board to Control and supervise Wakf administration, regulate the
powers of Mutawallis in so far as it relates to manage the Wakf
properties under various Sections of the Act was challenged as
unconstitutional. It was contended that such wide powers of the Wakf Board are violative of the fundamental rights of the Mutawallis or any person to manage their own affairs in matter of religion guaranteed under Article 26 (b) of the Constitution of India which states thus; “Subject to public order, morality and health, every religious denomination or any Section thereof shall have the right to manage its own affairs in matter of religion.” But, the Court rejected the argument and said that “In view of the general scheme and purpose of the Act, it is futile to contend that the question regarding Wakf, in so far as it relates to the properties comprised therein and the right of Mutawalli or any person to manage the same property fall under Article 26(b) of the Constitution. It falls under Article 26(d) of the Constitution and as such is subject to the law made by the Parliament. The Legislative competence of the Parliament therefore to make the aforesaid, cannot be questioned. There is nothing in the impugned Sections which derive the religious denomination, namely Muslims, of their right of administration or administering properties owned and acquired by it”.

Wakf Boards: Powers and Duties

Publication of Wakf List

The report forwarded to the Board under Sub-Section (1) of Section 5 is examined by the Wakf Board and published in the Official Gazette in the form of a list of Wakfs mentioning the Sunni or Shiah Wakfs. If no suit is instituted in the Wakf Tribunal regarding any property mentioned in the list of Wakfs, within a period of one year, no such suit can be filled in the Tribunal and lists of Wakfs becomes final.
Composition of Wakf Board

Before discussing the composition of Wakf Board, it appears pertinent to examine the crucial question which has long been debated in India as to whether the Wakf administration should be entrusted to one-man administration in the form of charity Commission as obtained in Maharashtra and Gujarat or should it be given to a Wakf Board consisting of a chairman and several other members and clothe it with all powers of supervisory and administrative, as is done under the Wakf Act, or again should it be a dyarchial system with separation of powers between a Wakf Commissioner (or a Chief Executive Officer as he is called under the Wakf Act, 1995) with all administrative powers and the Wakf Board with supervisory powers, as obtained in West Bengal.

It may be noted that during the Muslim Rule in India, only the officer known as Sadrus-Sadur was in-charge of the supervision of Wakfs both at Central and Provincial level.

In the erstwhile state of Hyderabad the Wakf administration was looked after by a full-fledged Government Department, known as Mahkuma-e-Umoor-e-Mazhabi i.e., Ecclesiastical Department. The department was essentially secular in character as both Muslim Wakfs and this department managed Hindu Endowments.

The Hindu Endowment Commission Report

The one-man Administration was supported by the Hindu Religious Endowments Commission Report,39 which can be referred to herewith thus, "Complaints have no doubt also been levelled against One-Man-administration, the general criticism being that he is apt to carry out the orders or wishes of the Minister-in-charge, on the other

hand. The Commissioners of Madras and Gujarat have asserted emphatically before us that there has been no case of interference by Government—Opinion on the relative merits of the two systems will no doubt vary. We have considered very carefully the pros and cons of the two systems. We do not wish to minimize the possibility of a single officer being over-awed or influenced by a powerful Minister who requires to act in accordance with his wishes. At the same time, we cannot also overlook the same possibility occurring in the case of a President and Members of a Board. After a careful balancing of the considerations, pros and cons, we have arrived at a conclusion that the Executive administration of temples by a single officer will be much more expeditious and efficient than administration by a body of persons or Boards of Commissioners”.

Recommendations of the Wakf Inquiry Committee

The Wakf Inquiry Committee appointed by the Central Government in 1976 has also considered this question and examined the suggestion given by the Amendments Committee of the Central Wakf Council, thus:

“While with its right hand the Committee has given vast and crucial important powers to the Executive Officers, such as the removal, suspension and dismissal of Mutawallis and committees of Management, framing of schemes and much more of reporting to the State Government on his own, whenever the Board takes a decision not in conformity with any of the provisions of the Act, with its left hand, the Committee has in effect nullified the exercise of all these powers by the Executive Officer by stipulating that the Executive Officer shall be under the administrative control of the Board. It does not need much emphasis to hammer home the point, than any officer who is under the
administrative control of the Board will not have the necessary prestige of all these important statutory duties. Hence, it is necessary that in the sphere of statutory duties and responsibilities entrusted to him under the Act, the officer should be kept outside the control of the Board and made accountable to the State Government. The key for achieving this goal is the proper and through separation of functions of general superintendence from those relating to administration, inspection, auditing, etc”.

Thus, the Wakf Inquiry Committee recommended for the appointment of, what is called, Wakf Commissioner and a non-official Board with essential separation of powers between them on the basis of the key words ‘superintendence’ and ‘Administration’. Thus, the Committee was optimistic that “Wakf Board can still continue to discharge an effective and useful role in the overall superintendence of Wakf particularly laying down policies, acting as watch-dog and recommending to the State Government for providing necessary facilities for the taking up of Wakf administration. Further, more, the presence of non-official members of the Board will act as check against any possibility of the State Ministers overacting the Wakf Commissioner and forcing the latter to act according to their will and pleasure”.

The present scheme under the Wakf Act, 1995, appears to have incorporated the recommendations of both the Wakf Inquiry Committee, 1976 (Vide, Section 32) and the Amendments Committee of the Central Wakf Council (Vide Section 25 and 26). However, the separation of powers between those relating to ‘Superintendence’ and ‘Administration’ has not been clearly carried out by the Act of 1995 to the desirable extent.
The Composition of the Wakf Board

*The Wakf Board consists of:*

**Chairperson** - Whenever the Wakf Board is constituted or reconstituted, the members of the Wakf Board from among themselves who are present at a meeting convened for this purpose\(^ {40} \) elect one chairperson

**Appointment of Members by Election** - Under Section 14(1)(b), one and not more than two members as the State Government may think fit, shall be elected from each of the following electoral collages:

(i) Muslim members of Parliament from the State, or as the case may be, the Union Territory of Delhi;

(ii) Muslim members of the State Legislature;

(iii) Muslim members of the Bar Council of the State; and

(iv) Mutawallis of the Wakfs having an annual income of not less than rupees one lakh.

The number of members elected under the clause may vary from four to eight.

**The System of Election** - Election of the member specified in Clause (b) of Sub-Section (1) of Section 14 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 by the State Government. However, if the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, then such Muslim Member shall be declared elected on the Board, provided further, where there is no such Muslim member from any of the above categories, then Ex-Muslim Members of these categories shall constitute the electoral college. Inclusion of ex-Muslim Member of Parliament or Member of Legislative Assembly is made as per the

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\(^ {40} \) Supra note 2, Section 14, Sub-Section (8)
recommendations of the Standing Committee 1994-95. However, where
the State Government is satisfied, for reason to be recorded, that it is not
reasonably practicable to constitute and Electoral College from any of
the above mentioned categories, then the State Government may
nominate such persons as the members of the Board as it deems fit.\textsuperscript{41} Further, it is provided that the number of elected members of the Board
except as provided under sub-Section 3, shall at all times be more than
the number of nominated members.\textsuperscript{42} This sub-Section 4 has been
added as per the recommendations of the Standing Committee on
Labour and Welfare 1994-95.\textsuperscript{43}

**Appointment of Members by Nomination**

In addition to the elected members, the Wakf Board also consist
of members who shall be appointed by the State Government by
nomination. Therefore, under sub-Section (1) of Section 14, the members
are nominated from the following categories:

Clause-(c) One and not more than two members to be nominated representing
eminent Muslim organization.

(d) One and not more than two members to be nominated from
recognized scholars in Islamic Theology.

(e) An officer of the State Government not below the rank of a deputy
Secretary.

Thus, all the number of members to be nominated by the State
Government may vary from 3 to 5 and, therefore, the total number of
the members of the Wakf Board, both from the elected an nominated
categories put together may vary from 7 to 13. However, in the case of
Union Territory other than Delhi, the Board shall consist of not less than

\textsuperscript{41} Ibid., Sub-Section (3)
\textsuperscript{42} Ibid., Sub-Section (4)
\textsuperscript{43} Supra note 19, p. 5
three and not more than five members to be appointed by the Central Government from among the categories mentioned in sub-Section (1).

Where there are Shia Wakfs but no separate Shia Wakf exists, then at least one of the members from the categories listed in sub-Section (1) shall be a Shia Muslim. Similarly, there shall be at least one Mutawalli as the member of the Board.

It is pertinent to mention here that as far as the appointment of members through election is concerned, the inherent danger in this system for the religious institutions cannot be ignored. It is a matter of common observation that even for the election of the managing committee of certain mosque, from among the members of the congregation, various religious groups are converted into hostile compartments and unhealthy, sometimes, unfortunate confrontation during the time of prayers tarnished the sanctity of the sacred place. Therefore, when the elections are conducted for a more important position of a member in the state of Wakf Board there is every possibility that the contestants of each of the Electoral College would make it a prestigious issue to win the elections by spending lot of money. Once they are elected by incurring huge expenditure then the temptations to get the expenditure reimbursed during the tenure of their membership cannot be ruled out. Apart from this, the Wakf Board too, have to incur lot of expenditure on account of the conduct of election as was observed in the case of election of a single mutwalli in the West Bengal Wakf Board which had to spend twenty or thirty thousands of rupees in the early 1970s and therefore, the West Bengal Wakf Act was amended in the year 1973 to replace the system of election of mutwalli by providing for nomination by the State Government.

44. Supra note 2, Section 14, Sub-Section (5)
The amendment Committee appointed by the Central Wakf Council had also suggested the inclusion of the members of the Registered Medical Association, the Institute of Engineering, Teachers Association and the Senate or Court of the Universities of the State, apart from the members of the Bar Council in the Wakf Board.

**Term of Office**

The term of office of the member of rather Wakf Board is fixed as five years. The purpose of fixing a long term of five years is to provide sufficient opportunity to the Wakf Board to plan and implement various policies and developmental schemes for improving the efficiency of its functioning and bringing about an overall improvement in the supervision and protection of Wakf properties. All this requires time. Therefore, it is always desirable not to disturb the Wakf Board by frequent constitution and reconstitution. Even Supreme Court of India expressed its opinion in similar terms in the case, which came before it from the Bihar Wakf Board. The Punjab High Court has held that the computation of five years shall start from the date of nomination by the Government.

**Disqualification of Members**

The Act specifies certain grounds that render a member disqualified for being appointed or for continuing as a member of the Board. Thus a person is disqualified for the membership of the Board if he is not a Muslim or has not attained the age of twenty-one-year, or he is of unsound mind or an un-discharged insolvent, or he has been convicted of an offence involving moral turpitude.

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45. Ibid., Section 15.
48. Supra note 2, Section 16, Clauses (a-d).
However, in the Wakf Act, 1995, it is added that if such conviction has been reversed or he has been granted full pardon in respect of such offence, then he is not disqualified. This addition does not appear to be well founded for the grant of full pardon by itself is indicative of his guilt and when in particular the offence relates to moral turpitude it should render him disqualified to hold a prestigious office of trust and honour in a body, which controls religious institutions also.

However, it is essential that the disqualification is seriously proved against the member and it should not be labelled on frivolous or faint grounds. Nor should it be imposed by stretch of imagination or bias. There should be necessary nexus between the guilt and the proposed action of removal. It was pointed out in a case by Andhra Pradesh High Court that mere discourteous behaviour of a member towards the Chairman is not sufficient to hold the view that the continuance of the member would be prejudicial to the interest of Wakfs. Further, before removing the member on such grounds, he should be furnished with the record against him and an opportunity of explanation should be given.

Establishing Committees for supervision of Wakfs

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. The Board shall determine the constitution, functions and duties and the term of office of such committees from time to time. Provided that it shall not be necessary for the members of such committees to be members of the Board.

50. Supra note 2, Section 18, Sub-Section (1)
51. Ibid., Section 18, Sub-Section (2)
Appointment of Officers of Wakf Board

The board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under Wakf Act, 1995, details thereof shall be determined by the Board in consultation with the State Government.\(^{52}\)

Delegation of Powers to Secretary etc

The Board may by a general or special order in writing, delegate to the chairperson, any other member, the Secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary.\(^{53}\)

Powers and Functions of Wakf Board

The Wakf Act, 1995 confers powers on the Wakf Board to administer, control, supervise the Wakf, and to regulate the powers of Mutawalli as far as it relates to manage the Wakf properties.\(^{54}\) The Madhya Pradesh High Court in a case\(^ {55}\) examined the basic and crucial question as to whether Wakf Board has any right to interfere with the right of Mutawalli, or for that matter, any person to manage their own affairs in matters of religion as guaranteed to him under clause (b) of Article 26 of the Constitution. Hence, the validity of such powers of the Board was challenged as unconstitutional being violative of Article 26 (b). But the court upheld the constitution validity of such powers of the Wakf Board on the ground that such right of Mutawalli is governed not by clause (b) of Article 26, but by clause (d) of Article 26 which states

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52. Ibid., Section 24, Sub-Section (1)
53. Ibid., Section 27.
54. Ibid., Section 32, Sub-Section (1)
55. Supra note 36
that such Mutawallī or persons shall have right to administer such property in accordance with law.

The powers of Wakf Board are conferred subject to the condition that the Board shall act in conformity with the directions of the Wakf, the purpose of the Wakf. Further, the Standing Committee recommended that the powers of the Wakf Board shall also be made subject to such usage and custom as are sanctioned by the “School of Muslim Law to which Wakf belongs”. The Wakf Act, 1954 as amended in 1964 contained the words “such usage or custom of the Wakf sanctioned by Muslim Law”. The members of the Standing Committee opined that Wakfs belonging to various categories of Muslim Schools of thought needs to be protected in accordance with the relevant usage and custom. Thus, the recommendation is incorporated in the proviso to Sub-Section (1) of Section 32, of the Wakf Act, 1995 adding the word “School of Muslim Law”. The Wakf Inquiry committee 1976 has also recommended that such inclusion of School of Muslim Law would enlarge the ambit of application of not only Sunni Law but also customs and usages of the sects such as Chishtia, Quadaria, Bhoru and Mehdavis.56

**Schemes of Management for Wakf**

The Wakf Board is also empowered to settle schemes of management for a Wakf.57 However, a proviso is added to this clause, which states that no such settlement shall be made without giving the parties affected on opportunity of having heard. The Mysore High Court58 has laid down that it is imperative on the part of the Wakf Board to have heard “Parties affected” before settling any scheme of

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56. Supra note 4, p. 57.
57. Supra note 2, Section 32, Sub-Section (2).
management of mosque. The fact that these petitioners were duly elected trustees was well within the knowledge of the Wakf Board. It was, therefore, their duty to have heard them in accordance with the Act. Further, under Section 69 of the Act, the Wakf Board may frame such scheme for the administration of a Wakf either on its own motion or on the application of not less than five persons interested in the concerned Wakf and such scheme shall be subject to other conditions as are stipulated under Section 69 of the Act. However, any person aggrieved by such settlement of scheme of management of a Wakf may institute a suit in a Tribunal for setting aside such settlement or directive.\(^{59}\)

**Incorporation of Doctrine of Cypress in the Wakf Act**

Usually ambiguity, indefiniteness and impossibility of achieving object are vitiating elements in any legal transaction. However, in the case of Charitable gift it is desirable that such gift shall not fail on account of ambiguity or indefiniteness or impossibility and the same may be utilized on purpose similar to the original object. Therefore, bringing about an amendment in the year 1964 incorporated the doctrine of Cypress in the Wakf Act. Thus, the Wakf Act, 1995, too retained the provision under Section 32 (2) (e) (iii), which says that in any case where any object if Wakf has ceased to exist or has become incapable of achievement, then so much of the income of the Wakfs as was previously applied to that object shall be applied to any other object. This rule has sanction by the Muslim law also. Tayabji quoted with the authority of Fatawai Kazi Khan\(^{60}\) and Raddul Mukhtar \(^{61}\) that when a purpose of a Wakf fails because the object has ceased to exist or has become incapable of achievement then it is lawful to apply the

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\(^{59}\) Supra note 2, Section 32, Sub-Section (3)


\(^{61}\) Ibid., p. 174
income of the Wakf property to other object nearest in its nature to the original purpose i.e., Jins-I-Q a’ r b”. For example if a Wakf is created for the maintenance of a particular orphanage and if that orphanage ceases to exist then maintenance of deserted children. However, in view of the very low literary level among Muslims, it is added in the Wakf Act, 1995 that where any object of Wakf has ceased to exist or has become incapable of achievement then such of the income which was previously applied can be used “for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community.”

It is further laid down that for the purpose of this clause the powers of the Wakf Board shall be exercised in the case of Sunni Wakf, by the Sunni members of the Board only and similarly in the case of Shia Wakf, by the Shia members of the Board only. For this purpose, the Wakf Board can also co-opt such other Muslims, being Sunnis or Shias, as the Board thinks fit, to be temporary members of Wakf Board for exercising its powers under this clause. The Wakf Act, 1995 contains provision,\(^\text{62}\) which confers detailed powers on the Board in relation to Wakfs, which have ceased to exist.

**Power to Sanction Transfer of Immovable Property of Wakf**

The Wakf Act, 1995 imposed stricter condition on the transfer of any immovable Wakf property by way of gift, sale, mortgage or exchange\(^\text{63}\) or for lending the property on lease\(^\text{64}\) without prior sanction of the Board. Clause (j) of Sub-Section (2) of Section 32 provides the procedure for granting such sanction by the Board and it requires that “no such sanction shall be given unless at least two-thirds of the

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\(^{62}\) Supra note 2, Section 31, Sub-Section (3)

\(^{63}\) Ibid., Section 51

\(^{64}\) Ibid., Section 56
members of the Board vote in favour of such transaction”. Obviously, obtaining the consent two thirds of the members of the Wakf Board is not always easy. However, the Wakf Inquiry Committee, 1976, has suggested for consent by two thirds of the members of the Board “present” and vote in favour of such transactions. However, in Wakf Act, 1995, the word “present” is not to be found.

Developmental project on Wakf land and its Origin

The question of developing Urban Wakf land through commercial utilization for the benefit of the Wakf, which offer attractive potential, has long been debated in India. The Central Wakf Council has constituted a Committee for the development of Wakf properties and the Central Government have sanctioned financial grant to the Central Wakf Council in order to enable that body to grant loans to suitable Wakf institutions through the State Wakf Boards for the implementation of economically and commercially viable development schemes. However, unfortunately whenever any developmental scheme were proposed for implementation the concerned Mutawallis posed resistance to such schemes and raised legal and other objections related to Shariat. The Central Wakf Council, the Amendment Committee, The Central and State Governments and the one-man commission all have emphatically suggested to give powers to the Wakf Board for ensuring implementation of such developmental schemes and projects. The Wakf Inquiry Committee65 recommended, thus, “we agree with the suggestion that the State Wakf Board should have powers to take over underdeveloped urban properties for development where the cooperation of Mutawallis is not forthcoming and to hand over after developing them and realizing the amount actually spend on development”.

65. Supra note 4, pp. 58-59
The Wakf Inquiry Committee had reproduced the proposed draft of Section 22-F prepared by the one-man Commission and the same was incorporated in the Wakf (Amendment) Act, 1984 as Section 15-A. This Section gave a very detailed scheme, which was incorporated in 14 sub-Sections of Section 15-A. However, this Act of 1984 was never brought into force. Therefore, now the Wakf Act, 1995 again incorporated the scheme for development of Wakf Land and conferred on the State Wakf Board effective powers to take over temporary possession of such Wakf properties, implement the scheme and hand them over to the concerned Mutawalli after development. However, under the Act, the scheme is simplified and incorporated.66

Statutory Provisions Relating to Development of Wakf Land

The statutory provisions under Sub-Section 4 to 6 of Section 32 relating to development of Wakf Land conferred potential powers on the State Wakf Board and thus stated that where the Board is satisfied that any Wakf land offers a feasible potential for development as a shopping centre, market, housing flats and the like, it may serve upon the Mutawalli a notice in the prescribed manner inviting his decision, objections or suggestions. If, the Wakf Board, on receipt of the reply from the Mutawalli, is satisfied that either the Mutawalli is not willing or is not capable of executing the development scheme, then the Wakf Board, with the prior approval of the Government, may take over the Wakf property, clear it of any building or structure there on which in the opinion of the Wakf Board is necessary for execution of the Wakfs. Either the necessary finance can be obtained from the Wakf Fund of the Wakf Board, or it may be raised on the scrutiny of the concerned Wakf properties. During the period of execution of the development scheme, the Wakf Board is empowered to take over the entire Wakf properties in

66. Supra note 2, Section 32, Sub-Section (4-6)
its control and manage the same till the completion of the development project.

However, it is incumbent on the Wakf Board to pay to the concerned Mutawalli an average annual net income calculated on the basis of the annual net income of the preceding three years of the concerned Wakf, during the entire period of execution of developmental scheme. After completion of the developmental scheme the Wakf Board has to handover the entire Wakf property, along with the newly developed property, back to the Mutawallis. The Wakf Board is entitled to recover the entire expenditure incurred on the developmental project along with the interest thereon, from the income of the concerned Wakf property including the newly developed property, before handing over the Wakf property to the concerned Mutawalli.

**Recovery of Lost Properties**

Clause (b) of sub-Section (2) of Section 32 requires Wakf Board to take measures for the recovery of the lost properties of any Wakf. However, the basic question was well debated as to whether Wakf Board has jurisdiction to make measure for the recovery of the lost properties of any Wakf. It was usually argued that the very purpose of continuing a Wakf Board is to supervise and control the Wakf properties for the purpose of protection of the existing Wakf properties. Therefore, it follows that the scope of functions of Wakf Board should be confined only to the existing Wakf properties, which has become extinct. Following the same view the clause (h) was deleted from the Wakf (Amendment) Act, 1984 which has not enforced. However, under the Wakf Act, 1995 this power is retained. Therefore, now the Wakf Board is empowered to take measure for the recovery of the lost
properties of Wakf and endeavour to restore the benefits to the beneficiaries to the possible extent.

**Powers of the Board in respect of Ceased Wakfs**

Section 39 of the Wakf Act, 1995 incorporates the Doctrine of Cypress, as already discussed under sub-clause (iii) of clause (e) of Sub-Section (2) of Section 32 of the Act, which deals with the functions of the Wakf Board. The difference between Section 32 and Section 39 is that under Section 32 the Wakf Board has been conferred with the power of utilization of the income of the Wakf which has ceased to exist on any other object nearly similar to the original object or for the benefit of the poor or for the promotion of knowledge and learning in the Muslim community, whereas Section 39 describes the procedure to be followed for such utilization and also provides for an action through the Tribunal for the recovery of such Wakf Property from any unauthorized possession.

Thus, under Section 39, the Wakf Board, if is satisfied that the objects or any part thereof, of a Wakf have ceased to exist, shall cause an inquiry to be conducted by the Chief Executive Officer in the prescribed manner. After receiving his report, the Board shall pass an order specifying the property and funds of such Wakf and directing the way in which it may be utilised for renovation of any Wakf property or where there is no need for such renovation, utilisation on the purposes similar or nearly similar to the original object in accordance with Doctrine of Cypress as specified under sub-clause (iii) of Clause (e) of Sub-Section (2) of Section 32 of the Act.

Similarly if the Board has reason to believe that any building or other place, which was being used for religious purpose or institution or for charity, has ceased to be used for that purpose, it may make an
application to Tribunal for an order directing the recovery of possession of such building or other place. The Tribunal after making such inquiry as it thinks fit may pass an order for the recovery of such property and its utilisation thereof in accordance with the Doctrine of Cypress.\textsuperscript{67}

\textbf{Decision if a Property is Wakf Property}

This was a very crucial question which came up before the Rajasthan High Court\textsuperscript{68} as to whether the Survey Commissioner as appointed under the Section 4 of the Wakf Act while making survey of the Wakf properties is empowered to decide the question whether a property is Wakf property or not? The High Court of Rajasthan held that the Jurisdiction of the Survey Commissioner is confined only to the Wakfs, which exist in the State and whether such Wakf is a Shia Wakf or a Sunni Wakf. However, he cannot decide the Basic question or dispute if one arises, as to whether a particular property is Wakf property or not. However, this view of the Rajasthan High Court was reversed by the Supreme in appeal from the same case\textsuperscript{69} and it was held, thus, “It will be clear that the word’s for the purpose of making a survey of Wakf properties is a key to the construction of the Section. The ordinary meaning of the word “Survey” as given in the Random house Dictionary of English Language is ‘to take a general or comprehensive view of or appraise a situation”. If the commissioner of Wakfs has the power to make a survey, it is but implicit that in the exercise of such power he should enquire whether a Wakf exists. The making of such an enquiry is a necessary concomitant of the power to survey. The High Court was clearly in error”. Now, if there is any dispute with regard to properties to whether it is a Wakf property or not, or whether it is a Shia Wakf or a Sunni Wakf, the Wakf Board, the

\textsuperscript{67} Ibid., Section 39, Sub-Section (4)
\textsuperscript{68} Radha Kishan v. Rajashtan Board of Muslim Wakf, AIR, 1967, Raj., p.1
\textsuperscript{69} Ibid., p. 289.
Mutawalli or any person interested therein may institute a suit in a Tribunal for the decision of the question.

However, the Wakf Board was given a power under Section 27 of the Wakf Act, 1954, to 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, and decide the question by itself after making such inquiry as it may deem fit. In 1984, an amendment was proposed to the old Section 27 of the Wakf Act, 1954, and it was provided that question whether a property is a Wakf or not, should be referred by the Board to the Tribunal whose decision thereon shall be final. However, the Standing Committee of the Labour and Welfare recommended that the power should be given to the Wakf Board itself to collect information and decide the question and any party aggrieved may go in appeal to the Tribunal against the decision of the Wakf Board and the decision of the Tribunal shall be final. Therefore, the old provision as contained under Section 27 of the Wakf Act, 1954 is retained under Section 40 of the Wakf Act, 1995, and it is, therefore, provided that the Wakf Board itself may decide the question, which shall be final, unless revoked or modified by the Tribunal.

**Power to Cause Registration of Wakf and to Amend Register**

Although every Mutawalli is required to apply for registration of Wakf under his administration,70 The Wakf Board, on its own accord may, direct a Mutawalli to apply for registration of a Wakf to supply any information regarding Wakf. Section 41 imposes a duty on the Mutawalli to comply the direction of the Board, which he is obliged to carry out under Section 50 (a) of the Act also. This Section also

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70. Supra note 2, Section 36.
empowers the Wakf Board itself to cause the Wakf to be registered or may at any time amend the register of Wakf.

**To pass orders on Auditors Report**

The Wakf Board is empowered to examine the report submitted by the auditor or and to call for the explanation of any person in regard to any matter mentioned in the report and pass such orders as it may think fit under the circumstances including orders for the recovery of any amount certified by the auditor as recoverable under Sub-Section (2) of Section 47 of the Act.71

The concerned Mutawallis or any other person aggrieved by such orders of the Wakf Board may go in appeal to the Tribunal within a period of thirty days from the date of receipt of such orders by him. However, so the Tribunal can entertain such application unless the amount certified by the auditors under Sub-Section (2) of Section 47 has no power to stay the operation of the order made by the Board in this regard. Nevertheless, the Tribunal after taking such evidence as it may think necessary, may confirm or modify the order of the Wakf Board or remit the amount so either certified in whole part or in part, since the amount certified by the auditor is already deposited in Tribunal. The Tribunal may also make such orders as to costs as it may think appropriate in the circumstances of the case. The orders of the Tribunal shall be final.

**Sanction for Alienation of Wakf Property**

The Statement of Reasons and objects relating to the Wakf Act, 1995, inter alia, has mentioned that the purpose of the Act is to make alienation of the Wakf property more difficult and, therefore, under Section 52, it lays downs that notwithstanding anything contained in

71. Ibid., Section 48
the Wakf deed, any gift, sale, exchange or mortgage of any immovable Wakf property shall be void unless effected with the prior permission of the Wakf Board. However, no mosque, Dargarh or Khanqah can be sold, mortgaged or exchanged except in accordance with any law for the time being in force. This requirement is added on the recommendations of the Standing Committee on Labour and welfare. The Wakf Board may accord sanctions only with at least two-thirds of the members of the Board vote in favour of such transaction.\textsuperscript{72} It may be noted here that obtaining consent of two-third members of the Board would be practically very difficult.

Therefore, the Wakf Inquiry committee has suggested that the consent of two-third members present at the Board meeting may be obtained. However, in the provision under Section 32 of the Wakf Act, 1995, the word “present” is missing. The sanction of the Board is Further, subject to condition that such transaction is necessary or beneficial to the Wakf, and it is consistent with the objects of the Wakf and Further,, that the consideration thereof is reasonable and adequate. However,, the Wakf Board has to follow certain procedure before granting sanction and it has to publish the details of the transaction in the official gazette for inviting objections and suggestions from the interested persons for the considerations by the Wakf Board. Further, such sale should be affected by public auction and should be subject to confirmation by the Wakf Board. However, the Wakf Tribunal, on application from the aggrieved Mutawalli or other person may permit such sale to be made otherwise than by public auction for reasons to be recorded by it. The amount so received shall be utilised or invested by the Mutawalli subject to the approval by the Wakf Board. Against the decision of the Wakf Board, the Mutawalli or any other person can go in

\textsuperscript{72} Ibid., Section 32, Sub-Section 2(j)
appeal to the Tribunal within ninety days from the date of communication of such decision to him.

**Recommendations of the Wakf Inquiry Committee**

The reason as to why such restrictions are imposed on gift, sale, exchange or mortgage of immovable Wakf property is quite satisfactory in view of the malpractices committed by the Mutawalli in effecting such transaction. The Wakf Inquiry Committee too, has remarked, thus “during all our tours of the states all Sections of Muslim community have represented to us hundreds of instances of illegal alienation and transfer of Wakf property by the Mutawallis and with their connivance and equally large number of unauthorised occupation by squatters. Closed graveyards situated in urban areas have been the main targets of such clandestine transaction. We are therefore convinced that the malady has reached a stage where some drastic action is required. Unless and until immediate measures are taken, we fear that the situation may go out of control and it would be too late to save the remaining Wakf properties.”

Thus, Section 51 laid down such cumbersome procedure in order to ensure alienation of Wakf property only in the interest of the Wakf and its beneficiaries.

**Recovery of Wakf Property Illegally Transferred**

In case of any Transfer of Property in contravention to the provision of Section 51, the Wakf Board in empowered to recover such property, under the provisions of Section 52, and send a requisition to the concerned collector to obtain and deliver the possession of the Wakf property to it. The Collector after duly following the procedure, laid down under Section 52 of the Act shall obtain possession of the property in respect of which the order has been passed and deliver it to

73. Supra note 4, p. 26
the board. Any person aggrieved by the decision of the Collector may go in appeal to the Tribunal within a period of thirty days and the decision of the Tribunal thereon shall be final.

Similar restriction is also imposed on Mutawalli to purchase any property on behalf of Wakf without the permission of the Wakf Board as required under Section 53.

Restriction to Grant Lease

Under Section 56 of the Wakf Act, 1995, a total restriction is imposed on the power to grant lease or sub-lease of a Wakf property for a period exceeding three years and any such lease, if granted, shall be void and of no effect and anything contained in the Wakf deed or instrument of Wakf or in any other law for the time being in force relating to such period of lease exceeding three years is totally ignored and made inapplicable. Any lease for a period exceeding one year can be granted subject to the previous sanction of the Wakf Board. Therefore in effect, a lease for a period of less than one year does not require any sanction from the Wakf Board while it is so required for a period during one year to three years. A lease for a period exceeding three years cannot be granted even with the sanction of the Wakf Board, as the Board does not have any power to sanction such lease. However, the Wakf Board is empowered to sanction renewal of any lease or sub-lease including a lease for a period of three years, subject to such terms and conditions as it may direct.

Corresponding provision relating to restriction on lease of Wakf property was also incorporated under Section 36-F of the Wakf (Amendment) Act, 1994 which was not brought into force.

It may, further, be noted that in the matter of granting lease for a period exceeding three years, even the direction of the Wakf, if any, is
also ignored and it does not appear to be appropriate particularly when such lease for a period exceeding three years may be necessary for well reputed tenants like Banks, Public Corporations, Government offices or other Commercial concerns who would like to furnish or suitably modify such premises on their own expense and therefore would prefer a lease on a long term basis. If a total, ban is imposed on lease beyond three years that may be renewed only on fresh terms and conditions as directed by the Wakf Board such potential tenants would not be attracted to take any such Wakf property on lease and therefore such a restriction does not appear to be in the interest of the Wakf.

**Payment of Dues on Behalf of Defaulting Mutawallis**

The act empowers the Wakf Board to pay dues on behalf of the Mutawalli in case of default by such Mutawalli. The Board discharge such 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 percent of the amount so paid.74

Wakf Board is Further, empowered under the Act to direct the creation of reserve fund for payment of revenue, taxes etc, or for repair or preservation of the Wakf property75 and extension of time by the Wakf Board within which any act is required to be done by the Mutawalli.76 Section 58 to 60 of the Wakf Act, 1995 exactly corresponds to Sections 38 to 40 of the Old Wakf Act, 1954.

**Power to Appoint Mutawalli in Certain Cases**

When there is a vacancy in the office of the Mutawallis 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.

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74. Supra note 2, Section 58, Sub-Section 1
75. Ibid., Section 19.
76. Ibid., Section 60.
The Board may appoint any person to act as Mutawalli for such period and on such conditions as it may think fit.\textsuperscript{77}

**Removal of Mutawalli**

Section 64 of the Wakf Act, 1995 deals with the removal of Mutawalli and corresponds to Section 43 of the old Wakf Act, 1954. However, under Section 64 certain new grounds have been added on the recommendations of the Wakf Inquiry Committee 1976, on the basis of which the Wakf Board could remove a Mutawalli.

**When a Mutawalli can be Removed**

a) Under clause (a) of Section 64, Mutawalli can be removed if he is convicted more than once under Section 61 of the Wakf Act, 1995.

b) If he is convicted of any offence of criminal breach of trust or any other offence involving moral turpitude. Under the Wakf Act, 1995 it is further, added that if such conviction has not been reversed or he has not been granted full pardon in respect of such offence, he would be liable to be removed. In other words, if his conviction is reversed he is granted full pardon the Mutawalli cannot be removed.

c) Unsoundness of mind or suffering of any other mental or physical defect or infirmity is also a ground of removal of Mutawalli as he would be practically unable to perform his duties for the maintenance and protection of Wakf property.

d) If he is un-discharged insolvent, an insolvent is one who is not able to pay his debts. Since insolvency may tempt or compel a Mutawalli to misappropriate the Wakf property, such person is disqualified to be appointed or to continue as Mutawalli.

e) If he is proved to be addicted to drinking liquor or other spirituous preparations or is addicted to be taking of any narcotic drugs. Islamic Law prohibits consumption of liquor and other spirituous preparation. However, under this clause mere consumption of liquor once or twice may not, probably, be sufficient to remove the Mutawalli as it is necessary to prove that he is “addicted” to such drinking liquor or taking

\textsuperscript{77} Ibid., Section 63.
other spirituous preparation or narcotic drugs and he is dependent on such things as a habit.

f) If he is employed as a paid legal practitioner on behalf of or against the Wakf, he is liable to be removed because of his inherent interest in the Wakf.

g) If he has failed to maintain or submit regular accounts for two consecutive years without any reasonable excuse under sub-section (2) of Section 46, the Mutawalli is required to submit the statement of accounts before first May in respect of the year ending on 31st March each year.

h) If he is interested, directly or indirectly in any lease or contract or other work being done for the Wakf.

i) If he continuously neglects his duties or commits any misfeasance, malfeasance or misapplication of funds or breach of trust relating to Wakf property. In this clause also isolated case of neglect of duties would not liable Mutawalli to be removed unless he is neglecting his duties continuously.

j) If he wilfully and persistently disobeys the lawful order of the Central Government, State Government or the Wakf Board made under the provision of the act or under any rule or order made there under. While the Wakf Board as the key agency to implement the Wakf Act is empowered to issue orders and directions to the Mutawalli under various Sections of the Act, the Central Government and the State Government are also empowered to regulate secular activities of Wakfs and issue directions under Section 96 and 97 of the Act respectively.

k) If he misappropriates or fraudulently deals with the Wakf property.

It must be noted that the Wakf Board is empowered to remove Mutawalli on the grounds mentioned under Section 64 and such powers are limited only to such grounds as are enumerated under Section 64 and the Board should make out the case within the ambit and scope of the Section. The Madras High Court has held that the Wakf Board is vested with powers to remove a Mutawalli on certain limited grounds. If those grounds are not made out, the Board will, of course,

have no jurisdiction to remove a Mutawalli. However, it is for the Board, in the first instance, to consider, whether there are grounds made out for removal. The allegation of the respondent that the petitioner committed breach of trust and divested the Wakf properties to his private use, prima-facie will attract the Board’s jurisdiction to enquire into the whole allegation.

**Personal Rights not affected**

As per the provisions of sub-Section (2) of Section 64, the removal of the Mutawalli would not affect his personal rights either as a beneficiary or as a Sajjadanashin. Where a Sajjadanashin is also working as manager then he can be removed from managership under Section 64 and allowed to continue as Sajjadanashin unless it is proved that his continuance as Sajjadanashin is prejudicial to the interest of the Wakf.

Under sub-Section (3) of Section 64 it is mandatory for the Wakf Board to hold an inquiry into the allegations against the Mutawalli before taking any action against him. It is also a legal requirement that the inquiry must be held in a free and fair manner applying principles of natural justice. The Mutawalli shall have the right of being heard and to cross examine the witness against him. He should first be given charge sheet and an opportunity to offer his explanation. Before removing a Mutawalli, an enquiry has to be made and that hearing has to be neither fair hearing in other words such inquiry should be real and not illusory nor a colourable attempt at fulfilling a legal compulsion.

It was held by Karnataka High Court\(^79\) that Section 43 (Now Section 64 under the Wakf Act, 1995) which deals with the removal of a Mutawalli and which directs that a Mutawalli cannot be

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removed without an inquiry and decision by the majority of the Board is mandatory. Therefore, the order of suspension passed against the petitioner in contravention to such provision is liable to be quashed.

**Majority Decision is Essential**

Under sub-Section (3) of Section 64, it is further laid down that the decision to remove a Mutawalli should be taken by a majority of not less than two-thirds of the members of the Board. It may be noted that under sub-Section (4) of Section 43 of the Wakf Act, 1954, such decision were required to be taken by a majority of not less than three-fourth of the members of the Board, which is now changed to two-third under the Wakf Act, 1995.

**Appeal to the Wakf Tribunal**

Any Mutawalli aggrieved by an order of the Wakf Board under this clauses (c) to (j) of sub-Section (b) of Section 64 may go in appeal to the Tribunal within one month from the date of the receipt of such order and the decision of Tribunal thereon shall be final.

**Suspension of Mutawalli**

Under the provisions of the old Wakf Act, 1954, a Mutawalli could have been removed under Section 43 after due enquiry, but there was no specific provision enabling the Wakf Board to suspend the Mutawalli. The Wakf Act, 1995 under sub-Section (5) of Section 64 has now provided that where any inquiry is proposed under sub-Section (3) against any Mutawalli and the Board is of the opinion that it is necessary so to do in the interest of the Wakf, by an order, may suspend such Mutawalli until the conclusion of the inquiry. Although the period of such suspension shall not exceed ten days but the same can be continued beyond ten days only after giving the Mutawalli a reasonable opportunity of being heard against the proposed action.
Appointment of Receiver

Where any appeal is preferred by the Mutawalli to the Tribunal under sub-Section (4) of Section 64, the Board may make an application to the Tribunal for the appointment of a receiver to manage the Wakf during pendency of the appeal. The Tribunal in case of such application has to appoint a suitable person as receiver to manage the Wakf and ensure that the customary or religious rights of the Mutawalli and of the Wakf are safeguarded.

Delivery of Possession may be ordered

Where a Mutawalli has been removed from his office, the Wakf Board may by order direct the Mutawalli to deliver possession of the Wakf property to the Board or any officer authorised in this regard or to any person or committee appointed to act as the Mutawalli of the Wakf property. Further, under Section 68 of the Act, the Mutawalli is under obligation to handover the complete charge of the Wakf property along with - book of Accounts and other relevant documents including cash, if any. In case he refuses or fails to do so then the Magistrate concerned may, after giving him a notice, order to comply with the orders and deliver the possession of the Wakf property. Failure of the Mutawalli to comply with the orders of the Magistrate could attract punishment of imprisonment for a term, which may extend to six months or with fine upto eight thousand rupees, or with both under sub-Section (3) of Section 68 of the Wakf Act, 1995.

Supervision and Supersession of Committee of Management by the Board

The purpose of Section 67 is to confer supervisory powers on the Wakf Board in relation to such Wakfs which are managed by a committee appointed by the Wakfs, under Section 3 (1) the definition of
Mutawalli also includes in its scope any committee or corporation appointed to manage the Wakf and therefore such committee would be under supervision of the Board. Under this Section, such committee is required to function under the direction, control and supervision of the Board and abide by such directions of the Board. In respect to any scheme made by the committee for the management of the Wakf, the Wakf Board is empowered to modify such scheme if the Board is satisfied that such scheme made by the committee is inconsistent with any provisions of the Act or of any rule made thereunder or with the directions of the Wakf and therefore the Wakf Board can modify such scheme to bring it in conformity with the directions of the Wakf or of the provision of this Act or any rule made thereunder. The Wakf Board is also empowered to supersede such committee if it is satisfied that such committee is not functioning properly; that it is being mismanaged or it is necessary to do so in the interest of the Wakf. But before doing so the Board has to give a notice setting forth the reasons for the proposed supersession 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 action shall not be taken and every such order shall be published in the prescribed manner. One such publication the order of the Board shall be final and binding on the Mutawalli and all persons having any interest in the Wakf. However, any person aggrieved by the order of the Wakf Board, may, within sixty days from the date of the order, appeal to the Tribunal. However, the Tribunal does not have any power to suspend the operation of the order by the Board during pendency of such appeal.

The Wakf Board also has to remove any members of such committee instead of superseding the whole committee. The removal of the member of this committee is also governed by the same procedure
and the Board is required to give notice providing reasonable opportunity to the member to show cause against the proposed action and he also has the power of appeal to the Tribunal against the proposed action and he also has the power of appeal to the Tribunal whose action modifying, reversing or confirming such order of the Board shall be final.

**Power of Board to Frame Scheme of Administration of Wakf**

Section 69 of the Act confers wide powers on Wakf Board to frame any scheme for administration of any Wakf on the basis of its own motion or on the application of not less than five persons interested in the Wakf. The justification of framing of the scheme for administration of Wakfs is the "necessary" or "desirability" of such scheme for "proper administration of the Wakf". However, it is incumbent on part of the Board to settle such scheme of management only after giving the party to be affected an opportunity of being heard as is required under clause (d) of Section 32 of the Act.

Further, while framing such scheme, the Board has to consult the concerned Mutawalli and such scheme may also provide the removal of the Mutawalli provided that where any hereditary Mutawalli is likely to be removed then the proposed scheme provide for appointment of such hereditary Mutawallis as one of the members of the committee appointed for the purpose of proper administration. Every such order is required to be published in the prescribed manner and it shall be final and binding on the Mutawalli and all other persons interested in the Wakf on publication of such order. However, any person aggrieved by the order may, within six days from the date of order, prefer an appeal to the Tribunal. Again, the Tribunal may revise, modify or confirm the

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80. Supra note 2, Section 69, Sub-Section (2)
81. Ibid., Sub-Section (3)
order of the Board and such order of the Tribunal becomes final but the Tribunal has no power to stay the operation of the order made under this Section. The Board is also empowered to appoint any suitable person to perform all or any of consultation with the Mutawalli and the publication of such framing of the scheme have to be carried out in accordance with the rules that can be made under Section 109 of the Act.

Power to Conduct Inquiry and the Procedure Thereof

Under Section 70 of the Act, any person interested in a Wakf may make an application to the Wakf Board supported by an affidavit to institute an inquiry relating to the administration of the Wakf. If the Board is satisfied that the Wakf is being mismanaged, it shall take such action as it thinks fit. Further, under Section 71, the Board, either on its own motion or application received under Section 73, may hold an inquiry in such manner as may be provided or authorise any person to hold inquiry into any matter relating to a Wakf and take such action as it thinks fit. For this purpose, the Board or any authorised person shall have the same powers as are vested with a civil court under the code of Civil Procedure for the purpose of enforcing attendance of witnesses and compelling production of documents.

The Standing Committee on Labour and Welfare (1994-95) in its report recorded that the “Members were critical about the number of frivolous complaints being received by the Wakf Board. They were of the view that there should be some safeguard against such complaints for the smooth functioning of the Board. In order to have a check on frivolous complaints being lodged in various Wakf Boards, the Committee desire that the complainants should be asked to deposit

82. Supra note 19, p. 9
certain cost of inquiry with the Board along with their complaints. The committee are, therefore, of the view that suitable provisions to this effect should be made in the rules under the Act". Since the recommendation of the Standing Committee is based on factual analysis, it deserves, to be incorporated in the rules to be made under this Section.

**Power to Borrow Money**

For 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.83

**Spending of Wakf Fund**

Section 77 of the Wakf Act, 1995 correspond, to Section 48 of the Wakf Act, 1954 but differs in certain respects. It specifies various components that constitute a fund to be called "Wakf Fund" and lays down that all moneys received or realised by the Board under this Act and all other moneys received by way of donations, beneficiations, or grants by the Board shall form a fund to be called "Wakf Fund".

It may Further,, be noted that under the Old Wakf Act, 1954. The expenditure towards the cost of audit of accounts of any Wakfs was to be paid out of the Wakf Fund under Sub-Section (3) of Section 33 of the Wakf Act, 1954 therefore such expenditure was allowed under clause (b) of Sub-Section (3) of Section 48 of the Old Wakf Act, 1954. However, under the provisions of the New Wakf Act, 1995 the cost of the audit of any Wakf is now to be met out of the funds of that Wakf and it is not to be paid out of Wakf fund of the Wakf Board. However, such expenditure of audit of accounts of any Wakfs is still in clause (b) of

83. Supra note 2, Section 75, Sub-section (1)
Sub-Section (4) of Section 77 of the Wakf Act, 1995 to be met out of the Wakf fund under this Section. Such inclusion obviously appears to have crept inadvertently.

**Budget and Audit of Accounts of the Wakf Board**

The provisions contained under Sections 78 to 82 of the Act deals with the preparation of budget of the Board, submission and audit of accounts of the Board, Government orders on such report of the auditor and the procedure for recovery of dues from the Wakf Board. Similar provisions relating to submission of budget etc., by the Wakf Board are incorporated under Section 44 to 49 of this Act. The only difference underlying these Sections is that the budget, its preparations, audit of accounts etc., of the Wakfs are required to be submitted by the Wakfs to the Wakf Board under Section 44 to 47 while the same relating to Wakf Board is to be submitted by the Wakf Board to the Government under Section 78 to 80. In both the cases, dues are recovered as arrears of land revenue under Sections 49 and 82 pertaining to the Wakfs and the Wakf Board respectively.

**No Suit against Wakf Board without Two Months Notice**

No suit can be instituted against the Wakf Board in respect of any act purporting to be done by it in pursuance of this act or any rules made there under, unless a written notice is delivered or left at the office of the Wakf Board two months in advance. Such notice should specify the name, description, place of residence, the cause of action and the relief sought for by the plaintiff, and the plaint shall also contain a statement that such notice has been so delivered or left.\(^4\) The Madras High Court\(^5\) had clarified that this Section is in general terms and it covers all suits questioning the validity of any action of the Board. The

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\(^4\) Ibid., Section 89.
Section imposes a statutory and unqualified obligation upon the courts to dismiss a suit for non-compliance with its provisions.

**Wakf Board to Apply to Tribunal for Directing the Mutawalli to Pay Money for Performance of Pious Religious or Charitable Act**

Section 94 of the Act lays down that where a Mutawalli is under obligation to perform any act recognised by Muslim law as pious, religious or charitable and the Mutawalli fails to do so, then the Wakf Board may apply to the Tribunal for an order directing the Mutawalli to pay to the Board or to any other person authorised by the Board such amount as may be necessary for the performance of such act. In respect of any other duties of the Mutawalli, wilfully fails to discharge his duties then the Board or any person interested in Wakf may apply to the Tribunal and the Tribunal may pass such order as it thinks fit.

**Members of the Wakf Board to be Public Servant**

The act provides protection to the officers of the Wakf Board, Survey Commissioner and every other person duly appointed to discharge any duties under this act or any rule or order made thereunder by declaring that they shall be deemed to be Public Servant within the meaning of Section 21 of the Indian Penal Code. Similarly every Mutawalli of a Wakf, every member of the Managing committee, every Executive Officer and every other person holding office in a Wakf is deemed to be a ‘Public Servant’.

The Wakf Inquiry Committee, 1976 made important observation in this regard, thus “Section 111 of the Andhra Pradesh Hindu Religious Endowments Act of 1966 goes much further,” (in this regard). Under the aforesaid Section of the Andhra Pradesh Act, any trustee or any

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86. Ibid., Section 94, Sub-section (1 & 2)
87. Ibid., Sub-section (2)
88. Ibid., Section 102, Sub-section (1 & 2)
member of the Board of trustee, the Executive Officer or any office holder or servant of a charitable or religious institution shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. This provision incorporated in the Andhra Pradesh Act on the specific recommendations of the select committee which considered the Andhra Pradesh Bill, as the committee was anxious that the Prevention of Corruption Act should be made applicable to every trustee and all members of Trust or to officers employed by the trustees and also the Executive Officer appointed by the Endowment Commissioner. In the control of the deep-seated corruption rampant in the management of Wakfs, we consider that the Prevention of Corruption Act should be made applicable to Mutawallis as well. We feel that persons managing the property vested in God should be no less liable than public servants and trustees for acts of corruption. We therefore consider that over and above the provision of surcharge recommended by us earlier in our report Mutawallis and other office holders and employees of Wakf, should be deemed to be Public Servant within the meaning of Section 21 of the Indian Penal Code in order that Prevention of Corruption Act may be made applicable to them which would facilitate speedier investigation and penal action against them.89

Thus it may be seen that the sub-Section 2 of Section 101 of the Wakf Act 1995 is exactly based on the draft Section 66 of the Old Wakf (Amendment) Act, 1984.

Power to Require Copies of Documents

The Act empowers the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other documents relating to a Wakf or any immovable property, which is Wakf property, to furnish, subject to the payment of necessary costs, 89

89. Supra note 4, p. 90
copies of, or extracts from any such records, 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 Chief Executive Officer, copies or extracts from the required record, register, report or other document.  

*Restoration of Evacuee’s Wakf Property*

The problem of evacuee’s Wakf property owes its origin to the circumstances created immediately after the Partition of the country in August, 1947 when hundreds of thousands of people migrated from India to Pakistan leaving behind them enormous properties both movable and immovable, some of them being Wakf properties. Mutawallis of such Wakf properties had also migrated and there was no proper record or information regarding such properties. Since the evacuees could not arrange for the protection of their properties behind them, many of such properties were taken over by the unauthorised occupants and this uncertain situation necessitated passing of the Administration of Evacuee Property Act, 1950 and Section 11 of this Act contained special provisions with respect to evacuee properties. According to this Section, where any evacuee property, which vested in the custodian, was the trust property for a public purpose of a religious or charitable nature, the Central Government could appoint a new trustee, by general or special order, in place of evacuee trustee. It further, if such evacuee property shall remain vested in custodian only till such time as the new trustees were so appointed. Due to this arrangement a substantial number of Wakf properties were restored which otherwise could have been lost. However, a great deal of difficulty was faced in respect of the properties for which no written instruments, documents or Wakfnamas were available to prove and

90. Supra note 2, Section 105
claim such properties as Wakf properties. In particular, graveyards in isolated places and other unprotected premises like mosques, the trespasser into their own dwellings converted madrasas etc.

It is against this background that the Old Wakf Act, 1954 was amended to incorporate a special provision relating to such evacuee Wakf property under Section 66-H of the Wakf (Amendment) Act, 1984. Although this amended act of 1984 was not brought into force. Section 66-G and Section 66-H were the only two Sections, which were enforced. Now the contents of Section 66-H are incorporated under Section 108 of the Wakf Act 1995. This Section, inter-alia, authorises the Wakf Board to assume direct management of such evacuee Wakf property and such Wakf property would be vested in the Wakf Board in the same manner and effect as in a trustee of such property for the purpose of Sub-Section (1) of Section 11 of the Administration of Evacuee Property Act, 1950.

Powers to Make Regulations

Section 110 empowers the Board with previous sanction of the State Government to make regulations generally for carrying out the purposes of the Act and particularly for any of the matters mentioned in clauses (a) to (1). All regulations made by the Board should be published in the Official Gazette and the regulations shall be effective from the date of such publication.

Chief Executive Officer-Power, Duties, Appointment, Term of Office and Other Conditions of service

Under Section 23 of the Wakf Act, 1995, the State Government appoints the Chief Executive Officer by notification in Official Gazette.

91. Ibid., Section 110, Sub-section (1)
92. Ibid., Section 110, Sub-section (2)
93. Ibid., Section 110, Sub-section (3)
He is appointed by the State Government with the consultation of the Wakf Board. The Office of the Chief Executive Officer is the special feature of the Wakf Act, 1995 and it owes its origin to the recommendations of the Wakf Inquiry Committee, 1976. Infact, it was recommended by the Wakf Inquiry Committee to appoint, what is called, a Wakf commissioner and a non-official Wakf Board with the separation of powers between them and demarcate functions based on the keyword “superintendence” and Administration. The proposed "Wakf Commissioner” is designated as Chief Executive Officer under Wakf Act, 1995. The necessary qualifications of the Chief Executive Officer are not prescribed under the Act and the same may be prescribed under the rules to be prepared by the State Government. However, the Act lays down that the Chief Executive Officer shall be a Muslim and he shall be ex-officio Secretary of the Wakf Board and as such would work under the administrative control of the Board. The Wakf Inquiry Committee had emphatically recommended that the Chief Executive Officer (Wakf Commissioner) shall not be placed under the Administrative Control of the Board as it was apprehended that such subordination would effect the prestige of his keeping in view the vast administrative functions of Chief Executive Officer has to discharge for the protection of the Wakf properties and exercise his control over the Mutawallis for the same purpose.

Powers and Duties

As mentioned earlier, the Chief Executive Officer has to function subject to the provisions of the Wakf Act, 1995, and the direction of the Wakf Board. Thus, the Chief Executive Officer is placed under the administrative control of the Wakf Board. However, the Wakf Board, while giving such direction, has to act in conformity with the directions

94. Ibid., Section 23, Sub-section (3)
by the Wakf as specified in the Wakf deed (Wakfnama), purpose of the Wakf and such usage and customs of Wakfs as are sanctioned by the School of Muslim Law to which the Wakf belongs. This provision is added on the basis of the recommendation of the Standing Committee of Labour and Welfare which expressed its opinion that interests of Wakfs belonging to various categories of Muslim Schools of thought need to be protected in accordance with the relevant usages and customs of such schools. Hence, it is incorporated under Section 25 (2) of the Wakf Act, 1995.

Subject to the above conditions the Chief Executive Officers' functions and duties include investigation of the nature and extent of Wakf and Wakf properties, inspection of lands accounts, deeds, and documents and take such steps as are necessary for the control, maintenance and supervision of Wakfs. In addition to this, the Chief Executive Officer, shall also exercise such other powers as may be delegated to him under the Act.

While the Chief Executive Officer has to work under the direction of the Wakf Board, he is empowered to refrain from implementing any resolution of the Wakf Board if he considers that such resolution:

1) has not been passed in accordance with the law or,
2) is in excess of, or is an abuse of the powers conferred on the Board by or under the act or by any other law, or
3) if implemented is likely to cause financial loss to the Wakf Board or to the concerned Wakfs generally or lead to a riot or breach of peace or cause danger to human life, health or safety or is not beneficial to the Board or to any Wakf or
4) is not beneficial to the Board or to any Wakf, or Wakfs in general

on the above reasons, the Chief Executive Officer may place such resolutions of the Wakf Board for its reconsideration and if such

95. Ibid., Section 25, Sub-section (2)
96. Ibid. Section 25, Sub-section (3)
order or resolution is not confirmed by a majority of votes of the members present, then the Chief Executive Officer has to refer the matter to the State Government along with his objections to the order, or resolution and the decision of the State Government shall be final. However, it may be noted that in the Wakf (Amendment) Act 1984 similar provision existed under Section 231-D with a glowing difference that the Chief Executive Officer, on the grounds mentioned under clauses (a) to (d) of Section 21-D above could directly submit such order or resolution of the Board to the State Government along with his objections and the decision of the State Government shall be final. But in the Wakf Act 1995, the Chief Executive Officer is required to place such order or resolution before the Wakf Board for its reconsideration and if the Board reconfirmed such order or resolution with a 'majority' of votes of the members of the Board present in the meeting, then the Chief Executive Officer is obliged to implement such order or resolution of the Board. It is only in the case where the Board fails to reconfirm its order with the majority of votes that the Chief Executive officer has to place it before the State Government for its decision.

It may be noted that originally the proposed Wakf Bill contained the word "Unanimity" among the members of the Board at the stage of reconsideration. However, the Standing Committee felt that such provision gives overriding power to the Chief Executive Officer as the condition of "unanimity" makes the Board a pawn in the hands of the Chief Executive Officer. Thus, the Standing Committee recommended substitution of the word 'Unanimity' with the words "simple majority".

**Chief Executive Officer to Exercise Powers Through Collectors:**

Under Section 28 of the Wakf Act, 1995, the Chief Executive Officer is required to exercise all or any of his powers conferred on him by this Act through the Commissioner of Division or the collector of the concerned district. As originally proposed by the Wakf Bill, this Section empowered the Chief Executive Officer "to delegate all or any of his powers to Commissioner of the Division or the Collector of the

97. Ibid., Section 26 (a-d)
concerned district. However, the Standing Committee noted that the Chief Executive Officer relatively is a junior officer and as such he can neither exercise his powers through his seniors i.e., Commissioners, collectors, nor delegate to them. Therefore, the Standing Committee recommended redrafting the whole Section making the exercise of the powers of Chief Executive Officer through rules and regulations and with the prior approval of the Board. Thus, the recommendation is incorporated under Section 28 of the Wakf Act, 1995.

Powers of the Chief Executive Officer to Inspect Records, Register in Public Office

This is an important feature of the Wakf Act 1995, which confers powers on the Chief Executive Officer or any other officer of the Board duly authorised by him to inspect in any public office any record, register or other document relating to a Wakf or movable or immovable properties which are Wakf properties or are claimed to be Wakf properties. Such inspection is subject, however, to such conditions and restrictions as may be prescribe and subject to payment of such fees as may be leviable under any law for the time being in force. Such conditions and restrictions may be prescribed by the State Government under clause (vi) of Sub-Section (2) of Section 109 of the Act. Similar provisions existed in the Wakf (Amendment) Act, 1984 and under Section 22-b as per the recommendation of the Wakf Inquiry Committee, 1926 which is now incorporated under Section 29 of the Wakf Act, 1995. Similar provision was also found under Section 99 of the Tamil Nadu Hindu Endowment Act, 1959.

98. Supra note 19, p. 6
Powers of the Chief Executive Officer to Examine Mutawallis Negligence and Failure

Section 33 of the act empowers the Chief Executive Officer to inspect any movable or immovable Wakf property, with the prior approval of Board, in order to find out 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 property. For this purpose the Chief Executive Officer or any other person authorised by him can inspect all funds, correspondence, places, accounts and other documents relating to such Wakf. To facilitate such inspection, all the concerned officers, employees, Mutawalli and every person connected with the administration of the Wakf are required to extend such facilities and assistance, as may be necessary.99

If during such inspection it appears that the concerned Mutawalli or any other person or employee has misappropriated, misapplied or fraudulently retained any money or other Wakf property, or had incurred irregular or unauthorized expenditure, then the Chief Executive Officer may, after giving him a notice in the prescribed and after considering his explanations make an order requiring such person to make the payment of the amount so determined and to restore the said Wakf property within such time as may be specified in the notice.100 However, such Mutawalli or any other person aggrieved by the order of the Chief Executive Officer may within a period of 30 days from the date of receipt of such order, appeal to the Wakf Tribunal. However, the Tribunal shall entertain no such appeal unless the appellant first deposit with the Chief Executive Officer the amount

99. Supra note 2, Section 33, Sub-section (2)
100. Ibid., Sub-section (3)
determined by the Chief Executive Officer as payable by the Mutawalli or any other person, as the case may be provided. Further, that the Tribunal shall have no power to grant any stay of proceeding or operation of the order made by the Chief Executive Officer. However, the Tribunal is empowered, after taking such evidence as it may think fit, to confirm, reverse or modify the order made by the Chief Executive Officer and may make such order as to costs as it may think appropriate. Such order of the Tribunal shall be final.

**Chief Executive Officer to Prepare Budget of Wakfs under Direct Management**

Under Section 45, the preparation of Budget in respect of the Wakfs under the direct management of the Wakf Board is entrusted to the chief Executive Officer who is also obliged to comply with the similar statutory requirements under the Act. However, he is authorised to charge administrative charges not exceeding ten percent of the gross income of the concerned Wakf under the direct management of the Wakf Board. Such charges are payable to the Wakf Board.

**Enforcement of Orders through Magistrate**

Section 55 provides for the procedure for the enforcement of the order made by the Chief Executive Officer under Section 54 and lays that where any person ordered under Sub-Section 3 of Section 54 to remove any encroachment omits or fails to remove such encroachment from the Wakf property then the Chief Executive Officer may apply to

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101. Ibid., Section 33, Sub-section (4)
102. Supra note 100
103. Supra note 2, Section 130, Sub-section (5)
104. Ibid, Sub-section (6)
105. Supra note 2, Section 45, Sub-section (7)
the concerned sub-divisional Magistrate for evicting such encroachment.

On receiving such application from the Chief Executive Officer, the Magistrate has to make an order directing the encroacher to remove encroachment from the Wakf property and deliver the possession to the concerned Mutawalli. In case of default of compliance with the order of the Magistrate to handover possession of the Wakf property, the Magistrate shall evict the encroacher and for this purpose, he can take such police assistance as may be necessary.

**Powers of the Chief Executive Officer to Direct Banks, Persons to Make Payment**

This is a new and a crucial provision incorporated under Section 73 of the Wakf, 1995. By virtue of this Section, the Chief Executive Officer has been empowered to recover contribution leviable under Section 77 from such of the banks or other persons with whom any money belonging to a Wakf is deposited. Thus, in case of delay, refusal or non-payment of annual contribution payable by the Wakfs to the Wakf Board, the Chief Executive Officer, notwithstanding anything contained in any other law for the time being in force, or if he is satisfied that it is necessary so to do, may make order directing any bank in which, or any person with whom any money belonging to such Wakf is deposited, to pay the contribution leviable under Section 72, out of such money as may be standing to the credit of the Wakf in such bank or may be deposited with such person. On receipt of such order the bank or the other person, as the case may be, shall comply with such orders. However, the bank or such other person may make appeal within thirty days from the date of receipt of such order, to the Tribunal and the decision of the Tribunal shall be final thereon. In case the bank
or the other person so ordered by the Chief Executive Officer or in the case of appeal, by the Tribunal, fails without any reasonable excuse to comply with the order, shall be punishable with fine which may extent to eight thousand rupees, or with imprisonment for a term which may extend to six months or with both.

Thus, this an important executive power conferred by the new Act on the Chief Executive Officer, which would contribute to strengthen the finances of the Wakf Board in a more effective and prompt manner. This Section corresponds to Section 46-A of the Wakf (Amendment) Act, 1986 and similar provision is also found under Section 59 of the Bombay Public Trust Act, 1950.

Mutawallis Duty to Apply for Registration of Wakfs

Section 36 of the Wakf Act 1995, provides for the registration of a Wakf at the office of the Wakf Board and the manner in which an application for registration of Wakf is to be made. It requires that the application for registration shall be made by the concerned Mutawalli, provided that the wakif himself, or his descendants or a beneficiary of the Wakf or may make such application even by any Muslim belonging to the sect to which the Wakf belong.

Preparation and Submission of Budget of Wakf

As per the provisions of Section 44 of the Wakf Act, 1995, every Mutawalli is under the obligation to prepare a budget in the prescribed manner and forming respect of the financial year next ensuing, shewing the estimated receipts and expenditure during that financial year. This proposed budget has to be submitted by every Mutawalli to the Wakf Board at least ninety days before the beginning of the financial year. This budget shall make provision for carrying out the objects of the Wakf, maintains and preservation of the Wakf property and the
discharge of all liabilities in commitments binding on the Wakf under the provisions of this Act or any other Law for the time being in force.\textsuperscript{106}

The Wakf Board is obliged to examine, scrutinise and approve the budget submitted by the Mutawalli\textsuperscript{107} and while doing so it may give such directions as it may deem fit for making alterations omissions or additions in the budget, subject. However, to condition that such directions shall be consistent with the object of the Wakf and the provisions of the Act.\textsuperscript{108}

Further, the Mutawalli may make any modification in the budget if it is necessary doing the course of the financial year in respect of receipts or distribution of the amounts to be expended in different heads of accounts. And he may submit to the Wakf Board a supplementary budget and in that case the Wakf Board shall have same powers to scrutinise and approve it.\textsuperscript{109}

**Submission of Accounts of Wakfs**

Under Section 46 of the Wakf Act, 1995, every Mutawalli is required to submit a full and true statement of accounts in the prescribed form and manner and this statement shall contain such particulars as may be provided by the regulations by the Board of all moneys received and expended by the Mutawalli during the period of twelve months ending on 31\textsuperscript{st} day of March each year. Such statements of accounts shall be submitted before the 1\textsuperscript{st} day of May every year. However, the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

\textsuperscript{106} Ibid., Section 44, Sub-section (1 & 2)
\textsuperscript{107} Ibid., Section 32, Sub-section (2 f)
\textsuperscript{108} Supra note 106, Sub-section (3)
\textsuperscript{109} Ibid., Section 106, Sub-section (4)
Payment of Annual Contribution to Wakf Board

Section 72 of the Wakf Act, 1995 corresponds to Section 46 of the Old Wakf Act, 1954. However, under the new Act drastic changes are brought in and the expression “net annual income of such of its property” appearing in Sub-Section (1) of Section 46 of the Old Act has been deleted. In fact, the Wakf Inquiry Committee, 1976 has also taken a note of the implications of these words due to which “Nazars” and “offerings” made at the Dargah were excluded from the assessment for the purpose of contribution. The Wakf Inquiry Committee observed, thus “we further, consider that the following word occurring in Sub-Section (1) of Section 46 of the Central Wakf Act as it stands to evict, net income of such of its properties it stands to led law courts to interpret the above quoted phraseology to mean the contribution payable by a Wakf is limited to the income derived from its “properties” only, and not from other sources. Following the aforesaid line of interpretation, the Tamil Nadu High Court held in a few cases that “Nazars” and “offerings” made at the Dargah are excluded from the assessment for the purpose of contribution. Hence, in our opinion the words “Such of its properties” in Sub-Section (1) of Section 46 of the Central Wakf Act 29 of 1954 should be deleted”.110 Therefore, following this recommendation, the Wakf Act, 1995 provided an explanation to Sub-Section (1) of Section 72 and thereby laid down that net annual income“ include nazars and offerings which do not amount to contributions to the corpus of the Waks.” Thus, nazars and offerings, which are not specifically earmarked by the donors towards corpus of the Wakf should be included in the expression of net annual income for the purpose of calculating 6% contribution of the Wakf income to the Wakf Board.

110. Supra note 4, pp. 49-50
Further, it was claimed by some of the Mutawalli that certain expenditure incurred by them on account of working expenses, particularly cost of cultivation and collection etc., should be allowed to be deducted from the net annual income for the purpose of calculating contribution payable to Wakf Board. Since there was considerable force in the suggestion on grounds of equity and natural justice, they have now been allowed under clause (a) to (f) of Sub-Section 72. However, the maximum dedication on account of these expenses was restricted to ten percent of the income derived from lands belonging to the Wakf.

Another important point raised in connection with the contribution payable to the Wakf Board related to the inequalities in the quantum of contribution and the nature of service rendered by the Wakf Board. In fact, this crucial argument was posed to challenge Section 46 of the old Wakf Act, 1954, case of Kerela Wakf Board v. Abdul Sattar Hajee Moosa Sait and others. While allowing the appeal of the Kerela Wakf Board, the Division Bench of the Kerela High Court has made the following important observation on the question of uniform levy of contribution and its effects inter se in between the various Wakfs. Thus, “The inequalities alleged because of some Wakfs having to pay more out of their net income (meaning profit and gains) proportionately than others it appears arising from the nature of enjoyment of properties or even the nature of the properties owned by a Wakf cannot be made a ground for supporting the contention that an import such as a fee at a uniform rate on the gross income of Wakfs is violate of Article 14 of the Constitution, as we are not able to discern any clear hostile discrimination of the singling out if any Wakf or any class if Wakfs for special or peculiar treatment. This discrimination, if any, as stated already, seems to arise out of the fortuitous circumstances.”

It may Further be noticed that the existing Section 72 of the Wakf Act, 1995 is based on the recommendation of the Wakf Inquiry Committee 1976 and correspond to the draft Section proposed by the Committee in its Final Report.\(^{112}\)

The quantum of contribution payable by the Wakf to the Wakf Board is now increased from 6% to 7% as may be prescribed. Non-payment or failure, or refusal by the Mutawalli to pay annual contribution to the Wakf Board is a punishable office under the Act.

**Mutawalli not to Lend or Borrow Money without Sanction of the Wakf Board**

This is also a new Section, which imposes restriction on power of the Mutawalli to lend any money belonging to the Wakf or any Wakf property or borrow any money for the purpose of the Wakf except with the previous sanction of the Wakf Board. However, no such provision in the Wakf Deed for such borrowing or lending. However, in the case where the sanction of the Wakf Board is required, the Wakf Board is also empowered to specify any terms and conditions subject to which such lending or borrowing of money may be sanctioned. If any Mutawalli lends or borrows any money in contravention to this Section or without the previous sanction of the Board then the Chief Executive Officer is empowered to recover such amount so lent or borrowed from the concerned person or Mutawalli together with interest due thereon.

**Recommendation of the Standing Committee**

The Standing Committee of Labour and Welfare (1994-95) However, recommended, thus, “In this connection the Members were of the opinion that some Wakfs are set up for the purpose of giving *Qarz-i-Hasanah* (interest free loan) for various purposes and therefore the

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\(^{112}\) Supra note 4, p. 51.
provision in its present form requiring prior approval of the Wakf Board is unwarranted." Thus in accordance with this recommendation such lending or borrowing of money, if permitted by express provision in the Wakf Deed is allowed under proviso to Sub-Section 1 of Section 76.

**Tribunal's Powers and Duties**

**Disputes Regarding Wakfs**

Despite regarding any property declared as Wakf property in the list of Wakfs published under Section 5(2) can be taken to the Wakf Tribunal by either the Wakf Board or the Mutawalli of the Wakf or any person interested therein. The dispute can relate to the question whether a particular property is a Wakf property or not, or whether it is a Shia Wakf or a Sunni Wakf.

The expression "any person interested therein" appearing in Section 6 above includes not only a “person interested in the Wakf” as defined under Sub-Section (K) of Section 3, but it also includes a person who, though not interested in the Wakf concerned, is interested in such property and to whom an opportunity has been given to represent his case by serving a notice on him during the course of the relevant inquiry under Section 4.

The Rajasthan High Court\(^{114}\) in 1967 held that the purpose of Section 6 is to confine the dispute between the Wakf Board, the Mutawalli and a person interested in a Wakfs, and therefore, this Section has no application to any stranger to a Wakfs. Consequently, the finality of the list of Wakf published under Section 5 (2) would be against such persons who are entitled to file a suit.\(^{115}\) In order to overcome the effects

\(^{113}\) Supra note 19, p. 10

\(^{114}\) Radha Kishan v. State of Rajasthan, AIR 1967, Raj., p. 1

\(^{115}\) AIR 1978, SC, p. 289
of these judgements and to render finality to the list of Wakfs against every person an explanation was added in Wakf (Amendment) Act, 1984, which was not brought into force. Therefore, in the Wakf Act, 1995 the explanation to Section 6 again included every person who, though not interested in the Wakf concerned, is interested in such property. This explanation would also cover within its ambit a non-Muslim who is permitted according to Muslim Law, to create a Wakf or to donate any property for the welfare of the Muslims. Thus, after this explanation, Section 6 now binds such person also who may not be interested in the Wakf, but is interested in such property.

The Karnataka High Court\textsuperscript{116} has held that limitation of one year for filing suit challenging inclusion of certain property in list of Wakfs does not apply to the government as the plaintiff government cannot said to be bound by the said limitation.

**Constitution of Tribunal**

The administration of Justice through Tribunal has become increasingly common in the modern judicial system in India and in almost all-important spheres of litigation; specialised Tribunals under various legislations are existing. The Income Tax Tribunal, Air Corporation Tribunal, Administrative Tribunal, Industrial Tribunal, Water Tribunal, etc., are few to mention. The very purpose of setting up such Tribunals is to provide expert machinery for the resolution of disputes relating to more specialised legislations, and secondly to avoid delay, which is a common feature of ordinary, law courts, which are subject to cumbersome procedure due to rigid adherence to the Civil Procedure Code and the Indian Evidence Act. Therefore, on similar grounds the Tribunals are set up for expeditious and expert disposal of

Wakf litigation. To start with, the Uttar Pradesh Muslim Wakf Act, 1960 empowered the State Government to constitute, as may Tribunals as may be considered necessary to cope up with the Wakf litigation. Thus, the U.P. State Government constituted Wakf Tribunals in all the Districts of the State headed by either the District or a Civil Judge of the concerned District, and the total number of such Wakf Tribunal in the State of U.P. along reached Fifty-five. Since the establishment of such a large number of Tribunals cost heavily on the State Ex-Chequer, the Wakf Inquiry Committee, 1976\textsuperscript{117} suggested as a via media, to constitute regional Wakf tribunal covering certain number of districts.

In the Central Wakf Act, 1954 also and amendment was brought in to provide for Tribunal under the Wakf (Amendment) Act, 1984 but it was not enforced. Now again in the Wakf Act, 1995 the entire scheme of resolution of Wakf litigation by Tribunal has been provided under Section 83 to 95.

It directs the State Government to constitute as many Tribunals as it thinks fit. Every such Tribunal shall consist of one judge not below the rank of District and Session Judge or Civil Judge, Class I.\textsuperscript{118}

Any Mutawalli or any person interested in a Wakf or other person aggrieved by an order made under the act or rules may apply to the Tribunal within the specified time for the determination of any dispute question or other matter relating to Wakf.

**Powers and Procedure of Tribunal**

The Tribunal constituted under the Act shall have the same powers as are vested with the Civil Court constituted under the code of Civil Procedure 1908 while trying suit or executing a decree or order.\textsuperscript{119}

\begin{itemize}
  \item \textsuperscript{117} Supra note 4, p. 32.
  \item \textsuperscript{118} Supra note 2, Section 83, Sub-section (1 & 4)
  \item \textsuperscript{119} Ibid, Sub-Section 5
\end{itemize}
It may be noted that the Wakf Inquiry Committee, 1976 has recommended that the procedure to be followed by the Tribunal should be simple, less cumbersome and expeditious and in any case, it should not be hampered by the cumbersome procedure under the Code of Civil Procedure, 1908. Therefore, under Sub-Section (6) of Section 83, it is laid down that the Tribunal shall follow such procedure as may be prescribed and anything contained in the Code of Civil Procedure, 1908 shall not apply to Tribunal. In fact, the main purpose of constituting any Tribunal is to ensure expeditious disposal of cases and avoid usual delay by the cumbersome of the Civil Courts.

Therefore, the procedure before the Tribunal is made flexible and the principles of natural justice are strictly adhered to. In line with the current progressive judicial trend with regard to the necessity for greater flexibility, even in the matter of procedure adopted law courts, the Supreme Court has also adopted a liberal point of view on the subject. The Supreme Court has made the following important observation:

"Rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given a opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed".

120. Supra note 4
It is also pertinent to note that the decision of the Tribunal is made final and binding upon the parties and it shall have the force of a decree made by a Civil Court, and no appeal lies against any decision or order whether interim or otherwise given by the Tribunal. This provision is also made in accordance with the recommendations, of the Wakf Inquiry Committee, 1976 which said thus, “On the analogy if Section 76 of the Uttar Pradesh Wakf At of 1960. The Amendments Committee has recommended that the award of a Tribunal shall be considered as final, conclusive and binding upon the parties concerned and the award shall have the force of a decree and that it shall not be questioned in any Court of Law. In view of the fact that in the case of the Uttar Pradesh Sunni Central Wakf Board v. Sirajul Haq, a doubt arose as to whether an appeal can lie against an interim order passed by the Tribunal during the pendency of the reference before it, it would be better if it is made clear that the final award and any interim order issued by a Wakf Tribunal shall be considered as final and conclusive”.

However, it is further, laid down in the Wakf Act, 1995 that such finality shall be subject to the condition that the High Court may, on its own motion, or on the application made by the Wakf Board or any other aggrieved person, 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 the High Court after such examinations may confirm, review or modify the order of the Tribunal and pass such order as it may think fit.

122. Supra note 2, Section 83, Sub-section (7)
123. Ibid., Sub-section (9)
124. AIR., 1963, All., p. 537
125. Supra note 4, p.33.
126. Supra note 118
The original Draft dealing with the Wakf Tribunal to amend the Central Wakf Act, 1954 proposed under Section 55A of the old Act that no proceedings taken by the Wakf Board or Wakf Commissioner under this Act in respect of any Wakf shall be stayed or suspended merely by reason of the pendency of any such dispute, question, or matter before a Tribunal or any revision before the High Court. Therefore, the Wakf Act, 1995, provided for this principle and laid down that the Tribunal shall have no power to stay order or proceeding of the Wakf Board or chief executive officer under the Act and incorporated the same under Sub-Section (2) of Section 6, Sub-Section (2) of Section (7), the proviso to Sub-Section 4 of Section 67, and the proviso to Sub-Section 3 of Section 69 of the Act.

Under Section 84 of the Wakf Tribunal is required to hold its proceedings as expeditiously as possible and on the conclusion of the hearing of any dispute, question or other matter relating to Wakf, give its decision in writing and also furnish copy thereof to the parties.

Bar of Jurisdiction of Civil Courts

Since a full-fledged forum for the determination of disputes arising out of the Wakf Act, 1995 has been provided under Section 83 to 95, the jurisdiction of the Civil Courts to try any suit or legal proceedings in respect of any dispute relating to any Wakf, has been barred. The Wakf Tribunal shall determine now all such disputes etc. Thus, Section 85 incorporates the same and avoids any conflict of jurisdiction between the Tribunals and the civil court with regard to Wakf matters. Interpreting similar provision under Section 43 (4A) and 55-C of the MP Wakf Act, 1954, the Madhya Pradesh High Court has held that when appeal is provided against any decision to Tribunal and

127. Supra note 4.
128. Intazamia Committee Idgah, Moraina v. MP Wakf Board, AIR 1996, MP., p.47
decision of the Tribunal is made final then the jurisdiction of Civil Court stands ousted.129

**Unregistered Wakfs Barred**

Registration of Wakfs has been made compulsory under Section 36 of the Act, it also imposes an obligation on every Mutawalli to register the Wakf with the Wakf Board, and any failure on part of the Mutawalli to register the Wakf is made punishable under Section 61 of the Act. The purpose of all these provisions is to ensure that all Wakfs are duly registered under the Act so that the Act so that the uniformity in the administration of Wakf could be introduced and the Wakf Board could exercise proper supervision over such Wakfs. If any Wakf is not registered under the Act then it is but fair that it should not be allowed to seek any benefit or protection under the provision of the Act without rendering itself subject to the Control of the Wakf Board. Therefore, Section 87 of the Act bars the enforcement of any right on behalf of such unregistered Wakf by instituting any suit, appeal or other legal proceedings in the Courts after the commencement of the Wakf Act, 1995. Similarly any such proceeding suit etc., If already commenced or pending before the courts shall not be continued, heard, tried or directed by the Courts after the commencement of this Act, unless such Wakf has been registered in accordance with the provisions of this Act.

**Proceedings under Land Acquisition Act, 1894**

Section 91 of the Act protects the interest of the Wakf Board in respect of such Wakf properties, which are likely to be acquired by the Collector in course of the proceedings under the Land Acquisition Act, 1894. It, therefore, requires that whenever it appears to the Collector that any property under acquisition is a Wakf property, he shall serve a

129. Ibid.
notice on the Wakf Board before making any award and shall stay further, proceedings in order to enable the Wakf Board to appear and plead as a party to such proceedings at any time within three months from the date of the receipt of such notice.\textsuperscript{130}

Similarly, if the Wakf Board on its own comes to know about such proceedings relating to the Wakf property, it may at any time, but before the award is made, appear and plead as a party to the proceeding.\textsuperscript{131}

Any order made under Section 31 or Section 32 of the Land Acquisition Act, 1894 or under the corresponding proceedings of any other law relating to acquisition, without giving an opportunity to the Wakf Board of being heard shall be declared void.\textsuperscript{132} In addition to this provision, the Wakf Board has a right to appear and plead as a party to any suit or legal proceedings in respect to a Wakf or Wakf property.\textsuperscript{133}

\textbf{Power of Appellate Authority to entertain Appeal after expiry of specified period}

Section 95 of the Act authorises the appellate authority to entertain any appeal after the expiry of the period specified for making such appeal if it is satisfied that the appellant was prevented by sufficient causes from preferring the appeal within the permitted period. Thus, the appellate authority can extend the time limit for making such appeal on reasonable ground.

It is a well-established fact that the institution of Wakf is so intrinsically interwoven with the religious and socio-economic life of the Muslims but unfortunately, many of the existing Wakfs have shown a steep decadence caused by neglect, misuse and mismanagement

\begin{itemize}
\item \textsuperscript{130} Supra note 2, Section 77, Sub-section (1)
\item \textsuperscript{131} Ibid., Sub-section (2)
\item \textsuperscript{132} Id., Sub-section (4)
\item \textsuperscript{133} Supra note 2, Section 92.
\end{itemize}
owing to the improper and non-serious application of the Wakf Act, 1995. The days are not far away when the Wakf properties will be only on papers. The Wakf Act, 1995 is an exhaustive piece of legislation, which is in force all over India except the state of Jammu and Kashmir and Dargah Khawaja Saheb, Ajmer, which has a separate legislation to manage its affairs. This Act aims to provide for better administration and supervision of wakfs, but its actual working revealed many flaws in it as also in the set up of the Wakf Boards, in particular the power of superintendence and control over the management of the individual wakfs. Although, the Wakf Act, 1954 was amended three times in 1959, in 1964 and in 1969, but did not materialised the desired results. On the recommendation of the Wakf Inquiry Committee, comprehensive amendments were carried out in 1984, but the same was strongly opposed. Therefore, it was decided to enact in new law i.e. Wakf Act, 1995.

The existing Wakf Act has disappointed on many fronts as the aims and goals have not been realised thereunder. The sorry state of affairs of wakfs calls for administration and organisational reforms. At present, the management of Wakf properties is seriously impaired both due to the high incidence of litigation and mismanagement. Often important wakf cases and thereby valuable properties are lost because of lack of financial and administrative resources. Therefore, strengthening and empowering Wakf Boards with administrative, financial and legal support is absolutely a need of the hour.